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Cover Photo

Kolob in Heavy Snow by Utah State Bar licensee – and first time *Utah Bar Journal* cover photographer – Christopher Marchant.

CHRISTOPHER MARCHANT retired from the Office of the Guardian ad Litem in 2023. In his retirement, he has taken up traveling and photography. Traveling throughout the world with his wife Karen, he has seen many beautiful places, but believes the Kolob Canyons, right here in Utah, is the prettiest spot on earth.

Asked about his cover photo, Chris said, “I wanted to share the scene I happened upon while driving into the Canyons with three of my grandchildren. It emphasizes the stark contrast of new fallen snow, the green foreground, the pop of a crimson cliff center stage and the deep blue/white sky overhead.” Chris believes that “the Kolob Canyons section of Zion National Park is, by far, the most beautiful part of the park.”



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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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.

LETTER SUBMISSION GUIDELINES

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.
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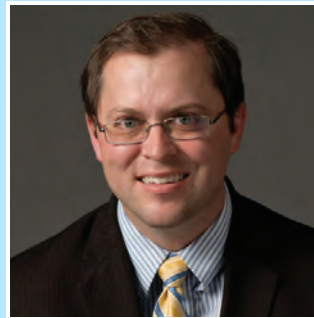

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Preserving Utah's Judicial Independence and Accountability: A System Worth Protecting

by Cara Tangaro

In 1984, Utah voters approved a constitutional amendment that repealed and reenacted Article VIII, the judicial article, of the Utah Constitution. The amendment established a judicial selection process that includes the governor appointing judges from a list of applicants certified by judicial nominating commissions. Those appointed by the governor are subject to review and confirmation by the senate. If confirmed, judges are required to stand for uncontested retention elections. The amendment retains language that had previously existed in the Utah Constitution prohibiting selection of judges based on “any partisan political consideration.” UTAH CONST. art. VIII, § 8(4).

The revised Article VIII was a carefully crafted compromise that followed years of study. It struck an important balance between merit selection, judicial independence, and accountability. It created a judicial selection system that has served the residents of Utah and the legal community in Utah well for forty years. Utah's judicial selection and retention system is one that is worth fighting to protect and to strengthen, even as some policymakers consider how to respond to recent decisions from the Utah Supreme Court.

Merit Selection

The wisdom of Utah's judicial appointment and retention system begins with a merit selection system, summarized by one sentence in the Utah Constitution: “Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration.” *Id.* That mandate applies to all aspects of judicial selection.

The Utah Constitution directs the governor to fill judicial vacancies in courts of record “by appointment from a list of at least three nominees certified to the governor by the Judicial Nominating Commission having authority over the vacancy.” *Id.* art. VIII, § 8(1). State statute requires exactly five nominees for vacancies in juvenile court and district court and exactly seven nominees for vacancies in business and chancery court, the

court of appeals, and the supreme court. Utah Code Ann. § 78A-10a-203(3)(a).

Judicial nominating commissions are established in statute, one in each district for both district court and juvenile court vacancies, one for business and chancery court vacancies, and one for vacancies in both the Utah Supreme Court and Utah Court of Appeals. *Id.* §§ 78A-10a-302, -402, -502. The governor appoints seven members to each judicial nominating commission. “In determining whether to appoint an individual to serve as a commissioner, the governor shall consider whether the individual's appointment would ensure that the commission selects applicants without any regard to partisan political consideration.” *Id.* §§ 78A-10a-303(4), -403(4), 503(4). The Utah Legislature established a similar merit appointment process for justice court judges. *Id.* § 78A-7-202.

Commissioners review applications submitted by interested attorneys, interview selected applicants, and ultimately certify a list of the most qualified applicants to the governor. “In determining which of the applicants are the most qualified, a commission shall determine by a majority vote of the commissioners present which of the applicants best possess the ability, temperament, training, and experience that qualifies an applicant for the office.” *Id.* § 78A-10a-203(2). Administrative rule directs commissioners to consider evaluation criteria including integrity, legal knowledge and ability, professional experience, judicial temperament, work ethic, financial responsibility, public service, ability to perform the work of a judge, and impartiality. UTAH ADMIN. CODE R356-2-10(1).

Though judicial nominating commissions are an important part of the merit selection system, they are not beyond improvement. The governor's discretion in appointing commissioners is nearly complete, bound only by the statute mentioned above. Before 2023, statute limited the governor



to appointing no more than four commissioners who were affiliated with the same political party. The Legislature removed this limitation during the 2023 General Session along with other requirements to include at least two attorneys on each nominating commission and to include a member of the Judicial Council as a nonvoting member on each judicial nominating commission. S.B. 129, 2023 Leg., Gen. Sess. (Utah 2023).

The limitation on stacking judicial nominating commissions with people from the same political party was considered by many to be an important safeguard that protected against political ideology entering the discussions and voting of judicial nominating commissions. Some worry that when only like-minded individuals serve on a judicial nominating commission, it is more likely that political ideology intentionally or unintentionally enters the process because there is no one present to act as a check. Legislators explained that the mere mention of political affiliation that existed in statute prior to 2023 actually increased the likelihood of partisan politics being part of judicial nominating commission deliberations and that S.B. 129 fixed that problem.

Before S.B. 129, all judicial nominating commissions had at least two attorneys. By statute, the Utah State Bar would provide a list of attorneys to the governor and the governor would appoint at least two commissioners from the list. That process no longer exists. The governor is free to appoint a judicial nominating commission of only attorneys. The governor may also choose to appoint no attorneys to a judicial nominating commission.

Similar to the Utah State Bar, the Judicial Council's role in judicial nominating commissions has been removed. Statute previously directed the chief justice to appoint a member of the Judicial Council to each judicial nominating commission. That person served as a nonvoting member. The repeal of this aspect of judicial nominating commissions is unfortunate for at least two reasons. The Judicial Council member was usually the only person on the judicial nominating commissions with experience performing the work of a judge. As such, the Judicial Council member was an important resource to the voting commissioners. Also, though the Judicial Council member had no oversight role on the judicial nominating commission, it is a good bet that having a judge in the room encouraged commissioners to follow the constitutional and statutory mandates to focus exclusively on qualifications and to follow the prohibition on consideration of partisan politics. If in fact that served as a guardrail, it is now gone.

To be fair, there is no enforcement mechanism for the constitutional and statutory mandates to consider only fitness for office or for the prohibition against considering partisan politics. Utah residents must rely on everyone involved in judicial selection to comply. All Utah residents do have opportunities to help encourage compliance, even if in a small way, by participating in the public comment periods for judicial nominating commission appointments, judicial nominees before the list is certified to the governor, and judicial appointments while the senate considers them.

Notwithstanding areas where the system can be improved, Utah's judicial appointment process continues to be based on constitutional and statutory requirements that all who participate in the process focus on the qualifications of applicants, not their politics. That lays the groundwork for an independent judiciary.

Judicial Independence

Long before voters approved the 1984 amendment to Article VIII, the framers of the Utah Constitution included an explicit separation of powers provision:

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

UTAH CONST. art. V, § 1. Principles of judicial independence, as well as legislative independence and executive independence, have existed in the Utah Constitution since 1896.

Of course, judicial independence in this country traces its roots back much further. The Declaration of Independence lists among its many grievances that King George III “has made Judges dependent on his Will alone” and “[he] has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.” THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). The founders of this nation understood through personal experience the perils of a government that did not have and protect an independent judiciary.

Though there are certainly plenty of nuances that have been and will continue to be the subject of legislative debate and judicial opinions, judicial independence is a fairly straightforward concept. Judges make decisions based on what the law requires, not based on their personal political opinions or outside

influences, and without fear of retribution from other branches of government. Judicial independence protects the integrity of the court system, which in turn protects the integrity of constitutional and statutory rights.


While addressing legislators during his 2024 State of the Judiciary speech, Chief Justice Durrant described the interplay between the legislature and the judiciary.

You make policy for our state. In doing so, you exercise your own judgment while also seeking to reflect the views of those who elected you. Judges, on the other hand, are called upon to interpret the statutes through which you set policy. In doing so, our north star is your intent. If you read our cases, you will see that time and time again, we emphasize that it is our job to interpret the statutes as you have written them. And that is what we endeavor to do.

We are also, at times, asked to perform the role the Utah Constitution assigns us to ensure that a statute is consistent with our state and federal constitutions.


When we review the constitutionality of legislation, we don't weigh the popularity of our decision, nor do we enact the policies we might personally prefer. Instead, we carefully assess the wording of the constitutional provision at issue and seek to understand what was intended by those who wrote it and what was understood by those citizens who ratified it. It is critical that courts be free from political pressure and outside influences as they work to protect those rights guaranteed by the constitution.

Matthew B. Durrant, Chief Justice, Utah Supreme Court, State of the Judiciary (Jan. 16, 2024), <https://www.utcourts.gov/content/dam/resources/reports/statejudiciary/2024-StateOfTheJudiciary.pdf>. A judiciary that must concern itself with political pressure from any source, whether it be legislators, other policymakers, or voters, is not independent and cannot protect constitutional and statutory rights. Judging based on political pressure is a dangerous game summarized well by Alexander Hamilton in Federalist No. 78: “[N]o man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day.”



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Accountability

Judicial authority is significant and must be subject to appropriate constraints and accountability. The Utah Constitution establishes two forms of accountability for judges: retention elections and the Judicial Conduct Commission.

To ensure that voters continue to have some voice regarding the state's judiciary, those who crafted the 1984 constitutional amendment to Article VIII of the Utah Constitution included a requirement that each judge of a court of record "be subject to an unopposed retention election at the first general election held more than three years after appointment." UTAH CONST. art. VIII, § 9. If retained initially, the Utah Constitution requires supreme court justices to stand for unopposed retention elections every ten years and all other judges of courts of record every six years. *Id.* The legislature adopted an identical requirement for justice court judges: they are "subject to an unopposed retention election at the first general election held more than three years after the judge or justice was appointed." Utah Code Ann. § 20A-12-201(1)(a). If retained initially, justice court judges are subject to unopposed retention elections every six years. *Id.* § 20A-12-201(1)(b)(ii).

Because the work of a judge can be difficult for voters to evaluate, the legislature established the Judicial Performance Evaluation Commission (JPEC) to provide relevant information about judicial performance to voters and to judges themselves. JPEC accomplishes that charge by administering surveys that are familiar to most attorneys. The surveys, also administered to jurors and court staff, ask a variety of questions about a handful of judicial performance-related topics: legal ability, judicial temperament and integrity, administrative performance, and procedural fairness. *Id.* § 78A-12-204(7); UTAH ADMIN. CODE R597-6-2. JPEC also relies on volunteer courtroom observers to assess whether the judge's conduct promotes procedural fairness. This evaluation process is adjusted for some justice court judges who preside in courts with smaller numbers of cases.

Survey results and courtroom observations are used to help the members of JPEC determine whether a judge satisfies performance standards. A comprehensive report explaining the data collected by JPEC is delivered to each judge who is scheduled to stand for retention. If the judge decides to stand for retention, the report becomes public. If the judge decides not to stand for retention, the report remains protected pursuant to the Government Records Access and Management Act. Utah Code Ann.

§ 63G-2-305(55). The retention reports for all judges standing for retention are available for voters to review as they consider whether to vote in favor of or against retention. In this way, judges are accountable to voters for their legal ability, judicial temperament and integrity, administrative performance, and procedural fairness.

Article VIII of the Utah Constitution also establishes the Judicial Conduct Commission (JCC) to "investigate and conduct confidential hearings regarding complaints against any justice or judge." UTAH CONST. art. VIII, § 13. Though the JCC existed prior to 1984, including it in the 1984 constitutional amendment was an important part of the delicate balance for ensuring merit selection, judicial independence, and accountability.

After completion of an investigation and any hearings authorized by statute, the JCC may order the reprimand, censure, suspension, removal, or involuntary retirement of any justice or judge for the following:

- (a) action which constitutes willful misconduct in office; (b) final conviction of a crime punishable as a felony under state or federal law; (c) willful and persistent failure to perform judicial duties; (d) disability that seriously interferes with the performance of judicial duties; or (e) conduct prejudicial to the administration of justice which brings a judicial office into disrepute.

Utah Code Ann. § 78A-11-105(1). All orders from the JCC are subject to review by the Utah Supreme Court. The supreme court may implement, reject, or modify an order of the JCC. *Id.*

Retention elections and the Judicial Conduct Commission promote accountability and provide important checks on judicial authority without compromising the independence of the judiciary.

The 1984 amendment to Article VIII of the Utah Constitution has proven to be a wise decision by Utah voters. Through its merit selection process, it ensures that Utah judges are qualified for the job rather than simply being politically well-connected. A qualified judiciary can be trusted with independence in its decision-making while also being accountable for its actions. This is a system that continues to serve the best interests of Utah residents in their pursuit of justice.

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Utah's Juvenile Court Turns 120

by The Hon. Michael F. Leavitt

When people talk about sacred places, they often talk about a church, synagogue, temple, or maybe the mountains or the desert, all places where people can commune with their higher power, connect with nature, or meditate and find clarity or purpose in their lives.

For me, what makes a place sacred has expanded over the years. Take a hospital, for example. In those antiseptic and busy buildings, most of us take our first breath and many our last. In each room, folks experience the full range of human emotions, indescribable joy at the birth of their child, fear of the unknown, pain, and deep grief when they have to say good-bye to someone they love.

Or a homeless shelter, where one finds people truly at the end of their rope, desperate for someone to help them just find a warm place to stay for the night and maybe have a hot meal. And someone usually does.

Each is a place where it seems humanity is, well, at its most human.

A juvenile courtroom is just such a place. Here, we find parents pleading for help with their wayward child and praying they'll catch a broader vision of their own future. We find kids, experiencing the full impact of their choices with a still-developing brain. We find parents, trying to find a way to be safe for their children, accounting for their own choices and perhaps those of the generations before them. We find children experiencing the painful cognitive dissonance of both loving and fearing an abusive or neglectful parent.

All of us in juvenile court – the attorneys, caseworkers, probation officers, and judicial assistants – stand as witnesses to the miracles and tragedies that happen here, and each plays an important part in helping create a safe and healthy place for kids and parents to find a way out of whatever mess in which they might find themselves.

And the juvenile court judge is tasked with maintaining some kind of order in this human messiness, balancing the constitutional rights of parents, the public's right to safety, and the need to both correct a child's behavior and protect them.

Joseph E. Frick, a Utah Supreme Court justice at the turn of the twentieth century, understood the juvenile court judge's assignment. In 1907, he penned the first supreme court opinion on an appeal from juvenile court in *Mill v. Brown*. 88 P. 609 (Utah 1907). Albert Mill was a thirteen-year-old kid who got caught stealing a box of cigars. *Id.* at 610. Judge Willis Brown, a newly appointed juvenile court judge, found him guilty and sentenced him to the State Industrial School in Ogden “until he shall have attained the age of twenty-one years, unless sooner released by the board of control of said institution.” *Id.*

At the time, only parents who had lost custody of their child had the right to appeal a juvenile court order. So, Albert's father, Emil Mill, appealed Judge Brown's decision. The supreme court reversed Judge Brown with a sharp rebuke. In doing so, Justice Frick said:

To administer juvenile laws in accordance with their true spirit and intent requires a [person] of broad mind, of almost infinite patience, and one who is the possessor of great faith in humanity and thoroughly imbued with that spirit. Those who come, and are intended to be brought, before juvenile courts must be reached through love, not fear. The purpose in bringing them before the court is to lead them away from, and to destroy their propensities to, vice; to elevate, not degrade; to reform, not to punish them. Their parents likewise must be met and dealt with in the same spirit.

Id. at 615.

JUDGE MICHAEL F. LEAVITT was appointed to the Fifth District Juvenile Court in 2014 by Gov. Gary R. Herbert. He serves Beaver, Iron, and Washington counties.



From our first territorial laws in 1851 to the present, the Utah Legislature has consistently worked to establish a forum designed to meet Justice Frick's expectation for administering juvenile law, including the establishment of our first juvenile court 120 years ago in 1905. And over time, each branch of government has shared in the responsibility of managing the humanity that comes to our juvenile courtrooms.

It has been a long road. Prior to the turn of the twentieth century, territorial law placed the onus of managing neglected and delinquent children, generally described in the same breath, on the county's board of selectmen, the predecessors of our modern county commissioners. *See* 1851 Utah Laws 52. Under the oversight of the probate court, selectmen were responsible for education and "to bind out orphan children, and vicious, idle, or vagrant children" until they reach the age of majority. *Id.* This included appointing guardians for the children or binding them out to apprenticeships, at times without the parent's consent, "if such Parent or Guardian neglects, refuses, or otherwise fails in properly controlling the actions and education of such minor, and does not train him or her up in some useful avocation." *Id.* at 76.

By 1888, children who violated the law were brought before the district or municipal courts just like adults, though selectmen still managed the needs of neglected children. 1888 Utah Laws 209–15. If found guilty of any crime other than murder, the court had the option of sending the youth to the newly-established territorial reform school, located in Weber County and later called the State Industrial School, to remain through the age of majority unless legally discharged after six months for good conduct. *Id.* at 214.

With the advent of statehood, Utah began shifting the responsibility for neglected youth away from county commission oversight. In 1903, in addition to having those courts adjudicate law violations by children, the legislature gave district and municipal courts jurisdiction over wayward and neglected children, including those "found begging," "thieving in the street," "wandering about at the late hour," "frequenting any saloon," found "in the company of a prostitute," or "found associating or dwelling with any thief, drunkard, or vagabond, or other dissolute or degraded person, ..." 1903 Utah Laws 171. It provided for the creation and recognition of children's aid societies, private corporations "having among [their] objects the protection of children from cruelty ..." *Id.* For several enumerated reasons, any peace officer or other "apprehending officer" could take a dependent child before any court of summary jurisdiction, with or without a warrant, and if adjudicated as neglected or dependent, the court could order the child to the custody of the children's aid society, to last "during the minority of such child." *Id.* at 171.

Parents who desired a return of custody were required to petition – not the court – but the children's aid society's board of managers who retained the authority to return the child to the parent. *Id.* at 172–73. Probation officers, without pay, were nominated by the children's aid society to be appointed by the court to oversee the child's case. *Id.* at 173.

Two years later, in 1905, the Utah Legislature created the first juvenile court for first- and second-class cities for the "care and correction of delinquent children." 1905 Utah Laws 182–87. Neglected children, and delinquent children in smaller cities, remained under the jurisdiction of the district court. *Id.* at 182. "Delinquent children" were not simply those who violated criminal laws but included any child who knowingly visited "a house of ill repute" or "place where any gambling device is ... operated," or a child who "habitually wanders about any railroad yards or tracks, or jumps on or attempts to board any moving trains." *Id.* The definition also included any child "who habitually uses obscene, vulgar, profane, or indecent language" or is found "drawing any obscene or vulgar picture." *Id.* at 186.

If adjudicated as delinquent, the juvenile court could order a child to remain at home under the care of a probation officer, place the child with another family, or commit the child to the



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State Industrial School or another home for the care of children. *Id.* at 185. A 1907 amendment provided clarity to the court's jurisdiction and provided for the right to appeal – not for the minor but solely for parents who lost custody of their children. 1907 Utah Laws 207–14. It also clarified that district courts, not juvenile courts, had jurisdiction over felonies a minor might commit. *Id.* at 211.

Though called a court by statute, these early juvenile courts were not part of the judicial branch. Rather, the Juvenile Court Commission, an executive agency consisting of the Governor, Attorney General, and the State Superintendent of Public Instruction, oversaw the work of the juvenile court, paid their salaries, and found courtrooms for them. *Id.* at 207.

This structure remained largely untouched until 1931 when the legislature expanded juvenile courts to all counties and established a consistent framework for litigating matters involving children's delinquency or welfare. 1931 Utah Laws 51–70. It granted juvenile courts concurrent jurisdiction with the district court over a minor fourteen years or older accused of committing a felony. *Id.* at 52. It specified procedures for service of process. *Id.* at 58. It authorized the juvenile courts to issue warrants for a child's removal from their parents' custody upon "reasonable cause to suspect that such child under eighteen years has been or is being ill-treated, is dependent, or neglected." *Id.* at 59–60. It required written findings and allowed the juvenile court broad discretion to make orders to correct the circumstances giving rise to the minor's delinquency or dependency. *Id.* at 61.

But the juvenile courts remained an executive branch entity. Appeals remained available only to parents who had lost custody of their children. And children were afforded no constitutional rights by statute. That changed sixty years ago with the Juvenile Court Act of 1965, where the Utah Legislature established the juvenile court largely as we see it today. 1965 Utah Laws 595–625. First, the juvenile court was finally recognized as part of the judicial branch and juvenile court judges were recognized as being on par with district court judges. *Id.* at 597.

More importantly, two years before the U.S. Supreme Court would require it in *In re Gault*, the Utah Legislature provided for additional elements of due process. The act required courts to advise parents and children "if old enough" that they had the right to be represented by counsel and, if found indigent, the right to court-appointed counsel. *Id.* at 610. It also allowed for compulsory process of witnesses for the parent "on his own behalf or on behalf of the child." *Id.* at 605. And for the first time, it established a procedure and criteria for terminating a parent's rights. *Id.* at 619.

Since then, the Utah Legislature has continued to shape the juvenile court to benefit children. In the 1980s it developed the process for obtaining a child protective order for emergency proceedings to protect children from physical or sexual abuse. 1984 Utah Laws 33–40. And in 1987 it created the Office of Guardian ad Litem to ensure that a child's voice and best interest were heard and respected in juvenile court. 1987 Utah Laws 677.

The 1990s saw a significant development in child welfare with the *David C. v. Leavitt* federal lawsuit, brought against the state on behalf of children in foster care, alleging serious deficiencies in Utah's child welfare system. Victoria P. Coombs, *Recent Legislative Developments in Utah Law, Utah's Child Welfare Reform Act*, 1994 Utah L. Rev. 1589 (discussing *David C. v. Leavitt*, Civ. No. 93-C-206W (D. Utah)).. This resulted in a consent decree that required the Division of Child and Family Services (DCFS) to "conduct more thorough investigations of abuse or neglect reports, provide foster children with improved health and educational services, conduct regular case reviews, and establish timely permanency plans." *Id.* at 1590. The lawsuit led to a legislative audit and the 1994 Child Welfare Reform Act that significantly reformed the state's child welfare system, identifying the rights and responsibilities of parties, establishing timelines for children remaining in foster care, implementing improved standards for a child's removal, and requiring that DCFS make reasonable efforts to return children to their parents' custody after removal. *See generally* 1994 Utah Laws 1142–1193.

Even today, the legislature continues to explore ways to fulfill the goals of the juvenile court. In 2017, it amended much of the Juvenile Court Act related to delinquency, setting presumptive timeframes for children to remain on probation or in the state's custody, limited the grounds for and amount of time children could remain in detention, and established clearer criteria for when children are removed from their parents' custody due to delinquency. *See generally* 2017 Utah Laws 1575–1647.

Over time, as society has learned about how to better protect and rehabilitate children, the state of Utah and its branches of government have responded accordingly. The creation of the juvenile court in Utah was a legislative achievement and a prime example of how the separation of powers works for the betterment of Utah's most vulnerable. Its statutorily-created structure, occasionally tweaked, continues to give the juvenile court judge an effective forum to pursue the goal, as Justice Frick implored, of being one "of broad mind, of almost infinite patience, and one who is the possessor of great faith in humanity and thoroughly imbued with that spirit." May the Utah Juvenile Court continue to offer sacred places for children and families for yet another 120 years and beyond.

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In Memoriam: Glenn Keiji Iwasaki

by Bill Bohling, Tyrone Medley, Bob Yeates, and Jennifer Yim

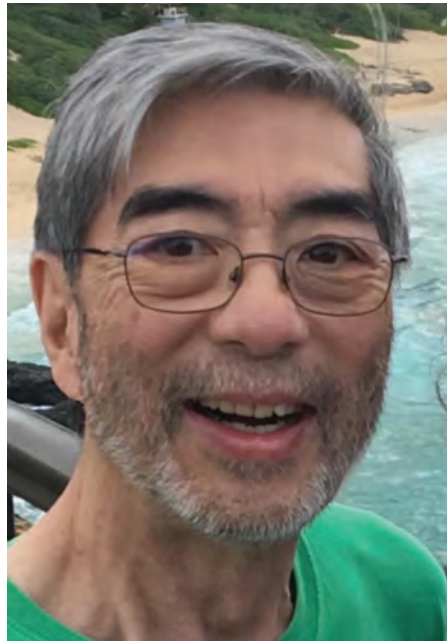
The Utah State Bar lost a beloved and valued member of its community with the passing of Judge Iwasaki on November 6, 2024. Glenn was an active member of the bar since passing the bar examination in 1971.

Glenn was born and raised in Salt Lake City. He grew up in the Capitol Hill neighborhood where he enjoyed a stable and loving home environment provided by his parents and older brother and sister. Glenn was educated in the public school system, graduating from West High School in 1964. He was actively involved in student government and played as a running back for the West High School Panthers football team.

Glenn graduated from the University of Utah with a Bachelor of Science degree in marketing in 1968. He then went on to pursue a law degree at the University of Utah College of Law, graduating in 1971.

During the course of his legal career, Judge Iwasaki engaged in the private practice of law as a solo practitioner for multiple years, specializing in criminal defense work. He was employed by the Salt Lake Legal Defender Association as a felony trial attorney and served two separate stints with the Salt Lake County Attorney's Office where he worked as a felony trial attorney, a member of the Career Prosecution Team, and a Unit Chief over the Special Victims Prosecution Unit. Along the way, Judge Iwasaki helped establish the law firm of Collard, Pixton, Iwasaki and Downes. His practice focused on criminal defense and juvenile court litigation.

Glenn was appointed to the Third District Court in July of 1992, where he served with distinction for over nineteen years until his retirement on September 30, 2011. Glenn's retirement was hastened by the onset of Parkinson's disease, which he confronted



with strength, courage, and dignity for approximately twenty years.

Judge Iwasaki was a model jurist. He was always prepared, patient, and wise. Counsel who appeared before him could expect a respectful hearing and a fair, considered judgment. Judge Iwasaki was known for his strong work ethic, honesty, and even-handed approach to the administration of justice. Glenn treated all of those who appeared before him, regardless of their station in life, with respect, dignity, and fairness. He was committed to giving everyone their day in court with a full opportunity to be heard.

All of that said, his most exceptional quality could well have been his humanity. Irrespective of the circumstances that brought parties before the court, he always seemed able to empathize with them. He had a "golden gut" – the ability to render just the right result in the most emotional and complicated circumstances.

Judge Iwasaki was honored as Judge of the Year by the Utah State Bar in 2008. He was a highly regarded colleague by the other judges he served with on the Third District Bench. Glenn remained close to many of the judges he worked with after his retirement.

Throughout his membership with the Utah State Bar, Glenn served on numerous boards, committees, and commissions. Early in his career, Judge Iwasaki served on the Salt Lake County Child Abuse Coordinating Committee, as a member of the Children's Justice Center Executive Committee, and as the Chair of the Youth Parole Authority. Glenn sat on the Utah State Bar Fee Arbitration Committee and the Utah State Legislative Committee on Child Support, Custody, and Visitation as well as the Utah Supreme Court Advisory Committee on the Utah Rules of Criminal Procedure. He was a member of the Utah Task Force on Racial and Ethnic Fairness in the Judicial System.

Judge Iwasaki served as a Trial Advocacy Adjunct Professor of Law at the University of Utah College of Law, in addition to his position as a trustee of the University of Utah College of Law Alumni Association. Glenn was the thirteenth ethnic minority admitted to the Utah State Bar. He later became a faithful member of the Utah Minority Bar Association.

Judge Iwasaki was an avid sports enthusiast, both as a participant and a fan. He grew up playing baseball, basketball, and football. In his later years, he actively participated in tennis and golf and competed in numerous tennis tournaments.

Glenn was a huge fan of Jerry Garcia and the Grateful Dead. He proudly displayed a Grateful Dead tattoo on his left leg, which he got long before tattoos were in vogue. At the time of his

passing, a recording of the Grateful Dead was playing in his room at the University of Utah Medical Center.

While Glenn achieved much throughout his life and excelled in practically everything he did, his highest priority was always his family. He is survived by his loving wife, Marian, his children Scott Iwasaki (Tamra), Marnie Mish (Martin), and Raquel Austin (Jedd), and his grandchildren, Allyson Iwasaki, Sydney Austin, Kaitlyn Duehlmeier, Cy Austin, and Emily Mish. He is also survived by his siblings, Hiro Iwasaki (Elaine) and Beverly Saito (Spencer), their children, and his cats, Bertha and Stella.

Glenn enriched the lives of those who had the privilege of knowing him. He will be missed, and always remembered by those who loved him. Judge Iwasaki left a positive imprint on the lives of many of us, for which we will always be grateful.

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How Utah Bar Licensees Can Help

by Frank Pignanelli and Stephen Styler

The 2025 Utah General Legislative Session commences on January 21. The Bar Commission and the government relations team have been working to enhance interactions between lawmakers and attorneys. We appreciate the desire to improve attorney involvement in the legislative process, resulting in a better judicial system and greater access to justice for citizens.

Bar Sections Engage With the Legislature Throughout the Year

The Utah State Constitution mandates a forty-five-day legislative session that adjourns in early March. May through November, the legislature meets monthly in interim committees, task forces, and ad hoc groups to discuss legislation. The Bar Government Relations Committee (GRC) and sections have received bill files (potential legislation) opened during the year. We hope this alerted section members as to possible legislative activity.

As the session approaches, your lobbyists will identify bills and send them to the Executive Director's Office for distribution to the GRC. We will also send legislation that is released directly to the appropriate section chairs so they can review it much sooner. Bar section leaders will inform their members of the legislation so they are aware of legislation that will affect their practice area. Sections may not take positions on the legislation, but lawyers can reach out to legislators in their individual capacity or provide subject matter expertise.

Bar Involvement

Because legislative activities regularly impact attorneys directly or indirectly, the Bar is vigilant in active monitoring and, when necessary, engagement in legislative deliberations. During each legislative session, the GRC meets weekly to review bills and resolutions. Last year, the GRC examined 280 bills and resolutions, almost a third of all legislation filed. All bills and resolutions will also be provided to the appropriate sections for their examination. The results of this scrutiny and accompanying recommendations will then be provided to the full GRC.

Jaqualin Peterson and Sara Bouley lead the GRC, and each section of the Bar has a designated representative. This year, meetings will be conducted online, as a virtual setting provides greater accessibility to participate in these discussions. The recommendations of the GRC are then provided to the Bar Commission for their review. The Bar posts its legislative positions to the public on its website, providing practitioners with transparency and clarity.

Please remember that the Utah State Bar's legislative activities are limited by design and follow the United States Supreme Court precedent outlined in *Keller v. State Bar of California*, 496 U.S. 1 (1990). When the Utah Supreme Court adopted rules directing the Utah State Bar's engagement in legislative activities, it identified specific guardrails to align with *Keller's* limitations. These areas of the Bar's involvement in legislative activities include matters concerning the courts, rules of evidence and procedure, the administration of justice, the practice of law, and access to the legal system. The Bar commissioners determine public policy positions after receiving input from the GRC.

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

*FRANK PIGNANELLI
& STEPHEN STYLER
are licensed
attorneys and
lobbyists for the
Utah State Bar.*



Potential Issues in the 2025 Session

We thank the lawyer-legislators who participated in the November Fall Forum and attended the Bar Commission breakfast. They provided great insight into what may be happening in various areas.

The Judiciary Interim Committee, chaired by Senator Todd Weiler, studied a wide array of issues during the 2024 Interim, and several study items culminated in bills that the committee favorably recommended for passage in the 2025 legislative session. Below is a brief description of many committee bills:

Administrative Procedures Act Amendments codifies the existing judicial test for determining “final agency action” in response to the Utah Supreme Court’s call for legislative action in *Vote Solar v. Public Service Commission of Utah* (2023).

Concurrent Resolution Authorizing Adult Sentencing and Supervision Length Guidelines and Juvenile Disposition Guidelines authorizes the sentencing commission to provide adult sentencing and supervision length guidelines and juvenile disposition guidelines.

Foreign Judgment Amendments clarifies statutes related to post-judgment interest rates applied to a foreign judgment in response to the Utah Supreme Court’s call for legislative action in *Sunstone Realty Partners X LLC v. Bodell Construction Company* (2024).

Juvenile Court Procedures Amendments clarifies that if both the juvenile and district courts have cases involving custody or guardianship of the same child, then after the juvenile court terminates reunification services and orders permanent custody and guardianship, the district court will have ongoing jurisdiction over that order. It also creates a mechanism by which parents may petition for reconsideration of guardianship and custody. This legislation is a response to the Utah Court of Appeals’ call for legislative action in *In re A.S.G. -R.* (2023).

Additional issues under consideration include the following:

Judgment Renewal Amendments will determine the legislative policy on the ability to renew judgments. The current limit is eight years but can be extended for another eight years. The proposed legislation will either limit extensions or allow unlimited extensions.

Justice Court Amendments is currently being considered by lawmakers, in conjunction with local jurisdictions and county attorneys, as to whether modifications need to be made to this judicial level.

Estate Planning Amendments may also be introduced to modify and streamline access by the public.

Other committee bills, as detailed by the Office of Legislative Research and General Counsel, include:

Consumer Protection Amendments, which would amend provisions relating to consumer protection and deceptive sales practices.

State Resource Management Plan Amendments, which would make technical corrections to the state resource management plan, as recommended by the Public Lands Policy Coordinating Office.

Criminal Justice and Mental Health Coordination Amendments, which would amend provisions related to mental health services and create the Crisis Response Task Force.

Medical Intervention Modifications, which would amend provisions related to medical interventions, specifically to clarify conditions of unprofessional conduct and protect individuals from unproven medical countermeasures.

State Water Policy Amendments, which would amend the state water policy.

Property Tax Act Modifications, which would:

- establish an application deadline for the residential property tax exemption;
- modify the contents of the residential property declaration;
- clarify the circumstances under which land less than five acres in area may qualify for agricultural property tax assessment; and
- clarify a taxpayer’s ability to appeal decisions related to tax deferral and abatement to the State Tax Commission.

Also, some lawmakers are examining issues related to the structure and deliberations of the judiciary. These include the yearly issuance rate of decisions promulgated by the Utah Supreme Court and the Utah Court of Appeals. Additionally, legislators and others have expressed concerns that the information provided by the Judicial Performance Evaluation Commission (JPEC) should be better available to the public. The Bar actively promotes voters’ interaction with the JPEC website to assist in evaluating their decisions regarding judicial

retention. More robust dissemination of JPEC may be reviewed in the session.

Bar Interactions With the Legislature and How You Can Participate

Adjacent to this article is a list of the lawyer-legislators serving in the 2025 session. This is a remarkable group of individuals who champion the interest of our profession and access to justice for all citizens. They welcome communications from colleagues regarding legislation. We encourage Utah State Bar practitioners to interact with their local lawmakers, with attention to the conditions provided above.

In the past, the Bar granted sections the authority to advocate a position on their behalf if there was a matter where the section had a particular interest or expertise. In *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021), a case involving the Texas State Bar introduced additional persuasive guidance and nuance to that practice, which the Bar has taken into account. Sections may no longer take official positions on legislation but may still do legislative work with safeguards, including using boilerplate language outlined below.

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

The following bill is a product of [section name].
The [section] is self-funded and voluntary, and this

bill has not been approved by the Utah State Bar. The Bar has not taken, nor will it take, a position on the bill except to the extent that it addresses access to justice, the regulation of the practice of law, the administration of justice, or improving the quality of legal services for the public.

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

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

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General Counsel, Maribeth LeHoux, mlehoux@utahbar.org
Frank Pignanelli and Stephen Styler, foxpig@fputah.com

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2025 Utah State Lawyer Legislative Directory

The Utah State House of Representatives



Nelson Abbott (R) – District 57
nelson@nelsonabbott.com

Education: B.A., Brigham Young University; J.D., J. Reuben Clark Law School; and M.B.A., Brigham Young University

Practice Areas: Auto Accidents and Personal Injury



Ken Ivory (R) – District 39
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Education: B.A., Brigham Young University; J.D., California Western School of Law

Practice Areas: Mediation, General Business, Commercial Litigation, and Estate Planning



Anthony Loubet (R) – District 27
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Education: B.S., California Lutheran University; J.D., J. Reuben Clark Law School, Brigham Young University

Practice Areas: General Counsel



Grant Miller (D) – District 24
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Education: B.A., Snow College; J.D., University of Utah S.J. Quinney College of Law

Practice Areas: Criminal Defense



Doug Owens (D) – District 33
doug@dougowensutah.com

Education: B.A., University of Utah; J.D., Yale Law School

Practice Areas: Complex Commercial, Employment, and Environmental Litigation



David Shallenberger (R) – District 58
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Education: B.S., Brigham Young University; J.D., Willamette University College of Law

Practice Areas: Energy and Environmental Services Industry



Andrew Stoddard (D) – District 40
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Education: B.S., University of Utah; J.D., J. Reuben Clark Law School, Brigham Young University

Practice Areas: Auto Accidents and Personal Injury



Jordan Teuscher (R) – District 44
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Education: B.A., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Practice Areas: Church of Jesus Christ of Latter-day Saints



Congratulations!

Campbell Williams Beech & Hall congratulates one of its partners, Cameron Beech, on his recent appointment and confirmation as a District Court Judge in the Eighth Judicial District, serving the people of the Uintah Basin.

The Utah State Senate



Brady Brammer (R) – District 27
bbrammer@le.utah.gov

Education: B.A., Brigham Young University; MPA, Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Practice Areas: Commercial, Real Estate, and Government Entity Litigation



Kirk Cullimore, Jr. (R) – District 19
kcullimore@le.utah.gov

Education: B.A., Brigham Young University; J.D., University of Oklahoma School of Law

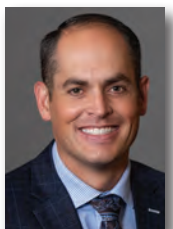
Practice Areas: Property Rights, Fair Housing, and Property Management



Daniel McCay (R) – District 18
dmccay@le.utah.gov

Education: Bachelors and Masters, Utah State University; J.D., Willamette University College of Law

Practice Areas: Real Estate Transactions, Land Use, and Civil Litigation



Mike McKell (R) – District 25
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Education: B.A., Southern Utah University; J.D., University of Idaho

Practice Areas: Personal Injury, Insurance Disputes, and Real Estate



Stephanie Pitcher (D) – District 14
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Education: B.A., Utah State University; M.P.A., University of Utah; J.D., University of Utah S.J. Quinney College of Law

Practice Areas: Criminal Defense



Keven J. Stratton (R) – District 48
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Education: B.S., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Practice Areas: Business, Real Estate, and Estate Planning



Todd Weiler (R) – District 8
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Education: B.S., Brigham Young University; J.D., J. Reuben Clark Law School, Brigham Young University

Practice Areas: Civil Litigation and Business

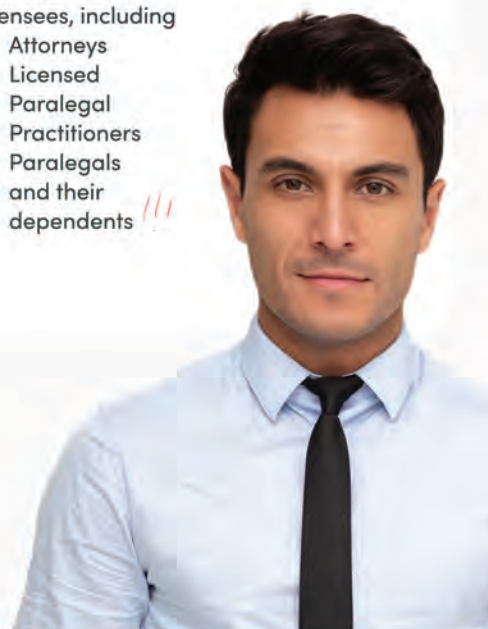


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- A recent study ranked Utah 50th in the nation after examining elder abuse, abuse prevention, long-term care nursing home quality, and 13 other measures of elder abuse protection!¹
- Most Utah Nursing Homes are owned by two small, municipal entities, 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

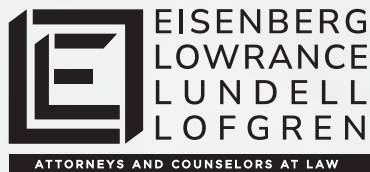
In this environment, winning Utah nursing home cases demands more than knowing the “standard of care”—it means mastering the corporate structures and operations of the industry.

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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.

A Call to Join the American Inns of Court from a Utah Pegasus Scholar

by Meg Glasmann

I cordially invite all of you to join an American Inn of Court. As a “regular” member of the David K. Watkiss Sutherland II Inn of Court in Salt Lake City, I have had the immense luck to learn from some of Utah’s best and brightest legal professionals. Recently, I had the distinct pleasure of traveling for a six-week international legal fellowship through the American Inns of Court known as the Pegasus Scholar exchange program. I’ve returned home with even more deeply felt appreciation for how special the American Inns of Court are, and how Utah is the place where it all started nearly fifty years ago. I’d like nothing more than seeing new Utah law students, attorneys, and judges join the ranks of the American Inns of Court.

The American Inns of Court

The American Inns of Court (AIC) is a nonpartisan organization that promotes professionalism, ethics, civility, and excellence in the United States legal profession and judiciary. *See What is an American Inn of Court?*, AM. INNS OF CT., [https://www.innsofcourt.org/AIC/About Us/What Is an American Inn of Court/AIC/AIC About Us/What Is An American Inn of Court.aspx?hkey=d3aa9ba2-459a-4bab-ae8-f8faca2bfa0f](https://www.innsofcourt.org/AIC/About%20Us/What%20Is%20an%20American%20Inn%20of%20Court/AIC/AIC%20About%20Us/What%20Is%20an%20American%20Inn%20of%20Court.aspx?hkey=d3aa9ba2-459a-4bab-ae8-f8faca2bfa0f) (last visited Nov. 26, 2024); *Our Vision, Mission, and Strategic Goals*, AM. INNS OF CT., [https://www.innsofcourt.org/AIC/About Us/Our Vision and Mission/AIC/AIC About Us/Vision Mission and Goals.aspx?hkey=27d-5bcde-8492-45da-aebd-0514af4154ce](https://www.innsofcourt.org/AIC/About%20Us/Our%20Vision%20and%20Mission/AIC/AIC%20About%20Us/Vision%20Mission%20and%20Goals.aspx?hkey=27d-5bcde-8492-45da-aebd-0514af4154ce) (last visited Nov. 26, 2024). With over 400 chartered American Inns of Court chapters, participation from 150 accredited law schools, nearly 30,000 active members, and 150,000 alumni members, the Inns are a small but integral part of the U.S. legal community. *See Frequently Asked Questions ... and Answers!*, AM. INNS OF CT., <https://www.innsofcourt.org/AIC/FAQ/AIC/FAQ.aspx?hkey=f5c1666d-f0f8-4440-a070-bb8516420858> (last visited Nov. 26, 2024).

A number of reputable bodies have endorsed the American Inns of Court, including the Conference of Chief Justices, the Judicial Administration Division of the ABA, and the Seventh Circuit Committee on Professionalism. *See id.*

The Utah Inns of Court

Utah has five Inns: the A. Sherman Christensen I Inn, the David K. Watkiss Sutherland II Inn, the Aldon J. Anderson Inn, the Rex E. Lee Inn, and the David K. Winder Intellectual Property Inn. *See Find an Inn*, AM. INNS OF CT., [https://www.innsofcourt.org/AIC/AIC Get Involved/Find An Inn.aspx](https://www.innsofcourt.org/AIC/AIC%20Get%20Involved/Find%20An%20Inn.aspx) (select Utah in the State search field) (last visited Nov. 26, 2024).



Inside Temple Church. King John and the barons signed the Magna Carta here in 1215.

The English Inns of Court

In England, legal professionals fall into two categories: barristers and solicitors. While foreign to us Americans, the split legal profession is standard throughout the U.K. and much of the Commonwealth. Barristers occupy the traditional

MEG GLASMANN is a litigation associate at Clyde Snow & Sessions. In this photo the author is posing in a barrister’s robes and wig during her visit to 33 Bedford Row Chambers.





Inner Temple's Great Hall, where the author had the honor of dining at the Bench Table with several KCs from 3PB chambers.

courtroom advocacy space, while solicitors are responsible for client interactions and serve more of a legal advisory role.

As barristers become more senior, some apply to become recognized as King's Counsel (KC). This is a highly sought after distinction that typically is bestowed only after fifteen to twenty years of practice. Many but not all KCs will later apply to become part-time or full-time judges in the U.K.

While the predominate U.S. path to practice requires robust coursework over three years of law school and successful bar exam passage (with many obtaining exposure to legal practice as summer associates or law clerks), there is no requirement that law students regularly interact with attorneys and judges prior to becoming licensed. In contrast, such interactions are an integral part of how the English system operates. All judges, barristers, and law students are affiliated with an Inn of Court (Gray's, Lincoln's, Middle Temple, or Inner Temple) and all chambers (similar but different from law firms) are affiliated with an Inn of Court as well. One requirement of licensure in the U.K. is for aspiring legal practitioners to attend a number of formal dining events, where law students, barristers, and judges break bread together.



Westminster Abbey during the Opening of the Legal Year event. The folks in wigs are distinguished members of the judiciary.

The Origin Story

What we now know as the American Inns of Court was dreamt up in large part in a riverside cabin in the late 1970s.

In 1977, Chief Justice Warren E. Burger traveled to London to participate in the Anglo-American Legal Exchange. *See The History of the American Inns of Court*, AM. INNS OF CT., https://www.innsofcourt.org/AIC/About_Us/History/AIC/AIC_About_Us/History_of_the_American_Inns_of_Court.aspx?hkey=a37ee0c7-2df9-4af4-967e-1602688fd8f4 (last visited Nov. 26, 2024). The Chief Justice was so impressed by the English Inns of Court that he sought Ninth Circuit U.S. Court of Appeals Judge J. Clifford Wallace's assistance to create an American version. *See Welcome to the American Inns of Court!*, AM. INNS OF CT., https://www.innsofcourt.org/AIC/About_Us/AIC/AIC_About_Us/About_Us.aspx?hkey=72647b55-4a23-4263-8a3e-817098c808fa (last visited Nov. 26, 2024). Two years later, Chief Justice Burger would put his plan into action. His venue? A cabin on the Upper Provo River owned by O.C. Tanner. *See Isaac D. Paxman, Founder Dallin H. Oaks' Visit Spurs Call to Join of Utah-born American Inns of Court Movement*, 25 UTAH B.J. 20, 20 (July/Aug. 2012). His cavalry? Two former U.S. Supreme Court law clerks and Brigham Young University faculty, Dallin H. Oaks and Rex E. Lee. *See id.* At the time, Oaks

was BYU president, and Lee was dean of the J. Reuben Clark Law School. *See id.* Neither had met the Chief Justice previously. *Id.*

Over breakfast, a casually dressed Chief Justice Burger greeted his rather befuddled guests and explained the reasoning behind the unusual gathering. *See id.* The Chief Justice – dressed in a tank top, shorts, and sandals – would confide in Oaks and Lee that day, sharing his concerns about the American legal system and trial skills of American attorneys. *See id.* Chief Justice Burger had a big idea, and it involved borrowing from our friends across the pond.

The Chief Justice proposed that BYU create a pilot program modeled after the English Inns of Court. *See id.* at 20–21. He saw the great benefits of the mentorship and community embedded in the English Inns and how these core values produced high-caliber oral advocates. *See The History of the American Inns of Court*, AM. INNS OF CT., https://www.innsforcourt.org/AIC/About_Us/History/AIC/About_Us/History_of_the_American_Inns_of_Court.aspx?hkey=a37ee0c7-2df9-4af4-967e-1602688fd8f4 (last visited Nov. 26, 2024).

This sense of community and civility is at the center of what Chief Justice Burger envisioned as the future of American legal

practice. Years later, Justice Sandra Day O'Connor shared the following when recalling her esteemed colleague's desire to establish a national network that became the American Inns of Court: "What is imperatively needed, is more emphasis on professional ethics, on manners and deportment in the courtroom and in the practice; in short, the necessity for civility, in what is inherently a contentious human enterprise." *Id.*

Oaks and Lee left that fateful cabin breakfast and went straight to work on making Chief Justice Burger's vision of an American Inn of Court into a reality.

Oaks and Lee chose A. Sherman Christensen, a Utah federal district judge, to preside over the BYU Inns pilot program. *See Paxman*, 25 UTAH B.J. at 21. Judge Christensen gathered a select group of local judges, attorneys, BYU law professors, and BYU law students to participate in the pilot, including Ralph L. Dewsnup and M. Dayle Jeffs. *Id.* It was this pilot American Inn of Court established in 1980 – the A. Sherman Christensen I Inn – that would dream up the "special sauce" that has made the American Inns of Court so successful: well-thought out programming and monthly CLEs executed by assigned pupillage groups. *See id.*



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Clyde Snow Welcomes Three New Attorneys



Carolyn W. Mendelson
Of Counsel

Mrs. Mendelson is a licensed Pennsylvania attorney who is a member of our Securities and Regulatory Practice Groups at Clyde Snow. Mrs. Mendelson focuses her practice on securities enforcement, regulatory defense, government and independent investigations, fund formation, and providing guidance to private funds, investment advisors, broker-dealers, issuers and industry service providers.



Katina Tatum *Associate*

Ms. Tatum practice focuses on corporate law, business transactions, business planning and organization, and labor and employment matters. She graduated from the University of Utah S.J. Quinney College of Law with a Certificate of Specialized Study in Business Law. While in law school, Ms. Tatum worked as a law clerk with the firm.



Meg S. Glasmann
Associate

Meg Glasmann is an associate attorney at Clyde Snow & Sessions. Meg brings her appellate specialty and legal research and writing prowess to the firm. Before joining Clyde Snow, Meg completed a clerkship at the Utah Court of Appeals for presiding Judge Michele Christiansen Forster. Ms. Glasmann's practice focuses on appellant practice, health care law, and civil litigation.

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A view of Lincoln's Inn.



Lincoln Inn's library.

Roughly a year after the initial success of the A. Sherman Christensen I Inn of Court, a second American Inn of Court was born in Salt Lake City: the David K. Watkiss Sutherland II Inn of Court. *See id.*

With the enormous success of the Christensen I and Watkiss II Inns of Court in Utah, interest in forming other American Inns of Court skyrocketed. In 1985, the American Inns of Court Foundation was formally established, and the rest is history. *See The History of the American Inns of Court*, AM. INNS OF CT., [https://www.innsforcourt.org/AIC/About Us/History/AIC/AIC About Us/History of the American Inns of Court.aspx?hkey=a37ee0c7-2df9-4af4-967e-1602688fd8f4](https://www.innsforcourt.org/AIC/About%20Us/History/AIC/AIC%20About%20Us/History%20of%20the%20American%20Inns%20of%20Court.aspx?hkey=a37ee0c7-2df9-4af4-967e-1602688fd8f4) (last visited Nov. 26, 2024).

Pupillage at the Inns

Pupillage is a term used to describe the year-long journey that legal professionals called to the bar in England must complete at a chambers before they can become practicing barristers. Pupillages provide robust training opportunities to pupils who will shadow experienced barristers in court and client meetings. *See Pupillage*, PROSPECTS, <https://www.prospects.ac.uk/jobs-and-work-experience/job-sectors/law-sector/pupillage> (June 2024).

In the American Inns of Court, pupillage groups are small presentation cohorts consisting of pupils (law students), associates

(junior attorneys), barristers (attorneys), and masters of the bench (partners and judges). *See What is an American Inn of Court?*, AM. INNS OF CT., [https://www.innsforcourt.org/AIC/About Us/What Is an American Inn of Court/AIC/AIC About Us/What Is An American Inn of Court.aspx?hkey=d3aa9ba2-459a-4bab-ae8-f8faca2bfa0f](https://www.innsforcourt.org/AIC/About%20Us/What%20Is%20an%20American%20Inn%20of%20Court/AIC/AIC%20About%20Us/What%20Is%20an%20American%20Inn%20of%20Court.aspx?hkey=d3aa9ba2-459a-4bab-ae8-f8faca2bfa0f) (last visited Nov. 26, 2024). Each group typically has one to two pupillage leaders and one judicial leader to oversee the CLE planning and execution. Pupillage groups have creative freedom to incorporate panel discussions, musical or theatrical skits, and competitions into CLEs to invigorate the experience. Often, the planning of such immersive CLEs requires pupillage groups to meet several times outside of the normal Inns monthly meetings to adequately prepare their presentations. By sharing the load of CLE planning across the entire year and intentionally mixing Inns members with varying levels of legal experience in these pupillage groups, Inn members gain access to community support that only deepens over time. It is the intentionality behind each year's programming and pupillage groups that promotes the lasting culture of collegiality, innovation, respect, education, connection, and mentorship across American Inns of Court chapters.

Pupillage groups are in many ways the distinguishing factor between an American Inns of Court chapter and another legal

organization or section of the bar. While bar associations tend to focus on licensure and standards of the legal profession, AIC chapters promote elevated ethics and professionalism among legal practitioners, judges, and law students. With judges at the helm of each pupillage group, the state and federal judiciary help to set the tone for ethics conversations. It is very typical of judges to chime in during CLE events with their thoughts on relevant issues and their lived experiences, offering Inns members a unique window into how the bench ponders practical issues.

My Experience with the American Inns of Court

The summer before I began law school at the University of Utah, I attended my first Inns of Court meeting.

Out of sheer luck (and a shared love of Utes sports), I had made the acquaintance of University of Utah law school alumni, local defense attorney, and now beloved friend, Kate Conyers. Kate took me under her wing and invited me to join her at an Inns of Court meeting. Having no idea what an Inn of Court was but liking the idea of meeting more of Utah's legal community before I began law school, I took Kate up on her invitation. I arrived on scene to the Watkiss II Inn meeting and was completely bewildered: the room was packed full of important looking people talking about the law – and they all seemed to like each other? My assumptions about lawyers were thrown out the window.

Over the course of that first Inn meeting, I learned that the Inns of Court were special. While the law is chock-full of difficult interactions with clients and at its base is an adversarial system, the Inns allowed practitioners to be friends. At the Inns, legal professionals could let their hair down, be creative, and be

reminded of how amazing the legal community can be when we support and respect one another.

I had the good fortune to be sponsored by Jim Holbrook as a first year law student to join the Watkiss II Inn, where I have been an active member since 2020. I sought out leadership opportunities from the start, volunteering as a law student to help organize our Inn's 40th anniversary celebration and later leading the development of several of the Inn's CLE events. Since graduating, I have continued to attend my local Inn's meetings and remain very involved in promoting the benefits of Inn membership to law students and new attorneys across the country.

The National Advocacy Training Program

After three years of membership, I received support from past Watkiss II Inns president Scarlet Smith to attend the American Inns of Court National Advocacy Training Program (NATP) in Philadelphia. As a 2023 participant in the NATP program, I had the incredible opportunity to learn from two U.K. practitioners alongside seven other NATP participants from across the country. Our cohort learned from two accomplished British barristers, Sarah Clarke KC and Peter Melleney, as we mooted arguments based on real events that came before the International Criminal Court. My favorite part about the NATP was interacting with attorneys that had backgrounds completely different from my own and learning more about them and their practices. We also had the excellent opportunity to attend an event hosted by the Temple Inn of Court and featuring national and international experts to discuss the benefits and drawbacks of the U.S. written versus the U.K. unwritten constitutions.

M. DAYLE JEFFS MARCH 1930–OCTOBER 2024



With great sadness we are announcing the passing of our founder, colleague and friend, M. Dayle Jeffs.

Dayle, along with his brother, Dean, was a founder of Jeffs & Jeffs law office. He practiced with the firm from its founding in 1957 to his retirement in 2019.

In addition to being a partner in Jeffs & Jeffs, Dayle was the Utah County Attorney from 1966 to 1970. He was a commissioner on the Utah State Bar Commission from 1979 to 1985. In 1980 Dayle was a founding member of the first American Inn of Court. Thereafter, he was appointed to an ad hoc committee to roll out Inns of Court across the U.S.

Dayle received numerous awards and accolades. In addition, he received court appointments to a number of committees and commissions.

Dayle will be missed by all those who knew him, particularly by those of us in the firm, the many attorneys he helped and mentored, and his family, friends and relatives. We will always remember him.

As a result of the NATP, I returned home with increased confidence in my oral advocacy skills and a number of new legal professionals to call friends – as well as a strong curiosity about the U.K. legal system and how it is foundational to the Inns of Court I know and love back home.

The Pegasus Scholarship Exchange Program

Since 1991, the American Inns of Court has sponsored two young attorneys to travel abroad and learn about the English legal system. In exchange, two English barristers visit the United States to learn about our legal system. The exchange program runs for approximately six weeks, with American attorneys having the opportunity to learn from the English Inns located in London, as well as other parts of the U.K.



The Neville Statutes. Image reproduced with the permission of the Honourable Society of Lincoln's Inn.

In fall 2023, following my participation in the NATP program, I had the pleasure of meeting more U.K. practitioners, Liam Kelly and Danielle Manson, when my local Watkiss II Inn hosted them during the tail end of their Pegasus Scholar exchange in the U.S.

During their visit to the Watkiss II Inn, I learned about the four English Inns of Court, viewing striking images of each of the Inns – Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn – and hearing stories about their unique subcultures. It was during this talk that I really began to understand how far back the tradition of judges and lawyers breaking bread together extends. This in turn deepened my appreciation of the tradition as it continues today, albeit in slightly different ways across America. I also learned about the educational process of becoming a barrister or solicitor, which piqued my curiosity about how

such differences between the U.S. and U.K. legal education systems and the relative influence of the Inns on entry to the Bar impact legal practice in each country. Meeting Liam and Danielle spurred me to apply to the Pegasus Scholar program.

My Experience as a Pegasus Scholar

As fate would have it, I was selected as one of the 2024 Pegasus Scholars.

Over the course of six weeks, I had the opportunity to visit many inspiring places in "Legal London," including the four English Inns of Court, the Old Bailey (the Central Criminal Court of England and Wales), the Royal Courts of Justice, the Rolls Building, and even the UK Supreme Court. As a Pegasus Scholar, I enjoyed afternoon tea at 33 Bedford Row Chambers, ate lunch in medieval dining halls, attended evensong at Temple Church, sat in on a call to the bar ceremony at Inner Temple, met with leaders of the Bar Society and National Pro Bono Centre, toured Linklaters solicitor firm, and observed proceedings at multiple district and appellate courts. I explored the magnificent legal libraries at the English Inns of Court, returning again and again to access their extensive archives and view ancient manuscripts. I wandered through picturesque gardens and stood in the room where the Magna Carta was signed in 1215!

During the program, I spent two weeks completing a mini pupillage at Old Square Chambers. While there, I had the opportunity to observe many different barristers in diverse practice settings, ranging from a medical negligence case (a pre-trial meeting with a client, a barrister, a solicitor, and an expert witness) to an employment discrimination case (a KC presenting a three-day case to an employment tribunal) to a GLO case (akin to corporate class action; over fifty barristers and solicitors packed into a courtroom). I saw some legal practitioners in suits, not unlike attorneys back home. I also saw some don traditional horsehair wigs and robes!

The last week in London I spent at the Supreme Court of the United Kingdom. While there, I had the once-in-a-lifetime opportunity to meet and befriend the various justices on the UKSC and their judicial assistants (akin to U.S. judicial law clerks). During my week at the UKSC, I attended several hearings, observing the different style of oral advocacy employed by various barristers before the court. I had the distinct pleasure of shadowing Lord David Richards of Camberwell during my visit. Lord Richards and I talked extensively about the distinctions between the U.S. and U.K. legal systems. We also talked about our shared love of the outdoors. I told him he must make a trip to Utah!

During my stay in London, I made sure to take advantage of the incredible art and history around me. I was part of the immersive

Guys and Dolls production at the Bridge Theatre, front row in the yard during a rainy, avant-garde rendering of *The Taming of the Shrew* at the Shakespeare Globe, and in a balconette to watch *The Book of Mormon* at the Prince of Wales Theatre. I was honored to attend a breathtaking performance of *Il turco in Italia* by Rossini at the Glyndebourne Opera house as a guest of Christa Richmond, the Director of Education at Middle Temple. I visited the British Museum, the National Portrait Gallery, the National Gallery (and visiting Van Gogh exhibit), and the Victoria & Albert Museum. I also made time to tour Oxford and Cambridge, visit Rochester and Upnor Castles, and Eltham Palace.

After my whirlwind four weeks in London, I spent the remaining two weeks visiting Edinburgh, Dublin, and the Hague. In each location, I had the honor of meeting esteemed judges and legal professionals committed to civility, ethics, and excellence.

While in Edinburgh, I visited Parliament House, where the Supreme Courts of Scotland are housed. I toured the epic Parliament Hall, enjoyed coffee with Lady Dorrian of the Scottish judiciary, and learn about the Faculty of Advocates.

In Dublin, I visited the Criminal Courts of Justice and King's Inn. While at the CCJ, I met with Judge Power and toured the architectural marvel of a building that is the CCJ (there are separate stairwells and corridors for all parties involved in cases, as well as judges and jury members). I donned a gown for a formal dinner at King's Inn.

During the last leg of the trip, I visited the International Criminal Court and Kosovo Specialist Chambers at the Hague. While there, I

met with ICC Judge Joanna Korner and Special Prosecutor Kim West. I also attended part of a hearing at the Kosovo Specialist Chambers and one at the ICC (the latter was confidential, so the gallery could view the courtroom but not hear any of the proceedings).

Over the course of my time as a Pegasus Scholar, I learned so much from our English counterparts about civility, decorum, and tradition. I feel honored to have participated in this exchange program, and I especially am grateful to the Watkiss II Inn for their support.

Utah Pegasus Alumni

Among the seventy U.S. Pegasus Scholar alumni, four individuals are presently members of Utah Inns: Isaac Paxman (2003), Scarlet Smith (2017), Larissa Lee (2021), and myself.

Call to the Inns

I hope I have convinced you to join an American Inn of Court! While there are many wonderful organizations that judges, lawyers, and law students may choose to join, the Inns offer a special space for all to gather and learn from one another simultaneously.

Please consider joining one of the five Utah Inns!

AUTHOR'S NOTE: All information for this article was taken with permission from the American Inns of Court website. The author would also like to thank Isaac Paxman for sharing his 2012 *Utah Bar Journal* article with her following her recent visit to the Christensen I Inn with American Inns of Court President, U.S. Court of Appeals for the Ninth Circuit Judge Consuelo Callahan, in early November 2024.

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United States, Europe
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MJ Townsend



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Anna Grisby



Jessica Holzer



Mikayla Irvin

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.*

legislative goal: 'to protect the public' from the 'adverse effects' of rising medical malpractice insurance costs by 'provid[ing] a reasonable time in which actions may be commenced against health care providers while limiting that time to a specific period for which professional liability insurance premiums can be reasonably and accurately calculated.'"

Utah Supreme Court

State v. Willden

2024 UT 37 (September 5, 2024)

In this interlocutory appeal, the Utah Supreme Court interprets the language of Rule 16(b) of the Utah Rules of Criminal Procedure for the first time since its amendment in 2021. As amended, that rule provides that a criminal defendant's "disclosure obligations do not include . . . attorney work product. Attorney work product protection is not subject to the exception in Rule 26(b)(6) of the Utah Rules of Civil Procedure." Utah R. Crim. P. 16(b)(4). The court held this subsection provides a limit on the disclosure obligations in subsections (1) through (3). Assuming the requested witness recordings fell within subsection (1)'s disclosure obligations, the court held that with the connection to Rule 26(b)(6) now "severed," the recordings constitute work product based on the definition set out in *Gold Standard, Inc. v. Am. Barrick Res. Corp.*, 805 P.2d 164 (Utah 1990). **The court additionally held, as a threshold matter, that appellants on interlocutory review are not required, as part of their burden on appeal, to show prejudice flowing from the asserted error.**

Bingham v. Gourley

2024 UT 38 (September 5, 2024)

The supreme court **upheld the constitutionality of the four-year statute of repose in the Utah Healthcare Malpractice Act against open courts and uniform operation of laws challenges.** The court concluded that the plaintiff had not shown the legislature's decision that the statute would address a crisis in the health industry was not "fairly debatable," and that the "statute of repose is a reasonable means for achieving a legitimate

Utah Court of Appeals

Haskell v. Wakefield and Associates

2024 UT App 123 (September 6, 2024)

Claim and issue preclusion, two "branches" of the doctrine of res judicata, both require a prior adjudication to a final judgment on the merits. The Utah Court of Appeals previously clarified that, for purposes of claim preclusion, this requirement cannot be met by an earlier dismissal without prejudice. In this appeal, however, the court held that, **for purposes of issue preclusion, an earlier dismissal without prejudice can satisfy the requirement of a final judgment on the merits.** Thus, issues fully and fairly litigated in a prior proceeding may have preclusive effect even if the broader proceeding ended in a dismissal without prejudice.

Maddox v. Maddox

2024 UT App 130 (September 12, 2024)

In this per curiam decision, the court of appeals rejected an effort to convert a notice of appeal, filed after a Rule 54(b) certification, into a petition for interlocutory appeal. The issue was raised because the 54(b) certification order was incomplete and therefore ineffective. The court held that **a notice of appeal of an order imperfectly certified under Rule 54(b) can only be treated as a petition for interlocutory appeal if the notice was filed within 21 days of the original decision.** Here, the original decision had been issued months earlier, so treating the notice as a petition rendered it untimely.

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

Musselman v. Keele**2024 UT App 143 (October 10, 2024)**

The court of appeals reversed a grant of summary judgment in a case where the motion was unopposed below. “Summary judgment may not be entered against the nonmoving party merely by virtue of a failure to oppose, but instead a district court must still determine whether the moving party’s pleadings, discovery, and affidavits demonstrate its entitlement to judgment as a matter of law.”

In re Adoption of RP**2024 UT App 149 (October 18, 2024)**

Utah’s Adoption Act, Utah Code § 78B-6-110(6), requires that any party contesting a proposed adoption formally intervene in the adoption proceeding within 30 days of receiving notice or be “barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.” In this case, the district court strictly applied the intervention requirement to effectively dismiss a paternal grandmother’s adoption petition based on her failure to intervene in an adoption proceeding subsequently filed by maternal grandparents. In a rare application of the absurdity doctrine, the Utah Court of Appeals reversed, concluding that

literal application of the intervention requirement here worked an absurd result by barring the paternal grandmother from pursuing her own first-filed adoption petition, while her husband could continue to pursue adoption.

Duffin v. Duffin**2024 UT App 154 (October 31, 2024)**

This was another unopposed summary judgment reversed because the motion did not establish a basis for judgment as a matter of law. The judgment was based exclusively on the non-movant’s failure to provide initial disclosures, where fact and expert discovery were now closed. **The court held that, in essence, the trial court had imposed Rule 37 sanctions without following Rule 37.** The court also held that failure to bifurcate the trial of two co-defendants (one of whom had lost the summary judgment) was an abuse of discretion because it could lead the jury to infer that the other co-defendant must have been involved in the same conspiracy.

Lerman v. Lerman**2024 UT App 155 (October 31, 2024) – DNC**

In this divorce case, wife appealed from the district court’s order awarding her and her ex-husband joint legal and physical custody of their son, arguing that the court was not permitted to do so because husband did not timely file a parenting plan, as required by statute. Relying on *Dahl v. Dahl*, 2015 UT 79, the court of appeals held that although the husband had not filed a parenting plan with his initial pleading as required by Utah Code § 30-3-10.8(1), the district court was nevertheless entitled to award joint custody because the husband was ordered by the district court to file a parenting plan after the temporary orders hearing and did so. The court explained, “**Our interpretation of Dahl is that its reasoning is broad enough to encompass all situations in which a parenting plan is filed with leave of court or pursuant to court order, even if that leave was not obtained by specific reference to Rule 15.**”

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10th Circuit

Chiles v. Salazar**116 F.4th 1178 (September 12, 2024)**

A therapist challenged Colorado’s ban on provision of conversion therapy to minor patients on First Amendment grounds. In affirming denial of the therapist’s request for a preliminary injunction, the Tenth Circuit held, as a matter of first impression, that a law

prohibiting a licensed therapist from practicing conversion therapy on minors only incidentally involves speech and therefore is not subject to strict scrutiny. The court did not specify whether intermediate scrutiny or rational basis review would apply to such laws, leaving that issue for another day. A lengthy dissent by Judge Hartz argued that talk therapy is speech, not conduct, and laws restricting it should be subject to strict scrutiny.

Free Speech Coalition v. Anderson
119 F.4th 732 (October 1, 2024)

Utah lawmakers recently created a private right of action against digital content providers who fail to verify that users accessing “restricted content” are at least eighteen years old. A free speech advocacy organization sued Utah’s Attorney General and Commissioner of Public Safety to prevent enforcement of the law on First Amendment grounds. The Tenth Circuit affirmed dismissal of the suit, holding **both officials were entitled to Eleventh Amendment immunity because they had no substantive role in enforcement of the law.**

Estate of Hurtado v. Smith
119 F.4th 1233 (October 22, 2024)

In this civil rights case brought by the estate of an inmate alleging deliberate indifference to serious medical needs, the Tenth Circuit affirmed the grant of summary judgment to the defendant doctor. **After providing an overview of the circuit’s jurisprudence regarding the line between mere negligence and deliberate indifference, the court held there was no genuine issue of material fact precluding summary judgment.** While the plaintiff relied on testimony from its expert that “every reasonable physician would have known that treatment through oral antibiotics rather than an I&D operation was inadequate,” that testimony about the care a reasonable physician would have given is “plainly incompatible” with governing precedent regarding the deliberate indifference standard. The testimony may have supported medical negligence, but it did not create an issue of fact as to deliberate indifference.



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Dealing with the Difficult Lawyer

by Andrew M. Morse

The difficult lawyer. The one who insults, degrades, and bullies and is simply difficult. We struggle to cope with their ever-worsening behavior. This article describes the behavior, how the Utah State Bar and other legal organizations have responded, how to handle the behavior, and finally, how to avoid becoming a difficult lawyer.

Most of us are kind and reasonable. We get along and work well with opposing counsel and the court. We have learned that this is the most peaceful and effective way to live and practice. Yet a small minority of lawyers are pills. They fight, refuse stipulations, brag, degrade, insult, abuse, and bully. The cadre of difficult lawyers aren't confined to miserable old misogynists, but include lawyers of all genders and ages.

I haven't the training or expertise to explain why they behave badly. My commentary, rather, is grounded in forty years in the trial trenches, and nine years at the helm of a fifty-lawyer firm (Snow Christensen & Martineau (1886–2024)) that featured generations of lawyers who prided themselves on their reputations for civility and honor.

The Problem.

We have all experienced difficult lawyers. They tell us we do not know what we are doing, that we are incompetent, even stupid. We have seen their dishonesty, suffered through their disruptive abuses in deposition, read their thirty-seven blanket objections to discovery requests followed by an evasive non-answer. We have gone to the expense of proving facts at trial that were not disputed, but did not garner a simple stipulation from the difficult lawyer.

Legal Entities' Responses.

Twenty years ago, the Utah Supreme Court adopted the Standards of Professionalism and Civility (Rule 14-301 of the Rules Governing the Utah State Bar). These twenty rules are aspirational. Violating them will not directly lead to an attorney's discipline, yet they are a very useful guide to proper conduct.

Likewise, the American College of Trial Lawyers (ACTL) in 2009, published the Code of Pretrial and Trial Conduct (Code). It details the qualities of trial lawyers and their obligations to clients,

colleagues, the court, and to the system of justice. It details proper and honorable motion and pre-trial procedures, discovery practices, and relationships with witnesses and litigants. Unfortunately, the lawyers who need to follow that Code often seem to be the last ones exposed to it, to read it, or be inclined to change their behavior. Nonetheless, these two resources are very valuable guides into how to conduct yourself in every aspect of your practice. More about that later.

Coping.

You have a contentious case with a difficult lawyer. His phone number appears on your telephone. You have a pit in your stomach, pulses increase, palms sweat. You pick up and try to sound pleasant, but there he goes again, insisting on the impossible, acting like a jerk. How do you respond?

First, breathe deeply. Exhale very slowly. Stay calm. Do not argue. Do not engage in the fight. It is surely tempting to call out someone on their bad behavior and to demonstrate how your behavior is righteous, but do not take the bait. You are not going to change the difficult lawyer's behavior and personality style. Your only option is to control your reaction.

Stake your ground. Draw boundaries. Say: "I am not here to argue." Offer to cooperate: "I'm sure we can work something out, but if we can't, we can bring this matter to the court." Offer remedies: "It seems like we can't get much done on the phone. I suggest we communicate only in writing from now on to avoid confusion." This will likely not be satisfactory. If he or she persists, end the conversation. Say: "I have tried to get along with you on this call, but it isn't working, so I am going to sign off. Goodbye." And hang up. Follow up with an immediate email. Be firm, civil, and assertive.

ANDREW M. MORSE retired from trial practice in 2023. He remains an active Fellow in the ACTL and serves as Co-Chair of the Wellness Committee of the Utah State Bar. When he isn't golfing he mediates and arbitrates tort and commercial cases.



Do not state how the lawyer's behavior is inappropriate. Do not lecture. Stick to the merits of the issue. Assume that one day your email and his or her response will be projected onto a courtroom screen or in a Professionalism and Civility Board Meeting.

Finally, it is very tempting to avoid all communication with the difficult lawyer. Yet to fulfill your duties to your client and firm or office, you must do the hard work of getting through the case. Do not be too quick to seek the court's assistance. The last thing the court wants to do is referee the day-to-day communications between counsel. Discuss the situation with trusted lawyers in your office or firm and around town. When doing so, do not use the lawyer's name, just describe his or her behavior. When you are firm, assertive, civil, and kind, the difficult lawyer will hopefully grow tired of trying to push you around.

Deposition Conduct.

Difficult lawyers can be at their worst in depositions when they are free of court supervision. When taking a deposition they interrupt answers, misstate testimony and facts, and abuse counsel and the witness. When defending a deposition, they interrupt, make speaking objections, coach witnesses, and abuse counsel.

Again, don't engage, argue, or fight on or off the record. Instead, know the rules, have them with you, and stand on them. *See* DU Civ. R. 30.1 (must specify why the question form is objectionable). Stay calm. Counsel in a deposition of mine once asked a series of objectionable questions. I objected: "Lack of foundation and calls for a legal conclusion." Counsel complained: "I have never seen a lawyer make so many speaking objections." I responded:

These are not speaking objections. The rule requires that I identify the nature of my objection as to the form of the question to give you a chance to correct it. Further, my idea of a successful deposition is to not speak at all, so long as questions are in the proper form.

Another way to cope is to try to talk counsel into bringing it down a notch. Take a break, meet with counsel privately and try to get them to use a less hostile, confrontational, and adversarial tone. Resort to the Rules of Civility that I have identified. Another tact useful with younger lawyers is to ask what type of reputation they want to cultivate and how that would help them develop business.

Resort to the Court.

If the lawyer persists, state calmly on the record that if the objectionable conduct continues, you will bring the matter to the court or to the Professionalism and Civility Counseling Board under Rule 14-303 of the Rules Governing the Utah State Bar.

Such a warning might work because these lawyers do not want to be called to task for their poor behavior. It takes time and money that is not billable. Certainly, no legal employer wants to spend its time and money defending their lawyers' conduct.

Hearings and Trial.

The difficult lawyer should be on his or her best behavior in court. They know that if they are their normal self, the court will not respect or trust them. In a hearing, do not correct the bully's behavior; just carry on, and let the court come to its own conclusions.

In trial, frankly, the difficult lawyer is free to choose his or her conduct. The court won't like it, the jury will know that the court doesn't like the conduct, and the lawyer's credibility deficit will deepen. Every lawyer starts trial with a credibility deficit. (*See* A. Lincoln's admonishment, below.) If you are trusted and respected by the court, your credibility deficit will lessen, and you will start to build a positive credibility ledger with the jury and the court. Unless the judge trusts and respects you, the jury will not trust and respect you. Unless the jury both trusts and respects you, it will not see things your way at the end of the trial, because it will not be led by someone it does not trust or respect. Take the high road and let the difficult lawyer fend for himself.

How to Avoid Being the Difficult Lawyer.

To avoid becoming a difficult lawyer, build and maintain a reputation for candor, honesty, and good nature. The best articulation for the need of honesty comes from Abraham Lincoln. In an 1850 address to fellow Illinois lawyers he said,

A Lawyer's Counselor

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There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent *confidence*, and *honors* are reposed in, and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid, yet the *impression*, is common – almost universal. Let no young man, choosing the law for a calling, for a moment yield to this popular belief. Resolve to be honest at all events; and if, in your own judgment, you can not be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.

Abraham Lincoln, *SPEECHES AND WRITINGS 1832–1858* (Library of America 1984) (*italics in original*).

The credibility deficit with which a trial lawyer begins every trial is rooted in this vague impression that lawyers are dishonest. As the ACTL noted in its Code of Pretrial and Trial Conduct, “[T]he real problem is the gradual corrosion of the profession’s traditional aspirations, which are:

- honor for the values such as honesty, respect and courtesy toward litigants, opposing advocates and the court; and
- a distaste for meanness, sharper practice, and unnecessarily aggressive behavior ...”

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ACTL Code, p. 1. The code provides:

- “trial lawyers must conduct themselves in a manner that reflects the dignity, fairness, and seriousness of purpose of the system of justice they serve. They must be role models of skill, honesty, respect, courtesy, and fairness consistent with their obligations to the clients and the court.” *Id.* at 2.
- “A lawyer should be straightforward and courteous with colleagues ... A lawyer must be scrupulous in observing agreements with other lawyers.”
- “A lawyer should not make disparaging personal remarks or display acrimony toward opposing counsel and must avoid demeaning or humiliating words in written and oral communication with adversaries.”
- “A lawyer must adhere strictly to all written or oral promises to and agreements with opposing counsel and should adhere in good faith to all agreements implied by the circumstances or by appropriate local custom.”
- “Written communication with opposing counsel must record and confirm agreements and understandings but must not be written to ascribe to any person or position that he or she has not taken or to create a record of events that have not occurred.” *Id.* at 4.

The Utah Supreme Court is commended for adopting the “Standards of Professionalism and Civility.” These standards flesh out in detail the model conduct articulated by the ACTL. Review these standards annually. Guard your good reputation jealously. After all, a reputation takes a lifetime to build and just five minutes to ruin.

If you’re struggling with the Rules of Civility and Professionalism and the specific mandates of the ACTL’s Code, there’s help. Find a therapist that counsels lawyers. Learn why you misbehave. Then do everything you reasonably can to modify your behavior for your own mental health and to manage your own stress level.

Conclusion.

In dealing with difficult lawyers stay calm. Be civil, clear, and firm. Establish boundaries. Do everything you can within the confines of your duties to your clients to get along with counsel. Treat them as fellow brothers and sisters struggling to survive a stressful adversarial environment.



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Making Justice Accessible: A Call for Utah Lawyers to Volunteer

by Kimberly Farnsworth

In the legal profession, there is a shared understanding that access to justice is a cornerstone of a fair and equitable society. Yet, for many Utah residents, barriers like cost, complexity, and lack of knowledge make navigating the legal system nearly impossible. For these individuals, a single interaction with a lawyer can change the course of their lives. Attorneys in Utah have the unique opportunity to make an impact for these people through pro bono work with the Utah State Bar's Access to Justice Office.

Pro bono service isn't just a professional obligation; it's a chance to make a tangible difference in your community while honing your skills, expanding your network, and reaffirming the nobility of the legal profession. Here, we'll explore six impactful programs administered or supported by the Utah State Bar's Access to Justice Office that you can volunteer for today. We'll also introduce you to the Utah State Bar's Pro Bono Portal, a list of pro bono opportunities that can be filtered to suit your specific needs.

The Virtual Legal Clinic

Imagine receiving a life-altering legal answer during a thirty-minute phone call or brief email. For many Utah residents, this is a reality made possible by the Virtual Legal Clinic. This program connects attorneys with individuals seeking guidance on legal issues ranging from housing disputes to employment concerns to small claims. Volunteers are matched with clients for one-time consultations, creating a flexible and time-efficient way for lawyers to contribute their expertise.

Attorneys participating in the Virtual Legal Clinic need not commit to long-term representation, and the service can be provided from anywhere with a phone or email. This makes it an excellent option for busy professionals who want to give back but can only do so in short, manageable increments. One concise conversation can empower clients to take next steps with confidence, significantly improving their chances of resolving their legal issues.

The Free Legal Answers Program

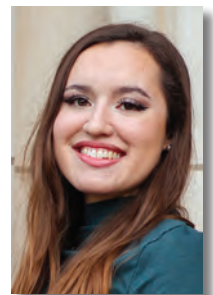
For those who prefer to volunteer remotely, the Free Legal Answers Program offers another avenue for impactful service. This online portal, created by the American Bar Association, allows income-qualifying Utahns to post legal questions, which attorneys can then answer on their own schedule. The platform covers a wide array of topics, including consumer law, housing, and family law, providing lawyers with the flexibility to choose questions that align with their expertise or interests.

Volunteering with Free Legal Answers is particularly appealing for attorneys seeking a commitment-free, no-pressure way to engage in pro bono work. You can log in anytime, browse questions, and respond at your convenience – all while maintaining anonymity. Whether you answer one question a week or ten, every response helps someone navigate the legal system with greater clarity and confidence. To create an account, visit the website here: utah.freelegalanswers.org.

The Pro Se Debt Collection Calendar

Debt collection cases often pit vulnerable individuals against experienced creditors or their attorneys, leaving many debtors unaware of their rights or legal options. The Pro Se Debt Collection Calendar program allows attorneys to step in and level the playing field. As a volunteer, you would represent a debtor during one phase of their case, ensuring they understand their rights, advocating for fair outcomes, and negotiating reasonable settlements.

KIMBERLY FARNSWORTH is the Utah State Bar's Access to Justice Training & Special Projects Manager.



This program is particularly impactful because even a single phase of representation can significantly alter the trajectory of a case. By stepping into these cases, you help ensure that Utahns are treated fairly and that their voices are heard in court. The experience also offers an excellent opportunity for attorneys to sharpen their litigation and negotiation skills in a focused, time-limited capacity.

The Family Law Pro Se Calendar

For Utah residents dealing with family law issues – such as child custody, divorce, or protective orders – the stakes are often deeply personal and emotional. Unfortunately, many family law clients cannot afford a lawyer and navigating the family court system without legal representation can feel overwhelming. The Family Law Pro Se Calendar program, run by the Utah State Courts, provides critical assistance by matching volunteer attorneys with individuals facing these challenges.

Like the debt collection calendar, this program involves limited-scope representation, allowing you to assist clients during specific phases of their cases. This structure enables you to make a profound impact without committing to long-term representation. Your

guidance can help clients better understand the legal process, make informed decisions, and achieve fair outcomes for their families.

Guardianship Program

For Utah's most vulnerable populations, guardianship proceedings are a vital safeguard, ensuring that individuals who cannot make decisions for themselves receive the care and protection they need. However, navigating these proceedings can be complicated and daunting for families and caretakers.

As a volunteer in the Guardianship Program, you would represent individuals in need of guardianship. By providing your expertise, you can ensure that these sensitive cases are handled with the dignity and care they deserve. The program is also administered by the Utah State Courts, offering structured support and resources for participating attorneys.

Immigration Support: No Más and UIC Programs

Immigration law can be a labyrinth for those navigating the system alone, particularly for individuals facing language barriers, financial challenges, or complex legal situations. Two programs – No Más and the Utah Immigration Collaborative (UIC) – aim

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to address these challenges by connecting attorneys with immigration clients in need.

No Más:

This program enables attorneys to provide limited-scope assistance to immigration clients, addressing specific legal needs such as visa applications, asylum claims, or work authorization.

UIC

This program allows attorneys to take on more comprehensive representation of immigration clients, often collaborating with other legal professionals to tackle complex cases.

Both programs provide opportunities to have a profound impact on individuals and families seeking stability and security in U.S. immigration cases, which often represent life-altering decisions for those individuals and families. Your legal expertise can help ensure that these clients receive a fair and just outcome.

Why Pro Bono Work Matters

Pro bono service is more than a professional responsibility; it is a tangible expression of the legal profession's highest ideals.

Here's why it's worth your time:

1. Community Impact

Your efforts can directly change lives, helping individuals access justice who would otherwise go without representation.

2. Skill Building

Pro bono cases allow you to expand your legal expertise, particularly in areas outside your regular practice.

3. Networking

Volunteering connects you with like-minded professionals and community leaders, enhancing your professional network.

4. Fulfillment

Few professional experiences are as rewarding as using your skills to empower someone in need.

Getting Started: The Utah State Bar Pro Bono Portal

The Utah State Bar makes volunteering simple and accessible through its Pro Bono Portal at <https://app.joinpaladin.com/utahprobono/>. This platform features a curated list of pro bono opportunities across the state, allowing you to select cases or programs that match your interests, skills, and availability.

The portal is easy to use, with detailed descriptions of each opportunity and tools to track your hours and impact. Whether you're a seasoned litigator or a newly minted attorney, there's a pro bono opportunity that's right for you.

Answering the Call

Providing access to justice can be a rewarding opportunity for all lawyers, not just those who work for legal aid organizations. By volunteering with the Utah State Bar's Access to Justice Office, each attorney in Utah can help bridge the gap, ensuring that everyone – regardless of income or background – has the opportunity to navigate the legal system with dignity and proper support.

The programs outlined above are just a few of the ways you can make a difference. Whether you're answering questions online, representing clients in court, or guiding families through sensitive legal issues, your time and expertise are invaluable.

Visit the Pro Bono Portal today to find an opportunity that resonates with you. Together, we can uphold the promise of justice for all. If you have questions about any of these programs or any others you find on the Pro Bono Portal, please reach out to atj@utahbar.org for more information.



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Harnessing the Power of Collaboration

Civil Legal Services, a Law Student, and the Employment Law Section Provide Justice for Migrant Workers

by Pamela Beatse and Connor Dela-Cruz

Imagine facing a dangerous or difficult situation, where you do not know what to do or where to go for help. You feel overwhelmed and think that people do not even notice you. You also may believe that there simply is no help available. This is often the case when Utah Legal Services (ULS) steps in and provides legal aid. Many attorneys are aware of the assistance ULS provides to Utahns facing domestic violence or family issues, eviction defense, consumer protection, and help getting public benefits. Less well-known are the services ULS provides to older adults, Native American tribe members, and migrant workers throughout the state. ULS often must do extensive outreach to let people know how ULS can help them, traveling to rural areas, reservations, and farm work camps to explain that even the most vulnerable have rights.

This is important and meaningful work, yet resources are often stretched thin. With a staff of around seventy attorneys, paralegals, and support staff, ULS cannot serve every person who needs help. As requests for help rise, ULS turns to Utah's law schools for additional support through intern, extern, and fellowship programs. Last year, the migrant worker unit recognized that they had too many cases and not enough staff to handle the tremendous need from workers facing forced labor situations. Applicants had valid wage claims against their employers, but ULS did not have enough resources to process all their complaints.

PAMELA BEATSE is the Executive Director of Utah Legal Services.



Fortunately, the Utah Bar Foundation and the Labor and Employment Section of the Utah State Bar were able to help by funding and arranging for a Spanish-speaking fellow, Connor Dela-Cruz, to help in the ULS migrant worker unit this past summer. The fellowship was a remarkable opportunity for these groups to fill a significant need while helping prepare a law student for practice. Connor was a tremendous asset to ULS and helped the migrant team process many claims. He also got the benefit of seeing how a nonprofit civil legal aid firm functions, and real-world experience in the law. Here is more about his work and his story, in his own words:

Mr. Dela-Cruz

One would not guess that labor trafficking exists in Utah. Over the summer of 2024, I learned otherwise. I was disappointed to learn how many unscrupulous Utah employers victimize foreign nationals by sponsoring their US visas and then subjecting them to intolerable work and inhumane living conditions. The defendants in the cases I worked on were all local Utah-based companies. Those companies were owned and operated by respected members of their industries, including agriculture, construction, and landscaping. In each case, our clients came to Utah relying on the promise of work and financial security for their families. In each case, their employers lied to them.

CONNOR DELA-CRUZ is a 2L at BYU Law.



My name is Connor Dela-Cruz, and I am a 2L at Brigham Young University's J. Reuben Clark School of Law. Thanks to a fellowship through the Labor and Employment Section of the Utah State Bar, I was privileged to spend part of this past summer at Utah Legal Services as a member of their migrant labor task force. We represented migrant workers exploited for labor by their employers. My role on the team was to help our clients pursue wage claims. These fellowships represent invaluable opportunities for an upcoming generation of attorneys to gain real-world experience while advocating for underrepresented communities.

The applicable legal framework

Under the H-2A and H-2B visa program, American employers can hire migrant workers for seasonal labor such as agricultural work, landscaping, and snow removal. At first glance, these visa programs appear to be a win/win since seasonal positions are often difficult for employers to fill, and many of these workers originate from underdeveloped countries with limited employment opportunities. For them,

these programs represent the hope for a better future. Many of our clients eagerly became migrant workers to be able to send money back home to their families, including parents and siblings who cannot provide for themselves due to age, disability, or illness.

However, upon arrival to the US, our clients endured unpaid wages, excessive working hours, cruel labor conditions, and unsafe housing. Employers regularly threatened our clients with retaliatory deportation for complaints or inadequate job performance. In some cases, our clients were physically assaulted by their employers.

The ULS migrant labor task force finds clients through extraordinary outreach efforts, even hiking into the mountains to communicate with sheepherders. Once clients are identified, ULS assists them through two units: (1) the immigration unit that files T-visa applications for human trafficking victims and (2) the newly formed wage claim unit, where I worked.



Attorney Tyler Fang Joins Parsons Behle & Latimer

Parsons Behle & Latimer is pleased to welcome Tyler Fang to its Salt Lake City office. Tyler is an associate attorney and member of the firm's corporate practice. He works with clients on a variety of corporate and securities matters. Prior to joining Parsons, Tyler practiced at a large international law firm in New York City and San Francisco, working on complex legal and regulatory matters for private fund sponsors and other asset managers. Learn more about him at parsonsbehle.com/people

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Because I am a fluent Spanish speaker, I could meet with our clients regularly in person and over the phone. As I gathered evidence to prepare their claims, I heard their stories and translated their personal statements. Most of our clients are in their twenties and will spend their rest of their long lives recovering from what they endured. I only played a brief role in their cases, but I hope my efforts will have a lasting effect.

An important part of establishing the wage claim unit was developing a sound understanding of the law on wage claims. I spent much of my time at ULS researching options and remedies for our clients in pursuing their wage claims. Their options depended on the circumstances of each case. Administrative remedies were available to our clients with wage claim applications through the Department of Labor and the Utah Labor Commission. Although those avenues are limited by short timelines and limited award amounts, they are efficient and often more likely than other avenues to be successful.

Wage claim actions are an alternative to administrative remedies, available under the Fair Labor Standards Act (FLSA). 29 U.S.C. § 206(a)(1). Although the FLSA is silent on H-2A and H-2B workers, case law supports the statute's equal application to these workers regardless of citizenship or visa status. *Arriaga v. Fla. Pac. Farms, L.L.C.*, 305 F.3d 1228, 1235 (11th Cir. 2002); *De Leon-Granados v. Eller & Sons Trees, Inc.*, 581 F. Supp. 2d 1295, 1307-17 (N.D. Ga. 2008). Several state

jurisdictions have followed federal law's example by applying similar treatment of state wage claim laws to migrant workers, although there is no precedent for Utah. *In re. Cuomo v. Dreamland Amusements Inc.*, 880 N.Y.S.2d 223, 2009 WL 81139, at *1 (Jan. 6, 2009) (unpublished table decision); *Berrocal v. Fernandez*, 121 P.3d 82, 87 (Wash. 2005) (en banc). Thus, the Utah Payment of Wages Act is another option that may be available to migrant workers if their claims exceed \$10,000 or after they have exhausted all administrative remedies. UPWA § 34-28-9.5; *Graystone Funding Co., LLC v. Network Funding, L.P.*, 2022 WL 1073796, at *5, 2022 U.S. Dist. LEXIS 65766, at *15 (D. Utah Apr. 8, 2022).

I worked with many different clients, nineteen to forty-three years old, who came from all over Central America. Below, I will share an example representative of the nearly 200 cases currently handled by ULS. I have changed his name to Santiago for anonymity and confidentiality.

Santiago

Santiago worked on a large farm in Northern Utah for several years. He worked throughout the warm months to earn a reasonable living before returning home to his family in Mexico each winter. Unfortunately, Santiago's annual routine fell apart during his last summer due to abuse and withholding of wages.

Over the years, Santiago's boss often made fun of him and his coworkers. He made fun of them for being so impoverished, they had to leave their families and travel to another country to take care of them. He used racist and vulgar terms to describe Santiago, his food, and his culture. Santiago and his coworkers were all "stupid Mexicans" in the eyes of his boss regardless of their actual nationality. Santiago was regularly degraded and insulted by his boss.

In addition to the verbal abuse, this employer frequently slapped Santiago and his coworkers on the chest or back hard enough to knock the wind out of them. Sometimes he punched them in stomach and caused them to double over. Being twice his size, Santiago's boss could – and did – punch Santiago in the arms and legs hard enough to leave bruises that lasted for weeks. Santiago and his coworkers became so afraid of their boss that whenever the boss got too near, they quickly moved away to keep a safe distance.

In Memoriam

KEN BROWN

The Utah legal community lost one of its great lawyers on November 29th.

Ken Brown was always a fearless champion of the underdog.

Never intimidated by pretense or decorum, he particularly enjoyed winning when he was up against the "best and the brightest," even better if he managed to rile up a judge in the process.

A keen legal mind and a marvelous storyteller, Ken could take any case and reduce it to something he had learned growing up on the farm in Hoytsville.

Juries loved him – we all loved him.



January 1947–
November 2024

Each summer, Santiago lived in a small, crowded house. Essential appliances, like fridges and washing machines, were missing or broken. Many of the windows of the house were broken. The septic tank once broke and flooded the basement of the house, which caused a horrible odor that filled the house and eventually the neighborhood. While at home, the workers covered their mouths and noses and spent as much time as they could outside in the yard to avoid inhaling the stench. The workers complained for weeks to no avail. Their employer finally sent somebody to fix it only after complaints from the neighbors.

But despite these abuses, in the past, Santiago's boss had consistently paid him and his coworkers on time. During his last summer, Santiago noticed payment issues early in the season. The common excuse was that the farm was having a difficult year. Santiago continued to work his regular schedule, which included overtime. When his pay checks did come in, he noticed large discrepancies between the hours worked and the money he received. At one point, Santiago and his coworkers went four weeks without pay. When they could not wait any longer, they confronted their boss and pleaded for their pay checks. They were only met with resistance as their boss grew increasingly irritated during the meeting and backhanded Santiago in the face. He was struck so hard that he fell to the ground and multiple teeth were knocked loose.

A worker filmed this assault and the incident found its way to several media outlets, which led to the boss's arrest. Santiago and many others returned to their home countries. Meanwhile several workers remained in the US to pursue outstanding wage claims ranging as high as \$25,000, with the assistance of ULS. I'm proud to say I could contribute to this effort in some small way.

My summer was a unique experience. The clients I worked with at ULS were experiencing the worst moments of their lives. They were helpless and had nobody looking out for them except for us. As a Spanish speaker who could communicate with them directly, I did my best to authentically capture their experiences as I drafted demand letters, complaints, and other documents on their behalf. I recognized my role as their advocate and sought to do my best in representing them. I hope my experience can raise awareness of the epidemic of human trafficking that is present in Utah. I also hope my experience raises awareness on the efforts of the important work of ULS and the Utah Bar's

Labor and Employment Section in placing highly qualified law students with great employers, like ULS.

I am grateful for this opportunity. As I continue growing within my young legal career, I look forward to applying what I learned with ULS to my future. I want to give a special thanks to Shaunda McNeill and her coordinating efforts to place me with ULS. I also want to thank Spencer Phillips, a prominent Utah employment lawyer and adjunct professor at the J. Reuben Clark Law School, for his mentorship and the training he extended to me and others at ULS. In addition to my coauthor, Pamela Beatse, I want to thank the ULS team, including Jacob Kent, Chauntel Lopez, my amazing supervisor, Oliver Wood, and the other staff I worked with.

How to Assist

More information about ULS and the services it offers are available on ULS's website, utahlegalservices.org. If you, your employer, or other groups you are involved with may be interested in sponsoring or mentoring law students working with ULS, please contact Courtney Eborn at ceborn@utahlegalservices.org.

MACARTHUR, HEDER & METLER

is honored to announce that

Senior Partner,
Ryan D. Petersen
has been appointed
as a Judge in the
Fourth District
Juvenile Court,
beginning of 2025.



Congratulations, Ryan!
Thank you for all you brought to MHM!



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Artificial Intelligence and the Lawyer's Duty of Confidentiality

by Keith A. Call

ChatGPT can do some amazing things. Last October, when my New York Yankees lost the World Series to my wife's Los Angeles Dodgers, our bet required me to compose a poem about Dodgers Domination. Given that I am not particularly poetic or romantic, the obvious choice was to leverage artificial intelligence, which is apparently both poetic and romantic. Here's a short excerpt:

*As the Dodgers ran circles, their victory clear,
The Yankees stumbled, a dance of deep fear.
"Oh dear, don't worry," she teased with a grin,
"It's just baseball, love, the Dodgers will win."*

*He frowned at the scoreboard, the pain in his chest,
While she danced with delight, feeling truly blessed.
"Isn't it charming, the way they perform?"
Yet each word felt sharp, a tempestuous storm.*

ChatGPT and other forms of generative artificial intelligence can also be very useful for lawyers. For example, lawyers have used them to assist in drafting letters, contracts, briefs, and other legal documents. The results are often efficient and helpful. But what are the ethical concerns when using generative AI for these and similar purposes?

In July 2024, the American Bar Association issued a detailed opinion that addressed several ethical concerns with a lawyer's use of generative AI, including competence, confidentiality, communication with clients, supervision of others, asserting only meritorious claims and contentions, candor towards tribunals, and reasonableness of fees. *See* ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 (July 29, 2024). This article focuses on concerns with client confidentiality when using generative artificial intelligence such as ChatGPT.

Opinion 512 reminds lawyers that, under Model Rules and Utah Rules of Professional Conduct 1.6, 1.9(c), and 1.18(c), lawyers have a strict duty to protect the confidentiality of client, former client, and prospective client information. With limited

exceptions, any disclosure of such information requires consent, and such consent must be informed.

Informed consent is no simple matter when using ChatGPT. For consent to be informed, the lawyer must be able to explain why the AI tool is being used, the particulars of the client information that will be disclosed, and the extent of the risk that later users of the AI tool will have access to information related to the representation. Opinion 512 expects lawyers to be thoroughly educated about how information submitted to a generative AI tool is used, stating that "boiler-plate provisions [in] engagement letters purporting to authorize the lawyer to use [generative] AI is not sufficient." Formal Op. 512, at 6–7.

Does anyone really know what happens to client information once disclosed to ChatGPT or similar AI models? It's hard to say, but here are some things we do know. ChatGPT's terms of use expressly provide, "We may use Content [which includes user inputs or prompts] to provide, maintain, develop, and improve our Services, comply with applicable law, enforce our terms and policies, and keep our Services safe." *Terms of Use*, OPENAI, <https://openai.com/policies/terms-of-use/> (last visited Dec. 2, 2024). ChatGPT's privacy policy confirms that your inputs are saved, collected, and used to provide and maintain its services, conduct research, develop new product features, prevent misuse of the services, and protect other users. *Privacy Policy*, OPENAI, <https://openai.com/policies/privacy-policy/> (last visited Dec. 2, 2024). In other words, ChatGPT adds your inputs to its databank of knowledge and uses it to improve future outputs.

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



Opinion 512 suggests that inputting client information into ChatGPT is dangerous because, when information relating to a client is input into the tool, it can later be revealed in response to prompts by others. According to Opinion 512, generative AI tools “are designed so that their output could lead directly or indirectly to the disclosure of information relating to the representation of a client.” Formal Op. 512, at 7. Thus, when you include confidential client information in your ChatGPT prompt, there is a risk that your opponent or others will receive (and recognize), and therefore be able to exploit, the client information you put into ChatGPT. To me, that feels a bit like putting a gallon of water into the ocean and fearing that someone on the other side of the world may come into contact with some portion of that very gallon of water in some recognizable form, but I suppose it is theoretically possible. The key takeaway, however, is that you need to be educated and thoughtful about your use of ChatGPT. That includes obtaining particularized informed consent from your client.

Notably, you have the ability to opt out of having ChatGPT use your inputs to train its AI models. You can currently do that by logging into ChatGPT, clicking on your user profile, going to Settings > Data controls > Improve the model for everyone, and clicking the toggle button to the “off” position. *See Data Controls FAQ*, OPENAI, <https://help.openai.com/en/articles/7730893-data-controls-faq> (last visited Dec. 2, 2024). This will only work for inputs applied while you are logged in. Furthermore, it is likely true that your inputs will still be collected and used for some of the other purposes identified above. But opting out likely reduces

the chance that your inputs will show up in response to someone else’s prompts.

Two more points to be aware of. First, Opinion 512 points out that client consent is not required if your use of generative AI tools does not require inputting information related to the representation. Second, Opinion 512 readily acknowledges that generative AI tools are a moving target, “indeed, a *rapidly* moving target,” in the sense that the precise features and utility will continue to change in ways that are impossible to anticipate. Because of that, look for further guidance in future ABA opinions and other state and local bar association ethics committee opinions. Formal Op. 512, at 2. As a legal industry we need to gain a better understanding of how AI works and what the true risks are – and are not.

In conclusion, Opinion 512 takes a conservative approach to a lawyer’s use of generative AI. It is critical for you to take time to educate yourself about the ethical implications of AI, to make sure that you have your client’s consent to use client information in generative AI, and (here’s the hardest part) to make sure that any such consent is informed by your thorough understanding of the implications of putting your client’s information into an AI platform.

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.

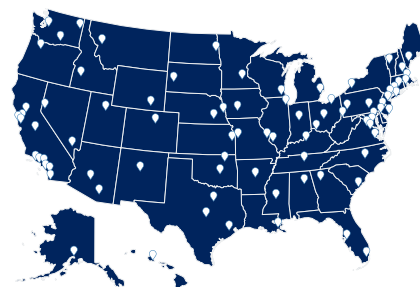
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Need Ethics Help?



**The Utah State Bar
provides confidential advice about
your ethical obligations.**

Need ethics help? Contact the Utah State Bar's Ethics Hotline for advice. Email us at ethicshotline@utahbar.org. We'll give you advice and point you to the rules and authority that apply to your situation.

Our limits: We can provide advice only directly to lawyers and LPPs about their own prospective conduct — not someone else's conduct. We don't form an attorney-client relationship with you, and our advice isn't binding.

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:

Dorothy Merrill Brothers Award – For the Advancement of Women in the Legal Profession.

Raymond S. Uno Award – For the Advancement of Minorities in the Legal Profession.

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.

Notice of Bar Commission Election

Second, Third, and Fifth Divisions

Nominations to the office of Bar Commissioner are hereby solicited for:

- One member from the Third Division (Salt Lake, Summit, and Tooele Counties),
- One member from the Second Division (Davis, Morgan, and Weber Counties), and
- One member from the Fifth Division (Beaver, Iron, and Washington Counties).

Bar Commissioners serve a three-year term. Terms will begin in July 2025.

To be eligible for the office of Commissioner from a division, the nominee's business mailing address must be in that division as shown by the records of the Bar. Applicants must be nominated by a written petition of ten or more members of the Bar in good standing whose business mailing addresses are in the division from which the election is to be held.

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.

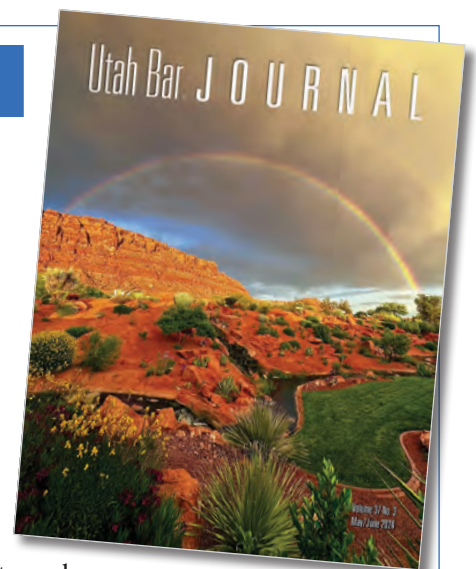
2024 Utah Bar Journal Cover of the Year



The winner of the 2024 *Utah Bar Journal* Cover of the Year award is *Rainbow Over Red Cliffs*, taken by Utah State Bar licensee – and first time contributor – Tyson Hafen. Tyson's photo appeared on the cover of the May/June 2024 issue.

Congratulations to Tyson and thank you to all of the contributors who have shared their photographs of Utah on *Bar Journal* covers over the years!

The *Bar Journal* editors encourage members of the Utah State Bar or Paralegal Division, who are interested in having photographs they have taken of Utah scenes published on the cover of the *Utah Bar Journal*, to submit their photographs for consideration. For details and instructions, please see page three of this issue. A tip for prospective photographers: preference is given to high resolution portrait (tall) rather than landscape (wide) photographs.



IN MEMORIAM

This "In Memoriam" listing contains the names of former and current members of the Utah State Bar, as well as paralegals, judges, and other members of the Utah legal community, whose deaths occurred over the past year, as reported to the Utah State Bar. To report the recent death of a former or current Bar member, paralegal, judge, or other member of the Utah legal community, please email BarJournal@utahbar.org.



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Glenn K. Iwasaki
Joseph E. Jackson
Norman H. Jackson
Joan Beard Thompson
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Ken R. Brown
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Richard J. Carling
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Bennett P. Peterson
Elwood P. Powell
Todd S. Richardson
Jim R. Scarth
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Chester A. Teklinski
Nathan Kurt-William Tenney
Don Croft Tingey
Scott C. Welling
Zachary Weyher
H. Ross Workman
Steven A. Wuthrich
Kent T. Yano
David E. Yocom
Michael O. Zabriskie
Claude E. Zobell, Jr.

PARALEGALS

Virginia Caseman
Leann Hepworth
Joan Horrocks
Jane Reiko (Komatsu) Tateoka

OTHER LEGAL COMMUNITY MEMBERS

Laura Cuff Blanchard
Director, Utah Children's Justice Center



Utah State Bar
Spring Convention
in St. George

March 13–15, 2025

We will present our Spring Convention – Mid-Year Bar Convention again in the coming year. We hope that you will plan to join us!

**Please register early and book your lodging soon.
Registration will open mid-January 2025.**

We will offer all of your live MCLE credits for the compliance year, including one hour of ethics and one hour of professionalism credit. We will also feature a golf tournament and a pickleball tournament!

CLE will include sessions on well-being, sustaining a lengthy and satisfying practice, practice tips for working in our rural districts, and conversations with our bench.

Dynamic and meaningful conversation and opportunities to network will be found ... so we hope you will be there, too!

*Please plan
to join us!*

Dixie Center at St. George
1835 Convention Center Drive | St. George, Utah

2025 “Spring Convention in St. George” Accommodations

Room blocks at the following hotels have been reserved. You must indicate that you are with the Utah State Bar to receive the Bar rate. After “release date” room blocks will revert back to the hotel general inventory.

Hotel	Nightly Rate (Does NOT include tax)	Block Size	Release Date	Miles from Dixie Center to Hotel
Comfort Inn & Suites 138 E Riverside Dr., St. George Please call 435-628-8544 and request to book under the Utah State Bar block.	\$200	10–King 10–2 Queen	2/11/25	.5
Courtyard St. George 185 S. 1470 E., St. George (435) 986-0555	\$269	10–King 10–2 Queen	2/11/25	4
Fairfield Inn 1660 S. Convention Center Dr., St. George (435) 673-6066	\$185 \$199	10–King 5–2 Queen	2/11/25	0.3
Hilton Garden Inn 1731 S. Convention Center Dr., St. George (435) 634-4100	\$185 \$195	5–King 5–2 Queen	2/11/25	0.1
Holiday Inn 1808 S. Crosby Way, St. George (435) 628-8007	\$185 \$205	10–King 10– 2 Queen	2/11/25	0.5
Holiday Inn Express & Suites, St. George North 2450 N. Town Center Dr., Washington Please call 435-986-1313 and request to book under the Utah State Bar Spring Convention.	\$107	10–King 10–2 Queen	2/13/25	11.5
Hyatt Place 1819 S. 120 E., St. George (435) 656-8686	\$199 \$209	10–King 10–2 Queen	2/11/25	0.3
My Place Hotel, St. George 1644 S. 270 E., St. George (435) 674-4997	25% off daily rate	22 rooms (any available)	Until sold out	.6
Red Lion Hotel 850 S. Bluff St., St. George Please call 435-628-4235 and request to book under the Utah State Bar block.	\$159	6–King 15–2 Queen	2/03/25	2
Tru by Hilton 1251 S. Sunland Dr., St. George (435) 634-7768	\$191	10–King 5–2 Queen	2/11/25	1

Visit utahbar.org/springconvention
to book your reservation today!

Utah State Bar Launches Campaign in Preparation for Its 95th Anniversary: “Honoring Our Legacy, Building Our Future”

As the Utah State Bar prepares to celebrate its 95th anniversary in 2026, lawyers and legal professionals are invited to join a long-term campaign, “Honoring Our Legacy, Building Our Future.” Established in March 1931, the Utah State Bar has dedicated nearly a century to advancing the practice of law in Utah, and this milestone offers the perfect opportunity to reflect on that history while looking toward the future of the legal profession.

This campaign will feature engaging Continuing Legal Education (CLE) opportunities that pay tribute to the legal community’s legacy and celebrate significant anniversaries in American law.

These include the 250th anniversary of the Declaration of Independence and the founding of the United States judiciary under the Judiciary Act of 1789. Legal professionals are encouraged to participate in these CLEs, contribute historical insights, and deepen their connection to the principles that define our legal system.

As part of its commitment to serving the public, the Bar will also roll out a variety of educational initiatives throughout the year to increase public understanding of how the law impacts everyday lives. Through digital media, which includes informational videos, and a series of educational materials, this effort aims to equip Utah residents with knowledge about their legal rights and the resources available to them. By bringing these educational tools directly to the public, the Bar hopes to empower Utahns to navigate the legal system with greater trust, confidence, and clarity.

We welcome legal professionals’ talent for digital media efforts, as well as submitting historical articles and photographs, providing feature stories from a first-person perspective, or volunteering to appear as recorded guests for a special commemorative video. Take advantage of these unique opportunities for Utah’s legal community to share firsthand experiences, spotlight meaningful achievements, and honor the lasting contributions of Utah attorneys past and present.



In addition, there is a chance to potentially serve on a special CLE panel, allowing

participants to offer insights into the rich history of the Bar and the legal profession. This panel and submitted stories will be shared across Utah to inspire current and future members of the Bar as we collectively look forward.

The campaign will wrap up with the summer convention held in beautiful Sun Valley, Idaho. This event occurs August 4–8, 2026, and will bring together Utah attorneys, law school alumni, and other members of the legal community for reunions, celebratory gatherings, and insights from nationally renowned guest speakers. With reunions, guest speakers, and an array of celebrations, Sun Valley promises a memorable gathering in honor of the Bar’s past and future. You will not want to miss it, so clear your calendar now.

Lastly, make 2025–2026 one of meaningful connection, historical reflection, and renewed commitment to the legal profession. Engage with the Utah State Bar’s 95th-anniversary campaign and let us honor our legacy together as we build for the future.

**If you have any questions, contact Utah State Bar Communications Director
Jennifer Weaver at jweaver@utahbar.org or 801-746-5237.**

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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.

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Stewart Ralphs
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Oliver Wood

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Greg Anjewierden
Mark Baer
Alex Chang
Megan Connelly
Ted Cundick
KC Decker
Recent Graduate from
J. Reuben Clark Law School
Hannah Ector
Kit Erickson
Kimberly Farnsworth
Leslie Francis
Denise George
Juliette Green
Recent Graduate from
J. Reuben Clark Law School
Russell Griggs
Erik Hamblin
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Amanda Todd
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Travis Christiansen
Rebekah-Anne Duncan
Maureen Minson
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James Purcell
Greg Walker
Colburn Winsor

Timpanogos Legal Center

Veronica Alvarado
Isabella Ang
Steve Averett
Ali Barker
Bryan Baron
Lindsay Brandt
Ashlee Burton
Dave Duncan
Chase Hansen
Eli Kukharuk
Madison Kurrus
Sallie McGuire
Chad McKay
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Michelle Lesue
Allison Librett
Orlando Luna
Bradley Meads
William Morrison
D. Michael Nielsen
David Pearce
Ryan Simpson
Babata Sonnenberg

Laura Suesser
Tamara Taylor
Amanda Thomas
Austin Wennig

Wills for Heroes

Shayne Jeramy Ashton
Ellie Bradley
Heather Burton
Eric Duncan

Sam Flitton
Emma Grissom
Ezzy Khaosanga
Chaz Lyons
Camille McBride
Charles Pearlman
Morgan Reese
Sean Robison
LaShel Shaw
Cody Winchester



BREAK THROUGH

Utah Lawyers Helping Lawyers is committed to rendering confidential assistance to any member of the Utah State Bar whose professional performance is or may be impaired because of:

- **mental illness,**
- **emotional distress,**
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- **any other disabling condition or circumstance.**

LHL matches those it assists with one-on-one volunteer peer mentors and conducts continuing legal education.



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Lawyer Discipline and Disability

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

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

ADMONITION

On May 15, 2024, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Admonition against an attorney for violating Rule 1.4(a)(1) (Communication) and Rule 1.2(a) (Scope of Representation and Allocation of Authority Between Client and Lawyer) of the Rules of Professional Conduct.

In summary:

A client retained a law firm to represent them in a workplace injury claim, and an attorney began working on their case. The attorney entered an appearance of counsel for the client and requested a hearing with the Utah Labor Commission. The following year, the attorney changed employment, but he remained as the client's counsel of record. The attorney did not notify the client of the change of employment.

The court issued Findings of Fact, Conclusions of Law, and an Order in the Client's case. These materials were sent to the attorney via email at their new workplace's email address. Included in the decision was a notice that any Motion for Review must be submitted within thirty days of the decision being signed. The attorney did not notify the client of the decision or their right to

appeal, as they believed that the decision was a "win." There is no evidence that the attorney made the client aware of their strategy, that the client understood the strategy, or that the client consented to it. The client in the meantime had been trying to contact the attorney at their previous place of employment until they were told that the attorney no longer worked there. When the client finally located the attorney, the client learned it was too late to appeal the Labor Commission's decision.

Aggravating circumstances:

Refusal to acknowledge the wrongful nature of misconduct involved and vulnerability of victim.

Mitigating circumstances:

Absence of prior discipline, absence of dishonest or selfish motive, and full cooperation in investigation.

RECIPROCAL DISCIPLINE

On October 31, 2024, the Honorable Linda Jones, Third Judicial District Court, entered an Order of Reciprocal Discipline: Public Reprimand and One-Year Probation against Davis P. Bauer. He was found to have violated Rule 1.3 (Diligence), Rule 4.4(a) (Respect for Rights of Third Persons), and Rule 8.4(d) (Misconduct) 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.

801-257-5518
DisciplineInfo@UtahBar.org

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Save the Date! January 22, 2025
5 hrs. CLE Credit, with 3 hrs. Ethics
To register, email: CLE@utahbar.org

In summary:

On June 20, 2024, the Arizona Supreme Court entered an Order of Public Admonition with Probation, (CLE), and Costs, publicly reprimanding Mr. Bauer and placing him on Probation for one-year. The order was predicated on the following facts:

Mr. Bauer sent letters on behalf of a client in a family matter to the court-appointed advisor's attorney, the Department of Child Safety, the opposing counsel in the family law case, a therapeutic interventionist, and a court appointed psychologist without adequately verifying the accuracy of the claims prior to sending the letters. In those letters, Mr. Bauer requested that the recipients of the letters change their recommendations or opinions to the family court in exchange for the Respondent or his client not proceeding with a lawsuit against them. He also included in those letters unsubstantiated allegations of terrorism, among other false claims. The court-appointed advisor and opposing counsel reported the letters to the family court, prompting a status conference about the letters' contents.

RECIPROCAL DISCIPLINE

On November 1, 2024, the Honorable Mark S. Kouris, Third Judicial District Court, entered an Order of Public Reprimand against Randal R. Leonard. He was found to have violated Rule 1.3 (Diligence) and Rule 3.2 (Expediting Litigation) of the Rules of Professional Conduct.

In summary:

On April 18, 2024, the Nevada Supreme Court entered an Order Approving Conditional Guilty Plea Agreement, publicly reprimanding and suspending Mr. Leonard from the practice of law for one day. The Order was predicated on the following facts:

Mr. Leonard represented a client in a bankruptcy case. He neglected his client's case until the client lodged a formal complaint against him. Mr. Leonard failed to file a certificate of service with the bankruptcy court, which resulted in nearly a year-long delay before his client's case could be closed with an order of discharge. Mr. Leonard also breached the terms of his prior probation by violating the rules of professional conduct resulting in a one-day suspension in Nevada.

Aggravating Circumstances:

Multiple prior disciplinary offenses, a pattern of misconduct, and substantial experience in the practice of law.

Mitigating Circumstances:

Absence of a dishonest or selfish motive and full and free disclosure to disciplinary authority or cooperative attitude toward the proceeding.

PUBLIC REPRIMAND

On August 14, 2024, the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rex L. Bray for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 1.6(a) (Confidentiality of Information), and 1.16(d) (Declining or Terminating Representation) of the Rules of Professional Conduct.

In summary:

A client retained Mr. Bray to pursue an order to show cause in a family law matter. At the order to show cause hearing, the opposing party failed to appear, and the court found the opposing party in contempt for failing to pay child-related expenses. The court entered judgment in favor of Mr. Bray's client and awarded Mr. Bray's client attorney fees and costs. After the hearing, Mr. Bray filed a proposed order. The court rejected Mr. Bray's proposed order and requested that Mr. Bray resubmit the appropriate document type for judgments. One month later, the client asked Mr. Bray about the status of the judgment. Mr. Bray stated that he received the judgment back from the court and needed to make a revision. He explained once it was signed, the opposing party would be garnished. Many months later, Mr. Bray mailed an invoice to the client's partner, who was also a client of Mr. Bray's. Mr. Bray included in the envelope addressed to the partner a billing statement for the client. The client did not live with their partner and never received the billing statement. The client also never provided Mr. Bray with consent to disclose the client's confidential information to the partner.

Approximately two years later, the client emailed Mr. Bray and told him she had learned from ORS that the judgment had not been resubmitted or signed by the judge. As a result, ORS had not collected the judgment from the opposing party. The client asked Mr. Bray to resubmit the judgment. After following up with Mr. Bray over the next few months, the client filed a complaint with the OPC. Mr. Bray subsequently filed a revised proposed order, which was entered by the court.

Aggravating circumstance:

Prior discipline.

Mitigating circumstances:

Personal or emotional problems.

SUSPENSION

On October 9, 2024, the Honorable Judge Dianna M. Gibson, Third Judicial District Court, entered an Order of Suspension against James M. Rock, suspending him for a period of two years from the practice of law. The court found that Mr. Rock violated Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a)

(Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters), 8.4(d) (Misconduct), and two counts of 8.4(b) (Misconduct) of the Rules of Professional Conduct.

In summary:

This case was comprised of two disciplinary matters. The first matter involved multiple criminal proceedings. In one criminal proceeding, Mr. Rock pleaded guilty to Driving Under the Influence of Alcohol and/or Drugs, a Class B Misdemeanor, and entered a plea in abeyance to Failure to Stop at Command of Police, a Third-Degree Felony. Due to Mr. Rock's violation of the terms of his plea-in-abeyance agreement, the court later entered a guilty plea on the latter charge. In three separate criminal proceedings, Mr. Rock pleaded guilty to three counts of Stalking a Current or Former Cohabitant, all Third-Degree Felonies. In two separate criminal proceedings, Mr. Rock pleaded guilty to a single count of Stalking, a Second-Degree Felony. Mr. Rock violated his duties to the public by committing criminal acts that reflected adversely on his trustworthiness and/or fitness to practice law.

In the second disciplinary matter, an elderly client on a fixed income retained Mr. Rock to address federal and state tax issues. The client began receiving collection calls and notices from a collection agency regarding taxes owed to the Utah State Tax Commission. The client repeatedly asked Mr. Rock for guidance and/or updates on the status of the matters without result. Over time, Mr. Rock became less communicative and after the client paid a second retainer fee, Mr. Rock stopped communicating with the client altogether. Mr. Rock never submitted any documents to the IRS or Utah State Tax Commission to help resolve the client's tax issues. The client had to obtain new counsel to assist them. After the client filed a complaint with the OPC, Mr. Rock told the client to withdraw their complaint. During the OPC's investigation, Mr. Rock did not respond to the OPC's requests for information.

Aggravating circumstances:

Substantial experience, pattern of misconduct, multiple offenses, and client was a vulnerable victim.

Mitigating circumstances:

Lack of prior discipline.



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DELICENSURE / DISBARMENT

On May 9, 2024, the Honorable Jared Eldridge, Fourth Judicial District Court, entered an Order of Delicensure/Disbarment against Christopher J. Rogers. Specifically, the court found that Mr. Rogers violated Rule 1.2(d) (Scope of Representation), Rule 1.5(a) (Fees), Rule 1.15(c) (Safekeeping Property), Rule 1.15(d) (Safekeeping Property), Rule 1.16(a) (Declining or Terminating Representation), Rule 3.1 (Meritorious Claims and Contentions), Rule 3.3(a) (Candor Toward the Tribunal), Rule 4.4(a) (Respect for Rights of Third Persons), Rule 5.5(a) (Unauthorized Practice of Law; Multijurisdictional Practice of Law), Rule 7.1 (Communications Concerning a Lawyer's Services), Rule 8.4(c) (Misconduct), and Rule 8.4(d) (Misconduct) of the Rules of Professional Conduct.

In summary:

This case involves two matters. In the first, Mr. Rogers represented a corporate client in a debt collection matter. Mr. Rogers violated Rule 1.2(d) by advising his client to dissolve and have its corporate officers resign in order to avoid a Rule 30(b)(6) deposition. Mr. Rogers violated Rule 1.15(d) by failing to render a full accounting when requested by his client and by attempting to collect additional fees by way of a fraudulent transfer of shares in exchange for attorney fees to be paid to Mr. Rogers.

Mr. Rogers violated Rule 1.16(a) when he refused to withdraw after his client had discharged him, forcing the court to enter an order terminating Mr. Rogers as counsel. He violated Rule 3.1 by filing numerous frivolous pleadings and papers, causing unnecessary delay and expenses. Mr. Rogers violated Rule 3.3(a) by making multiple false statements to the Court. He violated rule 4.4(a) by taking actions that had no other purpose but to burden opposing parties, counsel in the case, and Mr. Rogers's own client. Mr. Rogers violated Rule 5.5(a) by allowing a delicensed attorney to prepare pleadings and papers and advise his client and himself. He violated Rule 7.1 by using the name Rogers Law Group to advertise his services, which was a misrepresentation as he was the only attorney in the "group." He violated Rule 8.4(c) by committing fraud on the court with respect to the dissolution of his client and by deceitfully setting up several scams while representing his client. Mr. Rogers violated Rule 8.4(d) by filing numerous frivolous motions with the purpose of delay and hindrance of the actions.

In the second matter, a client retained Mr. Rogers to represent them in a criminal matter and a family law case. Mr. Rogers violated Rule 1.5(a) by charging and collecting an excessive amount of money for fees that were not earned and were unreasonable in light of the work actually performed. Mr. Rogers violated Rule 1.15(c) by failing to maintain money paid to him by his client in his trust account until it was earned or until costs were incurred. He violated Rule 1.15(d) by failing to return funds provided by third parties for a certain purpose despite numerous requests. Mr. Rogers violated Rule 1.16(a) when he failed to withdraw from his client's case after he was requested to do so. He violated Rule 8.4(c) when he deposited a large amount of money provided by third parties for the sole purpose of paying bail for Mr. Rogers's client, but then failed to return the money to its owners when the client went to jail. Mr. Rogers deposited the money into his trust account and claimed he had a right to keep the money even though the rightful owners had not consented and had asked for it to be returned.

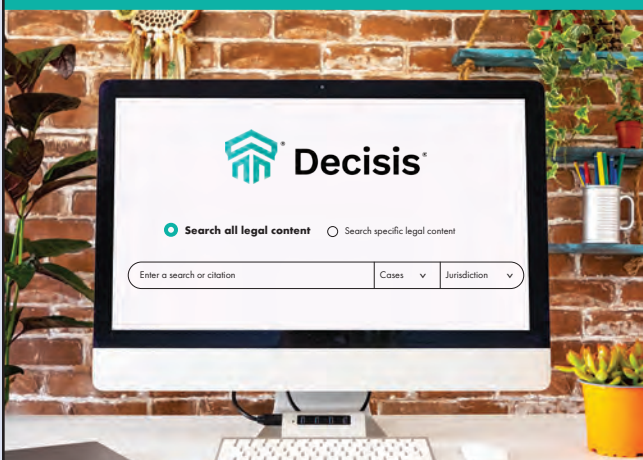
Aggravating circumstances:

Dishonest or selfish motive, a pattern of misconduct, multiple offenses, the refusal to acknowledge the wrongful nature of the misconduct involved, vulnerability of the victims, and the lack of a good faith effort to make restitution to rectify the consequences of the misconduct involved.

Mitigating circumstances:

The absence of prior discipline, the inexperience of the lawyer in the practice of law, and the imposition of other penalties or sanctions (Mr. Rogers had been subject to interim discipline).

The Utah State Bar is proud to provide licensees with access to **free legal research** through Decisis.





New Mail Policy for Incarcerated Individuals: What Attorneys Need to Know

Effective **January 6, 2025**, the Utah Department of Corrections (UDC) has partnered with Pigeonly to create a new system for handling and processing incoming mail. This change aims to improve mail delivery, allow more types of mail to be received inside its facilities, and reduce contraband introduced into the facilities through the mail. Here is what legal professionals need to know:

Privileged Legal Mail

Attorneys will continue sending privileged legal mail directly to UDC facilities. However, they must first register with Pigeonly's Privileged Mail program to generate a QR code sticker for each envelope. This QR code ensures the mail is processed correctly as privileged legal correspondence.

Mail should be addressed as follows:

- **Utah State Correctional Facility:**
Incarcerated Individual Name – Inmate ID #
PO Box 165300
Salt Lake City, UT 84116
- **Central Utah Correctional Facility:**
Incarcerated Individual Name – Inmate ID #
PO Box 550
Gunnison, UT 84634

Public Legal, Government, or Business Correspondence

Official legal correspondence that does not qualify as privileged mail, including letters from courts, government offices, or businesses, should be sent directly to the designated UDC facility. This mail may be inspected, but mislabeled correspondence from friends or family will be denied.

Examples of accepted official correspondence include:

- Courts and court staff
- Government offices and entities
- Attorney General's Office
- Members of Congress and the State Legislature
- Law enforcement officers in their official capacity

Non-Privileged Mail Process

All non-privileged mail from friends and family must now be sent to Pigeonly Corrections' centralized mail processing center. The addresses are as follows:

- **Utah State Correctional Facility (USCF):**
Incarcerated Individual Name – Offender ID Number
PO Box 96777
Las Vegas, NV 89193
- **Central Utah Correctional Facility (CUCF):**
Incarcerated Individual Name – Offender ID Number
PO Box 96777
Las Vegas, NV 89193

Pigeonly will open all non-privileged mail, scan its contents into digital color copies, and securely print these copies for delivery to the appropriate UDC facility. Original items will not be returned but will be temporarily stored before secure destruction.

Mail Requirements

- Return Address: Required on all mail.
- Envelope Size: Maximum size is 4" x 9½".
- Letter Size: Paper must not exceed 8½" x 11".
- Greeting Cards: Maximum size is 5" x 7".
- Postcards: Maximum size is 5" x 7".
- Photographs: Limited to 10 photos per parcel, size 4" x 6".

Prohibited Mail

The following items will not be accepted and will be returned to the sender:

- Glitter, rhinestones, stickers, or glued items
- Wax paper letters
- Letters written on sticky notes or irregularly shaped paper
- Items like crystals, coins, toys, or keychains
- Blank stationary or envelopes
- Stapled items
- Books, magazines, or overly thick greeting cards
- Polaroid photos or photographs from third-party vendors
- Bulk mail and any type of legal mail sent improperly
- Envelopes written in light-colored ink

Frequently Asked Questions

Why is this new process being implemented?

The UDC aims to mitigate the risk of contraband entering facilities through postal mail. This policy enhances security while maintaining timely correspondence for incarcerated individuals.

How does the process work?

Non-privileged mail is sent to Pigeonly's processing center, where it is scanned into a digital copy and reviewed by UDC before being printed and forwarded to the recipient's facility.

How long does mail delivery take?

Mail is typically processed, reviewed, and delivered within 1–3 days of receipt at Pigeonly's facility.

What happens to original mail?

Original items are securely stored for 45 days and then destroyed unless a sender requests their return within this period by contacting support@pigeon.ly.

Can formerly incarcerated individuals access their scanned mail?

Yes, upon release, individuals can email support@pigeon.ly to download their scanned mail items at no cost.

Key Takeaways for Legal Professionals

Legal professionals must register with Pigeonly's Privileged Mail program and use the one-time QR code system to ensure timely and secure delivery of sensitive documents. This transition underscores the importance of following precise procedures for legal mail to avoid delays or denials.

For more information, visit Pigeonly's website: <https://www.pigeon.ly/>.





Promoting Good Stewardship in Our Profession

by Linda Echeverria

The average full-time worker in the United States, who works forty hours a week or more, spends more time at work than with their families, on hobbies, or focusing on personal well-being. This is a well-known fact, but it's worth reminding ourselves of its significance. A welcoming and comfortable workplace is crucial for retaining employees, especially in the legal field where complex workloads make frequent turnover a major detriment. Both attorneys and paralegals must ensure that the time we share with our coworkers is of the highest quality and that we always act as good stewards of our profession.

Throughout my career, I've been fortunate to encounter several good stewards. One guided me in becoming a notary, another taught me how to authenticate a document with an apostille, and a special person introduced me to the Paralegal Division. Their decisions to invest time in my professional development had a profound impact on me. Interestingly, these individuals are among my favorite coworkers.

Many of my colleagues have similar stories of key people who, through their good intentions, made a significant difference in their careers. These stories share a common thread: these individuals went out of their way and beyond their normal duties to do something kind for someone else. Their actions helped build trust that often extended beyond our time together at a job. These individuals serve as examples of how we should conduct ourselves with others in our profession. They are good stewards of the profession.

In the ever-evolving legal landscape, the roles of attorneys and paralegals have never been more crucial. My colleagues and I, as members of the Paralegal Division of the Utah State Bar, recognize our collective responsibility to be exemplary stewards of our profession. The division's mission is to support paralegals through professional development, resource sharing, and networking opportunities that enhance our effectiveness and career growth. Upholding the highest standards of ethics and competence, while fostering a spirit of collaboration and mutual support among our peers, is paramount. By helping one another and sharing our

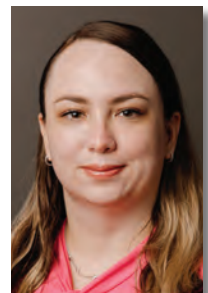
knowledge and experiences, we can ensure our profession continues to grow, thrive, and serve the community with integrity and excellence.

The paralegal profession can be isolating and mentally draining. A competitive spirit, often encouraged by the nature of our work, can lead to a lack of communication. Data on mental health concerns affecting lawyers is abundant, and it stands to reason that paralegals and legal support staff face similar issues, even if data specific to paralegals is scarce. A strong community built on kindness is necessary to combat these concerns.

When we know that our colleagues are invested in our career development, our motivation and engagement at work significantly increase. This investment demonstrates that our organizations value our contributions and see potential in our future. One effective way to foster growth in others is to encourage networking. Engaging with new people and sharing experiences can boost confidence and improve communication skills. Active networking also enhances your visibility in your industry, potentially leading to recognition and respect from peers and leaders. Furthermore, networking can pave the way for collaborations, partnerships, and new projects, all of which can greatly benefit both your career and your organization.

Many in the Utah legal field are unaware of the Paralegal Division of the Utah State Bar. Many of us in the division were also unaware until a good steward of the profession introduced us to the organization. This division believes that good stewardship should also come from supervising attorneys. One of the greatest acts of service an attorney can perform for their paralegal(s) is to inform them of such an organization and facilitate their membership

LINDA ECHEVERRIA is a corporate paralegal at dōTERRA International. Linda currently serves as the Membership Committee Co-Chair on the Board of Directors of the Paralegal Division.



where possible. For Utah paralegals, this resource is invaluable, offering the best support for growth and networking.

Paralegals in the division are required to complete ten hours of continuing legal education annually, including one ethics credit. Many of these courses are specifically designed for paralegals, helping us stay up to date with the ever-changing legal landscape and enhancing our skills. The ethics credit is vital for maintaining an awareness of professional restrictions and standards. Although dedicating time to continuing education

might appear to detract from productivity, it is essential for ensuring accountability and promoting good stewardship. We all recognize the dangers of becoming too comfortable with our existing knowledge and set in our ways.

For more information, please visit our website at paralegals.utahbar.org. We welcome any inquiries about joining our organization at utahparalegaldivision@gmail.com. Reach out to a coworker paralegal today and ask if they're a member; you never know what impact one simple question might have.

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**For information, contact Travis Nicholson at travis@utahbar.org
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