Utah Bar® JOURNAL

Volume 38 No. 4
July/Aug 2025

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The Utah Bar Journal

Published by the Utah State Bar | 645 South 200 East, Salt Lake City, UT 84111 | 801-531-9077 | www.utahbar.org

MISSION & VISION OF THE BAR:

The lawyers of the Utah State Bar serve the public and legal profession with excellence, civility, and integrity.
We envision a just legal system that is understood, valued, and accessible to all.

Cover Photo

Onaqui Stallion at Simpson Spring by Utah State Bar licensee Douglas B. Thayer.

DOUG THAYER is a trial lawyer and has been practicing for forty-one years. He is currently a shareholder at Dentons Durham Jones Pinegar, and has been with them for thirteen years, currently working out of the Lehi office.

Asked about his cover photo, Doug said, "Up until the day this photo was taken I had never seen a wild horse in person. On this day I saw this stallion with a few mares. He repeatedly started fights with other stallions and was trying to steal mares from them. When he finally noticed me near his two mares, he came at me with what I believe was a bluff charge, which is when I took this photo."

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.

Utah Bar JOURNAL

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Volume 38 No. 4
July/Aug 2025

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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.
8. If and when a letter is rejected, the author will be promptly notified.

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Letter to the Editor

Dear Editor:

I was pleased and reassured to read Bar President Tangaro's message affirming the close and effective relationship between the Utah Bar, legislators, the judiciary, and Governor Cox. Trust me, this is not always the case.

As a member of the Utah State Bar, the District of Columbia Bar, and the U.S. Supreme Court Bar, I'm aware of things going horribly wrong.

For example, our nation has been beset with a U.S. president who openly insulted the federal courts and ignored their decisions. The courts, of course, have no power to act on their decisions, and Congress lacked the will to act. Washington lawyers stood quietly aghast out of fear but let it happen.

I'm referring, of course, to President Andrew Jackson refusing to comply with a U.S. Supreme Court order. During President Jackson's autocratic rule from 1829 to 1837, the Supreme Court issued a decision Jackson didn't like. His response, according to some sources: "John Marshall has made his decision, now let him enforce it!" Justice Marshall, of course, couldn't.

Jackson's refusal to respect the court's decision resulted in the forced deportation of the Cherokee Nation from Georgia and the notorious "Trail of Tears," where close to 17,000 Cherokee died during their exile westward.

The open hostility between different branches of the government did not work out well for the country, least of all for the Cherokee Nation. Be grateful for what you have in Utah.

Michael Barrett

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Building Community: A Vision for the Year Ahead at the Utah State Bar

by Kim Cordova

As the incoming President of the Utah State Bar, I want to begin by recognizing a foundational truth: we are an integrated bar accountable to the Utah Supreme Court, and its inherent authority under the Utah Constitution defines our purpose, duties, and responsibilities. We have various functions, including regulating the admission and discipline of lawyers, promoting professionalism, and educating the public about the law. The Utah State Bar is essential to the integrity and functionality of the legal profession.

This framework is not incidental; it is central to our identity and purpose. The Bar exists not only to license and regulate lawyers but to serve the broader public by promoting access to justice, supporting the rule of law, and helping people understand how to navigate our legal system. This process not only protects the public but also fosters a culture of competence and accountability within the legal community.

As attorneys, we are officers of the court. This designation is more than symbolic; it defines the standard by which we must act. We are entrusted not just with advocacy, but with the ethical and professional stewardship of justice itself. Our role requires us to operate with integrity, competence, and civility that allows the public to place its trust in the legal system, and in us as legal professionals.

Being part of an integrated bar enables us to align our internal responsibilities, such as licensing, continuing education, and disciplinary oversight, with our external obligation of *protecting the public, supporting the courts, and upholding the rule of law.* It is this balance that gives the Bar its unique strength and responsibility.

With that grounding, I want to focus my presidency on a simple but powerful idea: ***building community***. Throughout the coming year, I hope to explore what that truly means in action, connection, and purpose. For me, building community is about creating a Bar where every legal professional in Utah feels seen, supported, and valued. As members of the Bar, we share a common purpose that extends beyond individual cases and clients – a commitment to strengthening our legal community. In an ever-evolving landscape, the bonds we build within our profession and with the communities we serve are more important than ever. A strong legal community fosters mentorship, collaboration, and a shared sense of purpose. It enables us to face challenges together, learn from one another, and elevate the practice of law across our state.

But before we can fully embrace the future, we must take a moment to honor the path that brought us here and the leaders who helped pave it. I would like to pay special tribute to my predecessor, Cara Tangaro, whose leadership has left an indelible mark on the Utah legal community.

Cara led with conviction, compassion, and courage. She was a staunch advocate for the rule of law, never shying away from difficult conversations, always standing firm in defense of justice and fairness. Equally important, she brought vital attention to lawyer well-being, reminding all of us that strength in our profession must be matched with humanity and care. Under her leadership, wellness moved from being an afterthought to a central priority. And before her, Erik Christiansen and Katie Woods served with distinction and both have not only been incredibly gracious in their support of me but also continue to be of service to the Bar and to all the lawyers across the state.

Cara, Erik, and Katie – thank you for your service, your voices, and your examples. Following in your footsteps is something I don't take lightly. I carry with me deep gratitude, a sense of responsibility, and an unwavering belief in the potential of our Bar.

To do that, I want to continue to explain further what the Bar does and how each of us can contribute to its promising future. Yes, the Bar is tasked with licensing, regulating, and supporting attorneys in Utah, but that description doesn't begin to capture the breadth of the work done, or the vibrant network of people and staff that make it all happen. Here are just some of the many functions provided:

Continuing Legal Education (CLE)

Offers mandatory and elective CLE programs to ensure ongoing professional development.

Practice Support & Resources

Provides tools for lawyers including ethics advisory opinions, law practice management guidance, and mental health resources, such as Tava Health.

Leadership & Community Engagement

Supports thirty-eight practice sections and two divisions to promote collaboration, networking, and leadership within the profession.

Access to Justice Office (ATJ)

Ensures legal help reaches those who need it most by organizing and supporting a range of programs that connect volunteer attorneys and law students with individuals navigating legal issues without representation:

Virtual Legal Clinics

- Free online legal advice is offered through virtual clinics.
- Individuals can submit legal questions online for non-criminal matters. Once a month, volunteer attorneys and law students from the SJ Quinney College of Law respond to these questions, coordinated by the Bar's ATJ Office.

Legal Education and Resources

- Provides legal information, referrals, and tools to help individuals better understand and navigate their legal options.

Pro Se Calendar Volunteer Program

- Manages the Third District Pro Se Debt Collection and Pro Se Immediate Occupancy calendars.
- Aims to assist individuals who cannot afford an attorney by providing limited-scope representation during hearings.

Volunteer Coordination

Individual Volunteers: Each week, the ATJ Office sends a call for volunteers to program attorneys. Those who accept will receive a case packet, which includes:

- Contact info for plaintiff's counsel and the tenant/debtor;
- Relevant case files;
- Hearing details; and
- (For Immediate Occupancy cases) Notes from the Utah Community Action Housing Mediator.

Participating Law Firms: Firms select a designated week each month. The program lead requests internal volunteers and relays names to the ATJ Office, which then distributes case packets and offers ongoing support.

The ATJ Office works with the ProBono Commission and Access to Justice Commission to ensure that legal service providers are aware of each other and collaborating to advise clients on their legal rights and obligations, and to assist them in navigating the legal system to protect their interests. Thousands of Utahns face legal challenges without the resources to navigate the system. Whether through pro bono work, public service, or systemic reform, each of us plays a role in bridging that gap. Access to justice is not a privilege – it is a cornerstone of a fair and functioning society.

An important event to strengthen this resolve is the ATJ Summit, which brings together legal service organizations for networking, training, and cooperation with ensuring the legal system operates fairly and efficiently.

This year marks the Seventh Annual ATJ Summit on October 3rd at the Utah Law & Justice Center. Your support is welcomed, as is your time as volunteers, to meet the rising demand of unbundled legal assistance. Whether you're a seasoned attorney or a new lawyer looking to give back, your time and experience can make a lasting difference.

And the difference you can make includes serving on the Bar's committees, sections, and divisions. There are more than twenty-five committees that assist the Bar Commission in its oversight and policy-making responsibilities pursuing general or specific assignments as needed. Each committee, section, and division make a positive impact by shaping the legal profession and services provided to the public.

As you can see, the Bar is a living ecosystem made up of sections, committees, commissions, volunteers, staff, and, of course, our thousands of licensees. But we are also so much more. **We are mentors. We are advocates. We are innovators. We are a support system for lawyers at every stage of their careers.**

As a commissioner of the Bar, I had the privilege of witnessing firsthand the dedication of those who work behind the scenes to ensure our legal profession thrives. And now, as President, I carry with me not only gratitude, but a deep sense of responsibility. I stand on the shoulders of those who came before me, and I am committed to making space for those who come next. Become involved so you can be a part of what comes next.

This year, I want to highlight and celebrate the many ways the Bar builds and strengthens community through its committees, sections, and divisions, through service and leadership opportunities, through our annual conventions, and through the vital conversations we host about ethics, equity, and excellence. I want to bring more visibility to the resources available to attorneys, including wellness initiatives, practice tools, AI, and professional development opportunities. I want to illuminate the vision and talent of the dedicated staff to the Bar, without whom none of this would be possible.

Most of all, I want to create opportunities for *connection*. Whether you're a solo practitioner in a rural area, a solo practitioner on the Wasatch front, a new lawyer in a big firm, a seasoned lawyer in a big firm, an in-house counsel, a government lawyer, or a judge – **you are part of this Bar. This is your community.**

As we embark on this year, I invite you to be involved, to bring your voice and your story to the table to fulfill the Bar's mission of creating a justice system that is understood, valued, respected, and accessible to all. Being active in the Bar is a strategic investment in your practice, your profession, and your legacy as a lawyer. The legal profession needs engaged, passionate lawyers. We need you; we want you; we value each voice; and we treasure every story. Let's celebrate what makes the Utah legal community unique, and let's continue building something even stronger ***together***.

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Utah's Business and Chancery Court: The First Six Months

by The Hon. Rita M. Cornish

For those not familiar with the Utah Business and Chancery Court, it is a specialized trial court with limited jurisdiction created to resolve complex business and commercial litigation disputes. The court was created by HB0216, which was signed into law by Governor Spencer Cox on March 20, 2023. The Business and Chancery Court opened on October 1, 2024.

The jurisdiction of the court is both broad and limited. It is broad in that the Business and Chancery Court has statewide jurisdiction without venue restrictions. Although the court will be permanently located on the first floor of the Matheson Courthouse in Salt Lake City, it "may perform any of [its] functions in any location within the state." Utah Code Ann. § 78A-5a-204(1). This means the court has some flexibility to hold hearings and trials in locations that are convenient to the parties and counsel if they are located outside Salt Lake City.

At the same time, the Business and Chancery Court's subject matter jurisdiction is limited in two primary ways – amount in controversy and case type. With respect to the former, the Business and Chancery Court's jurisdiction is limited to cases where a party seeks injunctive relief or damages equal to or in excess of $300,000, with respect to at least one of their claims. *See* Utah Code Ann. § 78A-5a-103(1)(a).

With respect to case type, at least one of the parties' claims must be of a permitted kind. Borrowing a term for the federal courts, the Business and Chancery Court has "original" jurisdiction over claims arising from a breach of contract, breach of fiduciary duty, internal business governance disputes (accounting/dissociation/dissolution), receiverships or liquidations, business torts, commercial insurance coverage disputes, the UCC, the Uniform Trade Secrets Act, misappropriation of intellectual property, securities fraud, blockchain, antitrust, certain kinds of malpractice, and declaratory judgment. *See id.* § 78A-5a-103(1). Generally speaking, the court also has supplemental jurisdiction over any other claims in an action if those claims arise from the same set of facts or circumstances as the claims within the court's original jurisdiction, *see id.* § 78A-5a-103(2), so long as those claims do not arise from a consumer contract, personal injury, the administrative procedures act, civil rights, the election code, domestic relations or child custody, protective orders, residential evictions, eminent domain, or the criminal code, *see id.* § 78A-5a-103(3).

As previously noted, the Utah Business and Chancery Court opened its doors on October 1, 2024, and April 1, 2025, marked six months of operations. In that time, we have collected some information and learned some lessons that merit sharing.

We are often asked how many cases have been filed and what kinds of cases are being filed. The answer to the first of these questions is that twenty-seven cases have been directly filed in the Business and Chancery Court and one case has been transferred from the district court. Of those twenty-eight cases, final judgment has been entered in two cases – one default judgment and one stipulated dismissal with prejudice based on settlement. The remaining cases are in the early stages of litigation. In three of the cases, the plaintiff sought preliminary injunctive relief; another three have involved pre-answer motions to dismiss; several cases are in the early stages of discovery; and many are awaiting service of a summons and responsive pleadings.

JUDGE RITA M. CORNISH was appointed to the Second District Court in November 2020 by Governor Gary R. Herbert. In July 2024, Governor Spencer J. Cox appointed her to the new Business and Chancery Court.

The mix of case types is pretty much what you would expect in light of the Business and Chancery Court's limited statutory jurisdiction. The court's docket has been dominated by breach of contract cases, with internal business governance disputes running a close second, and other case types trailing. The case types breakdown roughly as follows: 32% breach of contract cases; 29% internal business governance disputes, including breach of fiduciary duty claims; 14% business torts; 11% declaratory judgment actions; and 14% miscellaneous claims.

Though the majority of the cases are at an early stage, the early impression is that attorneys appearing before the court are doing a great job of adapting to the new forum. The level of preparation, practice, and advocacy have been impressive. However, as with any unfamiliar endeavor, we at the court are seeing some recurring challenges for parties and litigants appearing before the Business and Chancery Court. Most of these challenges appear to stem from simple inattention or an unfamiliarity with the Utah Rules of Business and Chancery Court Procedure (the U.R.B.C.P.). Before continuing, it is worth noting that the examples that follow are illustrative, not exhaustive, and are offered in the spirit of giving practice pointers before the Business and Chancery Court.

Inattention appears to be a common cause of errors when counsel or parties prepare pleadings from personal forms or forms from the Utah courts website. While the use of forms is encouraged and increases efficiency, we encourage counsel to carefully review their pleadings for compliance with the U.R.B.C.P. It has been a regular occurrence for the Business and Chancery Court to receive filings with a caption that incorrectly refers to a district court and a county instead of the Business and Chancery Court for the state of Utah. This almost always leads to the Business and Chancery Court clerks requiring a party to re-file pleadings with a corrected caption. *See* U.R.B.C.P. 10(f). While refiling pleadings can be annoying but not necessarily detrimental to a party's case, there have been instances where the effect is disruptive. For example, there have been a handful of times the Business and Chancery Court clerks have been unable to issue a default certificate because, although the defendant was properly served, the name and address of the court had not been updated in the caption or body of a form summons to reflect the Business and Chancery Court and, instead, carried over the name and address for a district court. *See* U.R.C.P. 4(c). These are mistakes that can be easily avoided by careful review of pleadings.

An unfamiliarity with the U.R.B.C.P. has also worked as a stumbling block for some of the first litigants in the Business and Chancery Court. By way of background, the Utah Rules of Civil Procedure apply in the Business and Chancery Court, "except where: (1) There is a rule of the same number in the Utah Rules of Business and Chancery Court Procedure; or (2) The Utah Rules of Business and Chancery Court Procedure exclude the application of … [a] specific rule number" of the Utah Rules of Civil Procedure "as set forth in Appendix A." U.R.B.C.P. 1(c). And there are only twenty rules of Business and Chancery Court procedure that replace the same numbered rule of civil procedure. This should give attorneys who regularly practice in Utah's District Courts some level of comfort practicing in the Business and Chancery Court.

However, in the instances where the Utah Rules of Business and Chancery Court procedure provide a substitute rule, that rule often addresses a fundamental difference between the district court and the Business and Chancery Court. For example, U.R.B.C.P. 8 governs the general rules for pleadings and has requirements materially different from its corresponding rule of civil procedure.

Because Utah District Courts have a system of tiered discovery, complaints filed in district court must either specify the amount of damages sought or plead that a specified discovery tier applies to the case. *See* U.R.C.P. 8(a). However, because the Business and Chancery Court does not have a system of tiered discovery, pleading a discovery tier is not required. *See id*. But more importantly, U.R.B.C.P. 8(a) requires parties to plead facts that are not typically found in a complaint filed in district court.

A complaint filed in the Business and Chancery Court must include a statement of the basis for jurisdiction of the court. And that rule makes sense because the Business and Chancery Court is a court of limited subject matter jurisdiction. *See* Utah Code Ann. § 78A-5a-102(3). The court needs to be able to assess subject matter jurisdiction at the outset of the case, and a failure to include allegations that state the basis for the jurisdiction of the court risks dismissal of the complaint at the outset of the case. *See, e.g., Olson v. Salt Lake City Sch. Dist*., 724 P.2d 960, 964 (Utah 1986) ("[A] lack of [subject matter] jurisdiction can be raised at any time by either party or by the court.").

Some early litigants have also appeared to struggle with compliance with U.R.B.C.P. 38, governing jury trials of right.

This is another instance where the rule of Business and Chancery Court procedure is substantively different from the corresponding rule of civil procedure, and that difference is driven by fundamental differences between the district court and the Business and Chancery Court.

Again by way of background, "[t]he Business and Chancery Court is the trier of fact in an action before the Business and Chancery Court." Utah Code Ann. § 78A-5a-104(1). Stated differently, there are no jury trials in the Business and Chancery Court. Instead, the Business and Chancery Court is required to transfer an action or claims in an action to the district court if a party demands a trial by jury and the court finds that the party making the demand has a right to trial by jury of their claim. *See id*. § 78A-5a-104(2). It, therefore, makes sense that Rule 38, governing the procedure for demanding a jury trial, would be very different in the U.R.B.C.P. as compared to the U.R.C.P.

Generally speaking, U.R.C.P. 38 permits a party to demand a jury trial by paying their statutory jury fee and making a demand in their pleading or serving a separate demand not later than fourteen days after the last pleading. U.R.C.B.P. 38, on the other hand, provides that by filing a complaint, plaintiff waives their right to a jury trial on all claims and issues asserted in the complaint. And with respect to subsequent pleadings, a party must make their jury demand either in their pleading or serve a demand no later than the date they file their responsive pleading. In addition, U.R.C.B.P 38(b)(5) requires parties making a jury demand to "identify the county in which the party contends the case should be tried." This is because, if the Business and Chancery Court is required to transfer the action or claims to the district court, it needs that information to make the transfer to the right district. Rule 38 of the U.R.B.C.P. also includes a procedure to challenge the opposing party's jury demand through a motion to strike under certain circumstances. Simply put, U.R.B.C.P. 38 has shorter deadlines for making a jury demand and requires more of the parties when making that demand.

In the early cases filed in the Business and Chancery Court, we are seeing repeated instances where the parties have failed to comply with U.R.B.C.P. 38. For example, jury demands have been included in complaints, and the majority of jury demands, whether included in a complaint or later pleadings, have initially failed to identify the county in which the party contends the case, claims, or issues should be tried. This has led to the court striking the party's jury demand with an opportunity to refile within seven days and include the required information. However, despite the fact that an opportunity to cure has been allowed, these missteps cause delay in the case and are indicative of an unfamiliarity with the U.R.B.C.P.

Looking back on these examples, they are minor missteps. Although minor, they are the types and kinds of missteps that we are seeing repeated and that frustrate or delay the progress of a case. More importantly, they are missteps that are easily avoided by heightened attention to the U.R.B.C.P. until attorneys have developed a familiarity with those rules and practice before the Business and Chancery Court.

Overall, the takeaways from the first six months of operations are positive. The Business and Chancery Court is largely operating as designed. Complex business litigation cases are being filed in the court, and those cases represent a cross-section of the case types falling within the court's original jurisdiction. Though the majority of cases are at early stages, cases are progressing as contemplated under the U.R.B.C.P., and the recurring challenges litigants are experiencing are of the kind that should be expected when counsel practices in a new forum.

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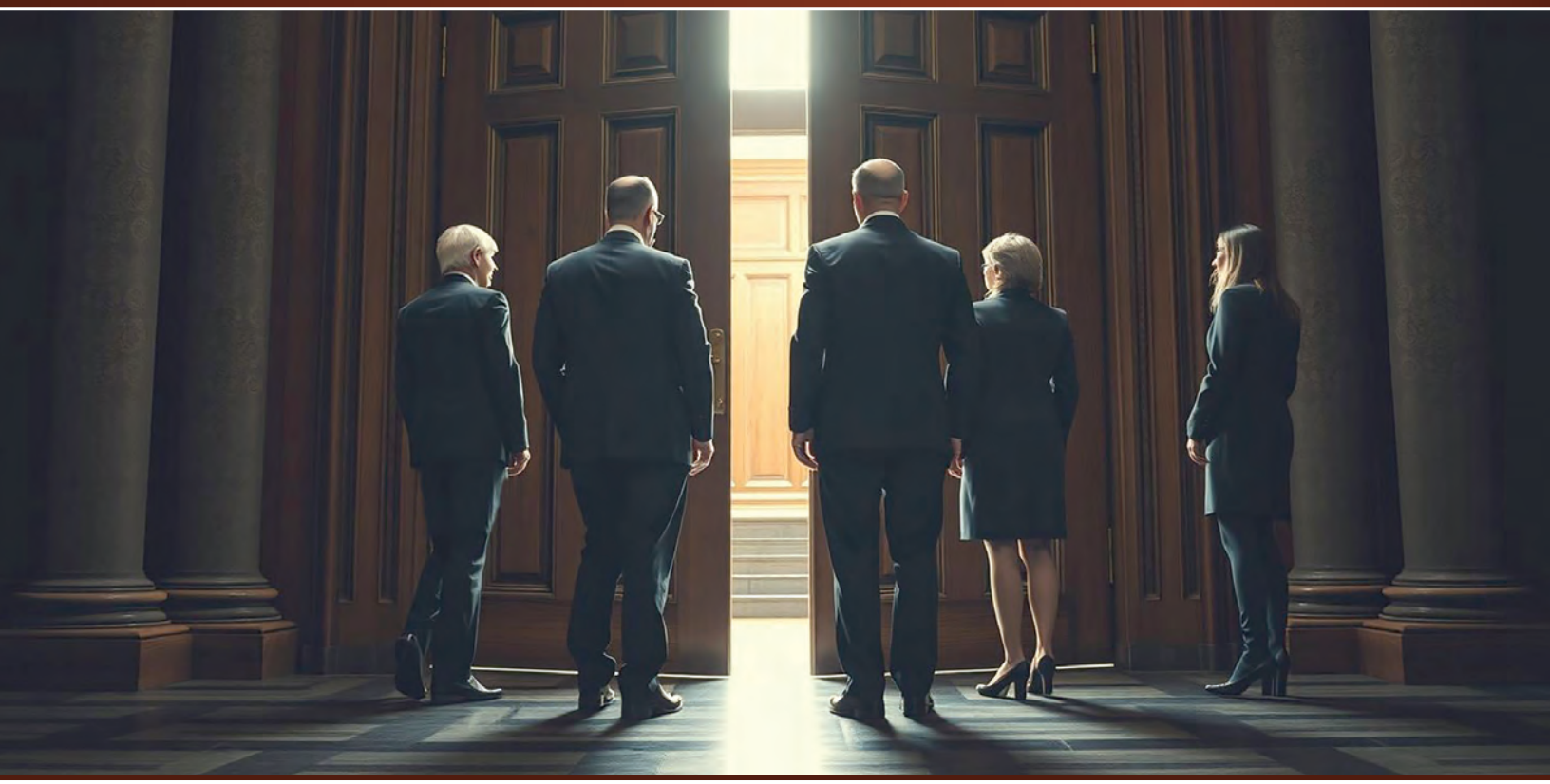

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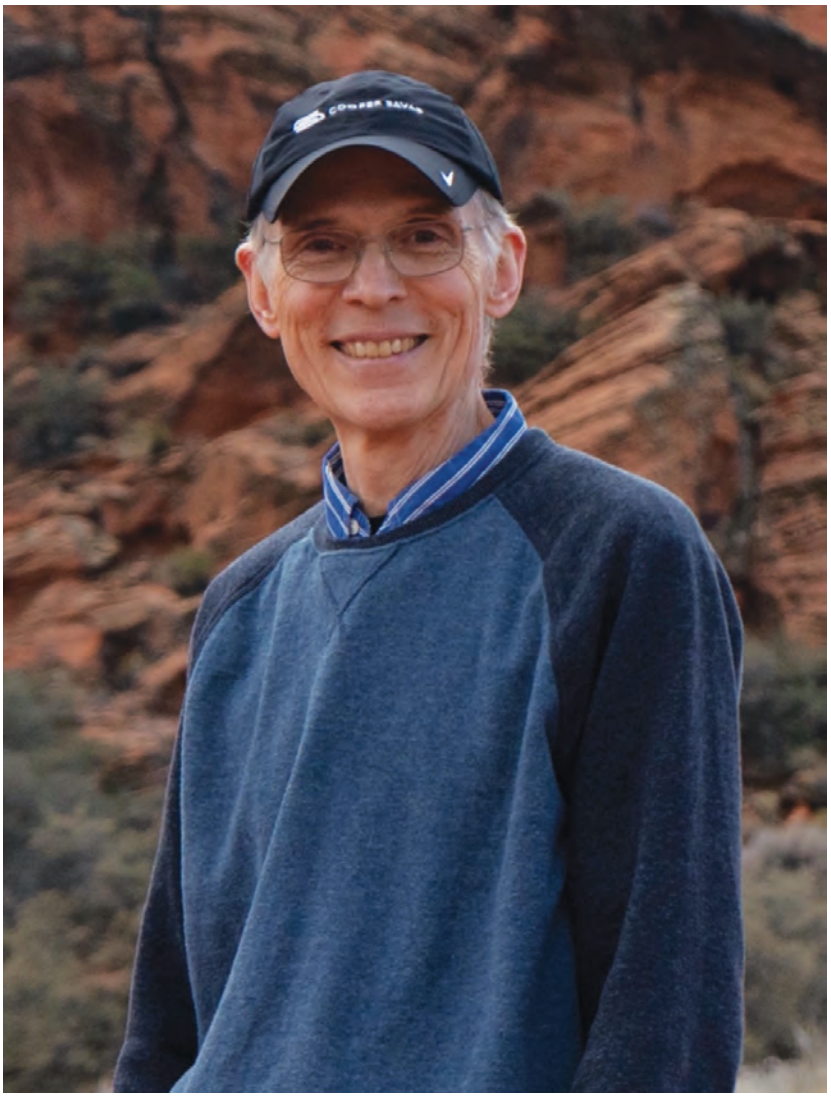
Thanks to Todd Zagorec

by Bill Holyoak, former Utah Bar Journal Editor-in-Chief

Todd Zagorec, Editor at Large of the *Utah Bar Journal*, recently announced his resignation from the Board of Editors. Todd has been a member of the Board since 2000, making him one of the longest serving editors ever. He was Managing Editor until 2013, when he moved to Connecticut for a new job. He then became an Editor at Large. He continued to write, edit, and participate in monthly editorial meetings via video conferencing. If Todd said he would do something, he did it.

Todd's is the classic story of local boy made good. After graduating from Jordan High School (go Beetdiggers!) and the University of Utah, he attended and graduated from Harvard Law School. I met Todd in the mid-1980s when we worked at the same law firm in Salt Lake. Todd left the law firm and worked as corporate counsel for several local companies, including KeyCorp and Huntsman Chemical, until he moved to Connecticut. There he was counsel for several major international corporations until his retirement from the practice of law earlier this year.

It can now be revealed that Todd was the voice of "Just Learned Ham," and wrote numerous clever and highly entertaining articles under that pseudonym for the *Utah Bar Journal*.



Todd Zagorec, retiring editor of the Utah Bar Journal and the voice of "Just Learned Ham."

Todd's is some of the finest writing to ever appear in the *Journal*. Two examples are a review of a book written by Justice Stephen Breyer (September/October 2024) and another article after Justice Breyer's resignation from the court (May/June 2022 issue). (Todd had the good fortune of taking Administrative Law from Justice Breyer when he was a professor at Harvard.) Both are wonderful examples of Todd's facility with the English language. I highly recommend them.

Todd, you will be missed. Enjoy your retirement.

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Citing Artificial Intelligence in Legal Prose

by Brenden Catt

AUTHOR'S NOTE: *The views and opinions expressed in this article are those of the author and do not necessarily reflect the position of the Utah Attorney General or the Utah Attorney General's Office.*

Introduction

The primary functions of legal citation are "to allow the reader to efficiently locate the cited source," "to provide the information necessary to lead the reader directly to the specific items cited," and to "communicate important information about the sources and legal authorities upon which [legal writers] rely in their work." The Bluebook: A Uniform System Of Citation 1 (Columbia L. Rev. Ass'n et al. eds., 22nd ed. 2025) [hereinafter The Bluebook]. These functions of legal citation serve three primary purposes: (1) efficiently leading readers to the cited source, (2) channeling veracity, and (3) improving transparency. This article squares these three purposes with the Bluebook's recent guidance on citing artificial intelligence in legal prose and explores considerations unaddressed by its guidance.

Background

John McCarthy first coined the term "artificial intelligence" or "AI" in the 1950s, defining it as "the science and engineering of making intelligent machines." Christopher Manning, *Artificial Intelligence Definitions*, Stanford Institute For Human-Centered AI (Sept. 2020), https://hai-production.s3.amazonaws.com/files/2020-09/AI-Definitions-HAI.pdf. For nearly seventy years, the features and definitions of artificial intelligence have evolved, and it is now generally understood as "technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy." Cole Stryker & Eda Kavlakoglu, *What is artificial intelligence (AI)?*, IBM (Aug. 9, 2024), https://www.ibm.com/think/topics/artificial-intelligence.

Recently, "generative artificial intelligence" or "Gen AI" has been the focus of headlines, news stories, and publications. Gen AI is computer technology "that can generate high quality text, images, and other content based on data [it was] trained on." *Id*. Unlike artificial intelligence, Gen AI is not limited to solving problems or making predictions based on the data to which it has access; it may create new data based on the data to which it has access. Adam Zewe, *Explained: Generative AI*, MIT News (Nov. 9, 2023), https://news.mit.edu/2023/explained-generative-ai-1109.

Artificial intelligence is creeping into pervasive use throughout the public and private legal sectors. In fact, a recent Clio study found that between 2023 and 2024 the use of artificial intelligence by legal professionals jumped from 19% to 78%. Sarah A. Sutherland, *AI use skyrocketing at North American Law Firms*, National (Nov. 4. 2024), https://nationalmagazine.ca/en-ca/articles/legal-market/legal-tech/2024/ai-use-skyrocketing-at-north-american-law-firms. With nearly 90% of legal executives preparing for increased investments in artificial intelligence technologies, this trend is not expected to slow. Ray Collitt, *AI is preparing the next generation of lawyers*, LexisNexis, https://www.lexisnexis.com/html/ai-is-preparing-the-next-generation-of-lawyers/?srsltid=AfmBOoodReveX-AO1WqcUQPE0s-n6HiEkaYv0o-4Nui-DV7lfwGrsvn5G (last visited Mar. 1, 2024). These statistics not only quantify the rapid adoption of artificial intelligence in the law but also the opportunities for applying this technology to numerous facets of legal practice. The recent publication of the 22nd Edition of the Bluebook is a fundamental step toward ensuring uniformity in citing AI, a previous shortcoming of using this technology in legal writing.

BRENDEN CATT is an Assistant Attorney General with the Environment Section of the Utah Attorney General's Office.

The Bluebook's Guidance on Citing Artificial Intelligence

In May 2025, the editors of the Harvard, Yale, Columbia, and University of Pennsylvania law reviews published the 22nd Edition of the Bluebook. The editors made numerous adjustments to make the Bluebook more usable in modern legal practice. Indeed, the editors revised the Bluepages to include the "contrast" introductory signal and the "(citation modified)" parenthetical, updated Table 2 to include new jurisdictions, and added Rule 22 and Rule 23, which provide guidance on citing materials from Tribal Nations and citing archival sources, respectively. The Bluebook, at 4–5, 9, 245, & 249. Subtle, yet germane to this article, are the editors' additions to Rule 18 providing guidance on citing AI, which resolves the competing perspectives on citing artificial intelligence that preceded the publication of the 22nd Edition of the Bluebook. *Id.* at 191.

Competing Perspectives on Citing Artificial Intelligence Preceded the Bluebook's Guidance.

The Bluebook suggests that "when citing material of a type not explicitly discussed in [the Bluebook], try to locate an analogous type of authority that is discussed and use that citation form as a model." *Id.* at 1. Prior to the publication of the 22nd Edition of the Bluebook, legal writing scholars were divided on the appropriate analogous authority for citing artificial intelligence, analogizing to "Unpublished Materials" under Rule 17 or "Internet Sources" under Rule 18.

Rule 17 governs citations to unpublished and forthcoming sources. *Id.* at 176. By analogy, some legal writing scholars suggested that the use of artificial intelligence is like citing an unpublished or forthcoming source because its use is "an intermediary step in the author's creative process, rather than the final product." Mark L. Shope, *Best Practices for Disclosure and Citation When Using Artificial Intelligence Tools*, 112 Georgetown L.J. Online 1, 9 (2023). Relatedly, legal writing scholars suggested Rule 17 as the best analogy because using artificial intelligence is similar to an unpublished interview, whereby the writer gleans ideas by prompting the artificial intelligence system. *Id.* This position suggested that the author is merely using artificial intelligence to elicit ideas or creative antidotes rather than requesting it to develop work product from scratch. *Id.* at 9–10. Although a creative approach, most legal writing scholars rejected the Rule 17 analogy in favor of the Rule 18 analogy.

Prior to the publication of the 22nd Edition of the Bluebook, Rule 18 governed citations to information found on the internet, commercial electronic databases, microforms, films, broadcasts, and other nonprint sources. *See* The Bluebook, at 181. It suggested, and the 22nd Edition of the Bluebook endorses, two general principles that directly align citing artificial intelligence with the three primary purposes of legal citation. First, "[a]ll efforts should be made to cite to the most stable electronic location available." *Id.* at 185–90. Second, the citation "should include information designed to facilitate the clearest path of access to the citation reference." *Id.* This may be one justification for educational institutions suggesting, prior to the publication of the 22nd Edition of the Bluebook, that Rule 18 was their "best guess for how a Bluebook citation to a [Gen AI] response should look." *Citing Generative AI*, Univ. Wash. Sch. L.: Gallagher L. Libr., https://lib.law.uw.edu/c.php?g=1236949&p=10159873 (last visited Feb. 20, 2025). Indeed, as explained below, these two principles appear to have informed the Bluebook's recent guidance on citing AI.

The analogous citation structures for citing artificial intelligence under Rule 17 and Rule 18 were distinct, and, in the absence of the Bluebook's recent guidance, often allowed for subjective applications. The 22nd Edition of the Bluebook now offers an objective approach, putting to bed the need to analogize to Rule 17 and Rule 18 when citing AI.

The Bluebook's Guidance on Citing Artificial Intelligence.

The Bluebook's guidance on citing artificial intelligence is constrained to a single rule – Rule 18.3. The Bluebook, at 191. In developing this rule, the editors likely confronted numerous questions like: Which artificial intelligence systems warrant citation? Is artificial intelligence considered an author? How can legal citation best account for Gen AI's generative nature? This is demonstrated by the rule's conservative, unique standards tailored to three broad categories: (1) large language models, (2) search results, and (3) AI-generated content.

Citing Large Language Models.

The 22nd Edition of the Bluebook first provides its highly anticipated guidance on citing responses from large language models under Rule 18.3(a). *Id.* The Bluebook's suggested citation structure for large language model responses is broken down into five elements. These five elements include the author of the prompt, the name of the artificial intelligence system, the exact text of the prompt in quotation marks, the date when the artificial intelligence system was prompted, and a parenthetical explaining where a screenshot of the artificial intelligence system response is saved as a PDF. *Id.* Applying this suggested

structure to cite a large language model response may produce the following citation:

Brenden Catt, ChatGPT, "Which national park would create a better setting for a post-apocalyptic film: Capitol Reef National Park or Bryce Canyon National Park?" (May 31, 2025) (on file with author).

The final element of this proposed citation structure is an unprecedented, but calculated, approach required not only for citing large language model responses but also search results and AI-generated content, as explained below. For the first time, the Bluebook suggests that legal writers independently record the material upon which the writer relied and save that record in a specific format. This expectation departs from the Bluebook's guidance on citing other sources. For example, authors citing a website under Rule 18.2 are not expected to download a copy of the webpage upon which the author relied, save that copy as a PDF, and use a parenthetical to explain where that copy is located. *Id.* at 185–90. This approach is the Bluebook's calculated solution to account for the generative nature of Gen AI. A primary purpose of Gen AI is personalization by learning from previous interactions with users and improving outputs based on these interactions. Kathleen Walch, *How Generative AI is Driving Hyperpersonalization*, Forbes (Jul. 15, 2024, 9:42 AM), https://www.forbes.com/sites/kathleenwalch/2024/07/15/how-generative-ai-is-driving-hyper-personalization/. As such, unlike a website where the substance is relatively stagnant and a permalink to the webpage is sufficient to accomplish the three primary purposes of legal citation, the response one user receives from a large language model may be worlds different from another user's response because of previous interactions with the large language model. Accordingly, although unorthodox, Rule 18.3(a) offers a standard citation structure that accounts for the generative nature of Gen AI.

Citing Search Results.

Next, the 22nd Edition of the Bluebook provides guidance on citing AI-assisted search results under Rule 18.3(b). The Bluebook, at 191. The Bluebook again proposes a citation structure containing five elements, similar to those used for large language models. Those five elements include the name of the search engine in small caps, the text of the search query in quotation marks that includes any boolean connectors used, the number of search results, the date of the search, and a parenthetical explaining where a screenshot of the results is saved as a PDF. *Id.* Applying this structure to cite a search result may produce the following citation:

Google, "7-day forecast for Salt Lake City, Utah," 2,820,000 results (May 31, 2025) (on file with author).

The Bluebook also provides direction on how to account for search results narrowed using filters. *Id.* The foundation of the citation structure remains the same, requiring the use of the five elements explained above. *Id.* However, when accounting for filtered results, legal writers should adjust the number of results to reflect the number returned after the filters are applied and include an additional parenthetical to explain which filters were applied to obtain the results. *Id.* When more than one filter is

applied, the Bluebook suggests listing each filter in quotation marks and separating them with commas. *Id*. Applying this structure to cite a filtered search result may produce the following citation:

> Westlaw, "Arrange!" /2 "liab!" /s "CERCLA", 17 results (May 31, 2025) (on file with author) (filtered by "Cases", "10th Cir.").

While insightful, the application of this citation structure appears quite narrow. Rarely do attorneys conduct research to merely quantify the number of results achieved by a specific query. Instead, attorneys apply those results to the problem at hand and use the substance of those results to analogize or distinguish from that problem to craft a solution. Occasionally, it may be useful to quantify search results to explain whether a problem is one of first impression or one that has been previously addressed. Regardless of whether a problem is one of first impression or its solution is settled, attorneys are tasked with developing arguments that persuade the audience that, despite the number of times the problem has been addressed, their position should prevail. Accordingly, this citation structure adds a distinct, narrow tool to legal writers' arsenal of citation structures, and the utility of its application has yet to be entirely realized.

Citing AI-Generated Content.

Finally, the Bluebook offers guidance on citing AI-generated content under Rule 18.3(c). *Id*. AI-generated content should be "cited according to the relevant Bluebook subrule." *Id*. A subrule is a subcategory of a larger set of rules. In the context of AI-generated content, the controlling subrules will often be those governing citations for video, audio, and images, which are each found in Rule 18. In addition to the elements required by the subrule, Rule 18.3(c) suggests including a parenthetical explaining that the content was generated by artificial intelligence and identifying the artificial intelligence system used. *Id*. If the relevant subrule requires the name of an author, the author's name should be substituted for the name of the individual who input the prompt. *Id*. If the name of the individual who input the prompt is unavailable, the citation should omit the author's name entirely. *Id*. Applying this structure to cite AI-generated content may produce the following citation:

> Brenden Catt, Realistic Illustration of a Stormy Day in New York City in the Roaring Twenties (on file with author) (generated by Google Gemini).

The Bluebook's suggestion to use a subrule as the foundation for citing AI-generated content was strategic. Artificial intelligence is finding applications in legal practice beyond legal writing and is being used to create visual tools, including exhibits, diagrams, and presentations. *See* Kevin J. Duran, *Using Artificial Intelligence for Your Trial Presentation*, GPSolo, Jan./Feb. 2024, at 56, 58. On the one hand, using the Bluebook's existing subrules as a foundational citation structure accounts for the foreseeable uses of artificial intelligence to generate content, such as videographic media under Rule 18.7, audio under Rule 18.8, and images under Rule 18.9. On the other hand, it is anticipatory by implicitly recognizing that AI-generated content is in its infancy and likely to expand. Accordingly, while the volume, type, and complexity of AI-generated content evolve, legal writers may rely on the Bluebook's existing subrules to appropriately cite such content.

The Bluebook's guidance for citing artificial intelligence is likely fleeting, but these citation structures provide conservative starting points with enough flexibility to address current and immediately foreseeable artificial intelligence developments. Despite the Bluebook's guidance for citing large language models, search results, and AI-generated content, its guidance was never capable of addressing larger, perhaps more pressing, considerations of using artificial intelligence to prepare legal prose.

Considerations Unaddressed by the Bluebook's Guidance on Citing Artificial Intelligence

The 22nd Edition of the Bluebook provides model citation structures for citing artificial intelligence in legal prose. *See* The Bluebook, at 191. However, this guidance leaves many considerations of using artificial intelligence to prepare legal prose unaddressed. These considerations include, among others, the importance of attorneys remaining cognizant of their audience and complying with the rules of professional conduct.

Remaining Cognizant of the Audience.

The Bluebook's guidance on citing artificial intelligence did not include instructions on how legal prose should be curated to particular audiences when artificial intelligence is used in its preparation. As with legal prose generally, attorneys should remain cognizant of their audience to comply with rules and policies, ensure their writing is well-received, and advance their clients' interests. This is particularly important when using artificial intelligence to prepare writings for courts, legal publications, and colleagues and clients.

Writing for Courts.

Courts have issued standing orders and amended local court rules to govern the use of artificial intelligence by attorneys before them. The variation in this governance is as broad in

substance as it is geographically. From blanket prohibitions to requiring legal citation and signed declarations, each court has its preference for disclosing or citing the use of AI, requiring heightened diligence for those practicing in numerous tribunals and across multiple jurisdictions.

Courts' standing orders vary significantly based upon the tribunal and jurisdiction. To illustrate this point, compare the distinguishable approaches of two federal court judges – Judge Michael J. Newman of the United States District Court for the Southern District of Ohio and Judge Michael M. Baylson of the United States District Court for the Eastern District of Pennsylvania. In December 2023, Judge Newman issued civil and criminal standing orders that provide "[n]o attorney for a party, or a pro se party, may use Artificial Intelligence (AI) in the preparation of any filing submitted to the Court." *See* Standing Order Governing Civil Cases, 11, S.D. Ohio S.O. (effective Dec. 18, 2023), https://www.ohsd.uscourts.gov/sites/ohsd/files/MJN%20Standing%20Civil%20Order%20eff.%2012.18.23.pdf. Regardless of whether an attorney discloses or cites to the use of artificial intelligence and regardless of how an attorney uses artificial intelligence, they could be sanctioned for violating Judge Newman's standing order. *Id*. Conversely, about six months before Judge Newman, Judge Baylson issued a standing order encouraging attorneys to disclose or cite the use of artificial intelligence by incorporating a clear and factual statement when "AI [was] used in any way in the preparation of the filing." Standing Order Re: Artificial Intelligence ("AI") in Cases Assigned to Judge Baylson, E.D. Pa. S.O. (effective June 6, 2023) https://www.paed.uscourts.gov/sites/paed/files/documents/locrules/standord/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf. These approaches have been replicated by judges in state courts throughout the country, including those in Texas and North Carolina, who have issued standing orders similar to their federal counterparts. Even if certain courts allow the use of artificial intelligence, their style guides and local rules may delineate legal citation standards that differ from merely conforming to the latest edition of the Bluebook. This further underscores the need to remain cognizant of the expectations of the tribunals and jurisdictions before and within which attorneys appear.

While Utah's state and federal courts have yet to address disclosing or citing the use of artificial intelligence by attorneys before them, the Utah State Courts published interim rules governing internal use of artificial intelligence in 2023. Utah State Courts, Interim Rules on the Use of Generative AI (Oct. 25, 2023), https://drive.google.com/file/d/1TRIV13v0_08N4nhKzr2xGBy_0OYZZrqd/view. The Interim Rules limit the use of artificial intelligence by judicial officers and court employees to legal research and preparing draft documents, among other tasks. *Id*. The Utah State Courts' self-governance regarding the use of artificial intelligence is instructive in two respects. First, it warrants a discussion of whether or to what extent the judiciary should be expected to disclose its use of artificial intelligence and whether those expectations evolve based upon the type of task for which the judiciary is using artificial intelligence. While this article is not the appropriate forum for such a discussion, the judiciary, too, has an audience that is composed of the public and attorneys, which may warrant citation, disclosure, or both. Second, the Utah State Courts' self-governance may foreshadow the Utah judiciary's eventual expectations for attorneys disclosing or citing the use of artificial intelligence. Utah courts are likely to address the use of artificial intelligence by attorneys in the not-so-distant future, which may be hastened by the recent examples of irresponsible use of artificial intelligence to prepare legal prose.

Members of the Bar using artificial intelligence and practicing in numerous tribunals and jurisdictions should tread lightly, as each tribunal and jurisdiction may have unique expectations for disclosing or citing the use of artificial intelligence.

Writing for Legal Publications.

Unlike the distinct artificial intelligence policies of the courts, legal publications that have addressed disclosing or citing the use of artificial intelligence share similar principles. In June 2024, Vanderbilt Law Review released an artificial intelligence policy. Vanderbilt Law Review Artificial Intelligence Policy, Vanderbilt Univ. L. Sch., https://cdn.vanderbilt.edu/vu-sub/wp-content/

uploads/sites/281/2024/08/23141237/VLR-AI-Policy.pdf (last updated June 2024). Among other standards, that policy requires authors to "disclose which tools the author used and for what purposes the author used each tool." *Id*. Similarly, the Harvard Journal of Law & Technology requires authors of student note submissions to disclose the artificial intelligence tool used and the functions of that tool used. Note Submission, Harvard J. L. & Tech., https://jolt.law.harvard.edu/student-note-submission (last visited Mar. 8, 2025). Nearly every legal publication, however, requires citations to conform to the latest edition of the Bluebook. Therefore, authors submitting to most legal publications will be expected to align with that publication's standards for disclosing the use of artificial intelligence and align with the Bluebook's guidance for citing large language model responses, search results, and AI-generated content.

Writing for Colleagues and Clients.

Attorneys should also remain cognizant of using artificial intelligence when communicating with and writing on behalf of colleagues and clients. Few public or private sector law firms have released internal policies regarding the use of artificial intelligence to prepare legal prose. A recent Thomson Reuters report found that 30% of law firms, 20% of government legal teams, and 37% of corporate legal teams have adopted specific internal policies to govern the use of artificial intelligence. Thomson Reuters Institute, 2025 Generative AI In Professional Services Report 26 (2025), https://www.thomsonreuters.com/content/dam/ewp-m/documents/thomsonreuters/en/pdf/reports/2025-generative-ai-in-professional-services-report-tr5433489-rgb.pdf?cid=5645838&chl=eb&sfdccampaignid=701pa00000hw60vyat. This remains true despite the rapid increase in the use of artificial intelligence in the legal field and the rapid decrease in law firms reporting that they have no plans to use artificial intelligence. *Id*. at 12.

Although access to law firm, government, and corporate internal policies governing the use of artificial intelligence is limited, two general principles could guide how such policies approach disclosing or citing its use. First, internal policies may create different standards for disclosing or citing the use of artificial intelligence based on whether the written communication is intended for internal or external distribution. Internal policies could advise attorneys to disclose or cite the use of artificial intelligence for internal communication, external communication, or both. Regardless of the recipient, those policies could encourage attorneys to (1) consider whether the communication is responsive, (2) determine whether the written communication uses the appropriate tone, (3) curate the written communication's language and pare back terms of art, and (4) consider each recipient's knowledge of the subject matter and expand or limit background information based upon the breadth of that knowledge. Second, when writing on behalf of colleagues and clients, internal policies may distinguish between the use of artificial intelligence for transactional matters and the use of artificial intelligence for litigation matters. As demonstrated above, each court has unique standards for disclosing or citing the use of artificial intelligence, and although common sense expects attorneys to comply with standing orders, local court rules, and style guides, internal policies may reinforce those expectations.

With the increasing use of artificial intelligence across the legal sector, attorneys must remain vigilant of updated internal policies addressing the use of artificial intelligence when communicating with and writing on behalf of colleagues and clients.

Complying with the Rules of Professional Conduct.

Tired are the publications explaining the ethical responsibilities and associated pitfalls stemming from attorneys' use of artificial intelligence. Although important, addressing those considerations here would woefully stray from the purpose of this article. In keeping with the purpose of this article, it is essential to acknowledge that the Bluebook's guidance on citing artificial intelligence does not endorse careless use of artificial intelligence or insulate attorneys from the rules of professional conduct. Rather, its guidance works in tandem with the rules of professional conduct. The three primary purposes of legal citation – leading readers to the cited source, channeling veracity, and improving transparency – closely align with attorneys' ethical obligations as advocates. Legal citations vet meritorious claims, ensure candor to tribunals, and promote fairness to opposing counsel. *See* Utah R. Jud. Admin. R. 13–3.1, 13–3.3, & 13–3.4. Therefore, while no rule of professional conduct directly mandates accurately citing AI, the spirit of those rules counsels in favor of citing its use when appropriate.

Conclusion

At long last, the 22nd Edition of the Bluebook has entered the fold, clarifying when and how legal writers should cite artificial intelligence. Yet, model citation structures are but one consideration for the responsible use of artificial intelligence in legal writing. As artificial intelligence's role in the law expands, so too does the need for attorneys to remain cognizant of their audience and vigilant of their ethical responsibilities – considerations that may very well coincide with citing artificial intelligence in legal prose.

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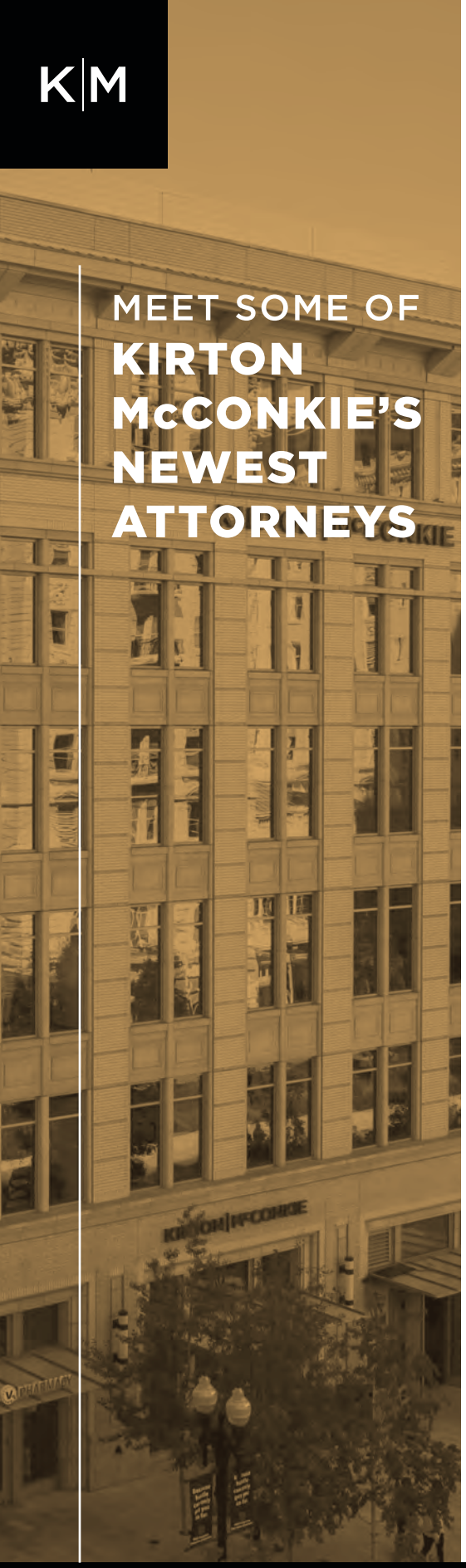

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Appellate Highlights

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

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

Utah Supreme Court

State v. Mullins
2025 UT 2 (March 13, 2025)

Mullins pled guilty to aggravated murder committed when he was seventeen years old, and was sentenced to life without parole. Years later, he asked the court to review the constitutionality of his sentence after the US. Supreme Court held that mandatory life without parole sentencing of juvenile offenders was unconstitutional. While Mullins had not faced a mandatory sentence, he argued that the sentencing court had not properly considered his age and circumstances – and specifically the possibility that he could change and reform – when it imposed the sentence. **While the record did not contain an affirmative factual finding that Mullins was capable of change, which would have rendered the sentence unconstitutional as a matter of law, the trial judge's comments that Mullins might have a chance to change and make a productive contribution "raise real concerns that Mullins may fall into that category.** Given that 'a lifetime in prison is a disproportionate sentence for all but the rarest of children,' the judge's statements undermine our confidence that Juvenile Life Without Parole was an appropriate and constitutional sentence."

Hinton v. Midwest Family Mutual Insurance
2025 UT 4 (March 20, 2025)

This case involves what constitutes "benefits paid or payable" under the Worker's Compensation Act such that those damages cannot be recovered in a separate action. Hinton settled a car wreck with the tortfeasor's insurance in a WCA proceeding, then claimed against her insurer for underinsured motorist coverage. The trial court interpreted Utah Code § 31A-22-305.3(4)(c)(i) to mean that past and future medical expenses and two-thirds of lost wages were payable under workers' compensation. The supreme court reversed. It held "that to be payable, benefits need only be capable of being paid to a claimant in a particular case." This means that there is not a categorical bar to damages categories, as the district court found. **"A claimant may not recover those underinsured motorist benefits that are hypothetically available from workers' compensation until she gets a determination allowing her to know for certain what workers' compensation will – and will not – cover. In light of this, we conclude that benefits remain 'payable' under the Workers' Compensation Act until a claimant in a particular case finds out otherwise.** But once a workers' compensation claim is adjudicated, 'payable' means the amounts that have been awarded or are owed, but not yet paid."

State v. Cooke
2025 UT 6 (March 20, 2025)

Defendant was charged with negligently driving with measurable amount of controlled substance in his body and causing death or serious bodily injury to another. Before trial, the statute under which he was charged was repealed and replaced with an amended statute. The supreme court held that the trial court properly denied defendant's motion to dismiss, because **"Utah's general saving statute permits a prosecution to proceed unabated when the statutory basis for the charge is repealed before trial."**

In re E.M.
2025 UT 8 (April 3, 2025)

Juvenile action where 15-year-old was charged with four racially motivated murders that occurred during a drive-by. The juvenile court found it appropriate to try E.M. as an adult, and

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

E.M. appealed. "E.M. argue[d] the juvenile court misapplied the Transfer Statute's retention factors because it considered facts that went beyond the elements of the transfer-qualifying crime, and because it determined elements of E.M.'s social history ultimately weighed in favor of transfer." On the last point, **EM argued that the history of social and family trauma should only weigh against transfer. In rejecting the argument, Supreme Court of Utah stated, "We acknowledge the difficult position this puts defense counsel in:** by introducing social history, any defendant likely hopes to provide explanation for his qualifying crime and potentially mitigate the possibility of transfer. But there is no formula that tells us when any particular traumatic experience will weigh for or against a juvenile being retained or transferred. Ultimately, the Transfer Statute seeks to guide the juvenile court to the outcome that is in the best interests of both the minor and of the public, with the hope of helping each minor rehabilitate and recover from the individual circumstances that informed his alleged choice to commit a very serious crime."

State v. Labrum
2025 UT 12 (May 1, 2025)

In 1986, the Utah Supreme Court held in *State v. Brickey* that "the Utah Constitution prohibits such a refiling of criminal charges absent a showing of new or additional evidence or other good cause." Over the almost four decades since, the Brickey "rule has become muddled in its application." In *State v. Labrum*, the supreme court clarified Brickey, holding that **"[t]here is no presumptive limitation on a prosecutor's ability to refile criminal charges that have been dismissed for insufficient evidence at the bindover stage," but if a "defendant … articulate[s] a reasonable basis to believe that the State refiled the charges in bad faith or with intent to harass," "the State must show, by a preponderance of the evidence, why its behavior was not the product of bad faith or an intent to harass."**

State v. Jolley
2025 UT 9 (April 10, 2025)

Rule 412 of the Utah Rules of Evidence, known as a "rape shield rule," generally prohibits admission of evidence of a victim's "other sexual behavior" or "sexual predisposition" in a criminal proceeding. But the rule also provides a handful of exceptions and a specific procedure to determine whether particular evidence falls under one of those exceptions. In this case, the defendant invoked that procedure to compel testimony from an alleged victim regarding her prior sexual activity. On interlocutory appeal from the district court's order compelling the victim to testify at an evidentiary hearing, the Utah Supreme Court reversed, concluding that the defendant and the lower court "fundamentally mistake the purpose of a rule 412 hearing." The rule is designed to protect a victim from "having his or her sexual history discussed in open court" – it is not meant to permit discovery by a defendant. **Accordingly, a defendant seeking to admit evidence under Rule 412(b) must identify that evidence "*in advance* of the … hearing" and may not compel the victim to provide testimony in order to discover such evidence.**

In re D.S.
2025 UT 11 (April 24, 2025)

In this decision reversing the Utah Court of Appeals' reversal of the juvenile court's termination of Father's parental rights of his two children, **the Utah Supreme Court addressed certain of the guardian ad litem's "primary objections" to the court's decision in *In re B.T.B.***, 2020 UT 60. The GAL had argued the court of appeals' failure to give sufficient deference to the juvenile court's best interest determination and impermissible reweighing of evidence – which served as the basis for the supreme court's reversal – could be traced to the guidance the court had provided in that case about how to conduct the best interest analysis. *In re B.T.B.* "makes clear that the child's best interest is of paramount importance," such that "the child's best interest is in first position." The court additionally clarified that its statement in *In re B.T.B.* that "a court must start the best interest analysis from the legislatively mandated position that wherever possible, family life should be strengthened and preserved," "did not mean that preserving family life is a coequal focus of the best interest analysis." Instead, "once grounds for termination have been found, the goal of preserving family life must be subordinate to and in service of the child's best interest." And, "at the best interest stage, the potential for reunification is viewed from the child's perspective – including the child's recognized right to be reared by the child's natural parent – not from the parent's perspective."

Utah Court of Appeals

Walmart v. Tax Commission
2025 UT App 28 (March 6, 2025)

In this property tax case, Walmart requested de novo review in district court of the Tax Commission's valuation decision. The court of appeals held that the trial court did not err by considering the Tax Commission's file and decision as part of the record, because the court properly understood that the case was based on de novo review and not simple appeal based on the Tax Commission record. Walmart also challenged the court's acceptance of a valuation based on value in use, arguing that only value in exchange is cognizable under the tax code. The court of appeals rejected the argument, holding that **the selection of valuation method is a factual determination and that the trial court had not abused its discretion in accepting a value in use test.**

Estate of Schofield v. Starbucks Corporation
2025 UT App 29 (March 6, 2025)

A patron of Starbucks was killed by a runaway pickup truck that crossed two parking lots, five lanes of traffic, and numerous other obstacles before crashing into the coffee shop's outdoor seating area. The patron's estate sued Starbucks, alleging negligence under a theory of premises liability. Starbucks successfully moved to dismiss the complaint, arguing that it owed "no duty to protect against the unforeseeable actions of third parties" like the truck driver. In reversing the dismissal, the court of appeals emphasized the conceptual distinction between duty and breach or proximate cause – the former is a

broad, categorical determination, while the latter are case-specific questions of fact. **In this case, the patron's estate invoked a long-established, categorical duty owed by business owners to their invitees and, based on the corresponding allegations in the complaint, that was enough to survive a motion to dismiss. Questions whether Starbucks could have foreseen or prevented the circuitous chain of events that led to the patron's injury in this particular case "go to breach and proximate cause, and not to duty."**

State v. Smith
2025 UT App 35 (March 6, 2025)

In closing arguments at the conclusion of a criminal trial, the prosecutor told the jury that the presumption of innocence was now "gone" because "[w]e've proven each element beyond a reasonable doubt that [the defendant is] guilty." The court of appeals, reviewing the defendant's subsequent conviction, warned that such prosecutorial commentary is "arguably objectionable." As in other recent cases, the court acknowledged that the duration of the presumption of innocence is an unsettled question in Utah law, but **cautioned that any prosecutor suggesting to the jury that the presumption of innocence is "gone" by the close of evidence is "treading on thin ice."**

Wild Country Holdings, LLC v. WE Five, LLC
2025 UT App 54 (April 24, 2025)

The court of appeals held that **the plaintiff, which owned property on the mountainside in unincorporated Salt Lake County, lacked the right to exercise eminent domain to acquire an easement over neighboring property to run water and sewer lines to its property.** The proposed easement was not a "public use" under Utah Code § 78B-6-501(2)(c)(ii) or (2)(i)(i), as those subsections do not contemplate the installation of water and sewer lines without any promise from the relevant service providers that the lines would actually be used. In addition, the plaintiff would not be "in charge" of any public use, as required under the eminent domain statute. Instead, it would be a third party condemning an easement for use by another (the service providers).

Utah Department of Transportation v. Boggess-Draper Co., LLC
2025 UT App 58 (May 1, 2025)

In this appeal from a second jury trial in a condemnation action, the court of appeals reversed the jury's verdict and remanded for a new trial. In doing so, the court of appeals rejected all but one of the property owner's arguments in favor of reversal, including that the district court abused its discretion by allowing UDOT to introduce evidence regarding the project's influence on the property's pre-project value. **The court held the property owner had failed to preserve this issue. The property owner had raised the issue through written objections to UDOT's proposed jury instructions approximately eight months before trial.** The court held this was insufficient to timely raise the issue to a level of consciousness such that the district court could consider it because the requests "which for all practical purposes amounted to a motion in limine – were labeled as a mere objection to a jury instruction, the court had no reason to review the specific objection until the end of trial when all the instructions had to be finalized. And at that point, it was too late for the court to exclude the challenged evidence given that it had already been presented during trial." The court further noted that the property owner had "made no effort to lodge a real-time objection to any project influence testimony during trial," despite knowing the district court had not yet ruled on the jury instruction objections.

Sunrise Home Health & Hospice, LLC v. Nye
2025 UT App 62 (May 1, 2025)

In this dispute over non-compete and non-solicitation provisions of an agreement, the district court found at the conclusion of a bench trial that one defendant breached her contracts with the plaintiff and that she and certain other defendants were jointly liable to the plaintiff for civil conspiracy and tortious interference. The district court dismissed the plaintiff's claims against certain other defendants. **On appeal, the court held the plaintiff's challenge to the dismissal of the claims against the remaining defendants was moot.** It explained that even if the three dismissed defendants were found liable, it "would not alter the ultimate judgment in the case" because "all the defendants would remain jointly and severally liable," and "the fact that only joint and several liability would be incurred by these three defendants is inconsequential as concerns [the plaintiff] because the judgment has already been paid in full."

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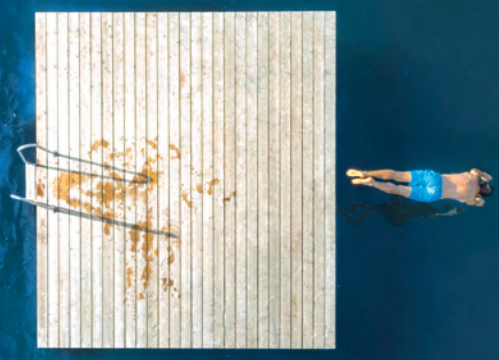

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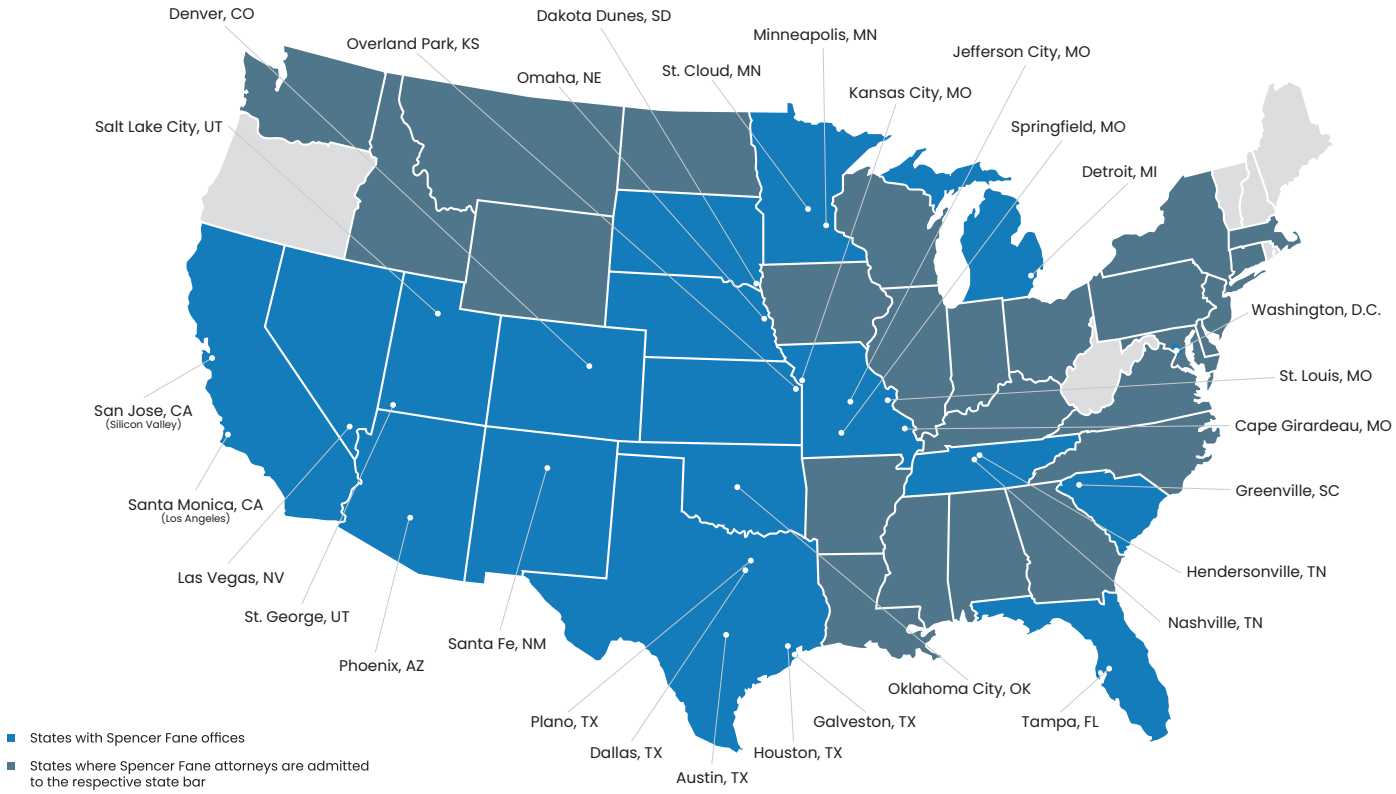

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Designing a Purpose-Driven Legal Career: A Better Way to Address Mental Health in Our Profession

by Ryan C. Gregerson

It's no secret that mental health is a growing concern in the legal profession and has been for years. We've all heard the statistics that lawyers face higher rates of depression, anxiety, substance abuse, and burnout than nearly any other profession. The solutions we're often offered, like stress management CLEs, employee wellness programs, or mindfulness apps, while well-meaning, tend to treat symptoms rather than root causes.

Challenging the Narrative

Here's a thought that may surprise you: What if the law itself isn't inherently stressful? What if the problem isn't the work, but the way that our lives have been built around it?

We often accept stress, exhaustion, and disconnection as the cost of practicing law. But that cost isn't built into the profession, but rather the systems and choices we've made around it. Many lawyers never truly design their careers. We drift into firm cultures, calendars, and definitions of success that we never consciously chose. In the absence of intention, pressure fills the space.

It doesn't have to be this way. When we live and work with purpose and intentionally build practices that align with our values, the stress doesn't disappear, but it transforms. The work becomes meaningful. The pressure becomes focused. And the profession becomes not only sustainable but deeply fulfilling.

Reconnecting with Purpose

I didn't start out intending to build a purpose-driven law firm. Like many attorneys, I followed the path that was available to me, one that included family law, a practice area I hadn't expected to pursue. But over time, as I grew into my role and faced the emotional toll of the work, I realized I needed a new framework to guide me.

That's when I came across Simon Sinek's TED Talk on the power of Why. It challenged me to think differently, not just about my business, but about how I wanted to live. I began crafting a purpose that would ground me and guide how I worked and practiced law. And when I started my own firm, I created my Why Statement as the foundation for something new, an organization designed with intention, centered around values, and deeply rooted in meaning.

It's easy to forget, in the midst of deadlines and discovery disputes, that the legal profession is a noble one. At its best, the law is a tool for justice, healing, restoration, and protection. Some attorneys enter the profession to make a difference. Others are drawn to the prestige. Many seek a stable and prosperous career. None of those reasons are wrong. But whatever the initial motivation, we all reach a point where we have to ask: Is the life I'm living through this profession one I actually want?

When I first explored Simon Sinek's Start with Why framework, it put words to something I had felt but never clearly articulated: that most of us live and work from the outside in. We focus on what we do and how we do it, but we rarely stop to ask why.

Sinek's approach offers a way to realign your life and career around purpose. Your Why Statement is a clear expression of the deeper reason you do what you do. Not what you produce. Not what you sell. But the cause or belief that drives you forward, and the impact you want to have.

That clarity changes everything.

A Why Statement doesn't eliminate the hard days. But it transforms how you experience them. When your work aligns with your values, the stress feels different. The days are still full, but they aren't hollow.

RYAN C. GREGERSON is the managing partner at RCG Law Group.

Reclaiming Your Role as the Architect

If you're reading this and feeling disconnected from your work, if it feels like law is just something happening to you, it may be time to reconnect with why you chose this profession in the first place. And if your current answer is "I'm not sure," that's a great place to begin.

For far too many attorneys, life in the profession feels like something we've inherited rather than something we've intentionally chosen. We wake up years into our career realizing we're following a path that someone else drew, and we're not sure how to get off it. But the truth is, we're not passengers. We're architects.

We accept the premise all too readily that being an attorney is hard and stressful and that it creates unhappy lawyers and unhappy people. We need to stop accepting that narrative.

Once you know your Why, you gain the power to design around it. Your calendar. Your client base. Your fee structure. Your team. Even your definition of success. You begin to replace pressure with clarity, and chaos with intention.

And something remarkable happens when you do: the work starts to bring you joy again, or for the very first time.

That's the part we don't talk about enough. It's not just about avoiding burnout or reducing stress. It's about creating a practice, and a life, that actually makes you feel good. Not just proud. Not just accomplished. But genuinely joyful.

Joy shouldn't be a surprise in this profession. It should be the standard.

You deserve to enjoy your work and to feel aligned with what you're building. You deserve to wake up most days excited about the contribution you get to make, not just the obligations you need to fulfill. That kind of joy doesn't happen by accident. It happens when you decide to design a career with purpose at its core.

And the best part? It's not too late to start.

You're Allowed to Build Something Better

This profession can be beautiful. It can also be brutal, especially when we build careers around other people's expectations instead of our own intentions.

But here's the truth: you don't have to accept the way things are. You don't have to keep surviving a career you never consciously designed. You can choose something different. You can build a practice and a life that reflects your values, your voice, and your vision for who you want to be in the world.

We need more attorneys who aren't just competent but fulfilled. Not just productive but purposeful. Not just surviving but thriving. That begins when you decide to stop drifting and start designing.

You became a lawyer for a reason. If that reason has gotten lost in the noise, now is the time to rediscover it.

Three Actionable Takeaways for You Today

1. Write Your Why Statement

Ask yourself: What is the deeper reason I do this work? Use Simon Sinek's framework: "To [contribution] so that [impact]." Let it become your compass.

2. Redesign One Part of Your Practice Around Your Why

Start small: restructure your calendar, refine the types of clients you serve, delegate differently, or clarify your intake process. Align one thing with your purpose.

3. Pursue Joy Without Apology

Joy is not a luxury in this profession; it's a signal that you're on the right path. You are allowed to build a career that energizes and fulfills you. Choose that path. Then invite others to do the same.

Sustaining Success: Summer Wellness Strategies for Busy Lawyers

by Dr. Matt Thiese

Most lawyers do not need a reminder that the profession is mentally and physically taxing. The pressure to deliver, the constant stream of deadlines, and the ingrained culture of overextension are all too familiar. Summer rarely brings the pause it promises, as client needs and billing demands continue without interruption. Still, this season offers a distinct window, not for escape, but for intentional recalibration.

With even modest changes to routine, attorneys and their support staff can reinforce their well-being and sharpen their performance without stepping away from their professional obligations. Mounting evidence indicates that the legal profession is in the midst of a mental health crisis.

As one article reports, a 2024 survey by the American Bar Association reported that 75% of associates experienced burnout and 60% noted a decline in their mental health over the past year. Travis Whitsitt, *The Evolving Role of Mental Health in Legal Recruiting: How Firms Are Addressing Burnout and Well-Being*, Vault, https://vault.com/blogs/vaults-law-blog-legal-careers-and-industry-news/the-evolving-role-of-mental-health-in-legal-recruiting-how-firms-are-addressing-burnout-and-well-being (Feb. 20, 2025). These findings underscore the persistent mental health challenges facing the legal profession and highlight the continued need for systemic reform in work culture and expectations.

Burnout and chronic stress were pervasive across all experience levels. Here in Utah, a pre-pandemic study found that 17.5% of lawyers had symptoms consistent with major depressive disorder or MDD. Matthew Thiese et al., *Depressive Symptoms and Suicidal Ideation Among Lawyers and Other Law Professionals*, 63 J. Occup. & Env't Med. 381, 381–86 (2021). MDD is a serious and common mental health condition that affects how a person feels, thinks, and functions in daily life.

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), MDD is:

- **characterized by a period of at least two weeks during which a person experiences a depressed mood or loss of interest or pleasure in most activities.**

- **accompanied by other symptoms, including:**
  - significant weight loss or gain, or changes in appetite
  - insomnia or hypersomnia (sleep disturbances)
  - fatigue or loss of energy
  - feelings of worthlessness or excessive guilt
  - difficulty thinking, concentrating, or making decisions
  - recurrent thoughts of death or suicide

Am. Psychiatric Assoc., Diagnostic and Statistical Manual of Mental Disorders (5th Ed. 2013). To meet the criteria for MDD, these symptoms must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning and cannot be attributed to substances or another medical condition. Left unaddressed, MDD can impair decision-making, interpersonal relationships, and even ethical judgment, making early detection and treatment crucial for both personal well-being and professional competency.

In response to such mental health consequences, both the ABA and state bar associations, including the Utah State Bar, have launched wellness initiatives encouraging attorneys to care for their physical and psychological health. Anne Brafford, *Well-Being Toolkit for Lawyers and Legal Employers*, Am. Bar Ass'n, https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_

DR. MATT THIESE serves on the Utah State Bar's Well-being Committee for the Legal Profession and the Vice President for Research and Scholarship at the Institute for Well-being in Law. He is a Professor at the University of Utah and Chief Operating Officer of the Rocky Mountain Center for Occupational and Environmental Health.

legal_employers.authcheckdam.pdf (Aug. 2018). Despite these efforts, wellness strategies often remain unadopted due to workload, stigma, or lack of clear, accessible guidance tailored to legal professionals.

While some lawyers face seasonal litigation spikes, for many, summer offers a brief slowdown or greater scheduling flexibility. This makes it a prime time to implement sustainable wellness routines. Here are several evidence-based ideas to improve wellness. Pick one and see where it takes you.

Embrace Outdoor Physical Activity

Engaging in regular physical activity is a proven stress-reduction technique. *Exercise and Stress: Get Moving to Manage Stress*, Mayo Clinic, https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/exercise-and-stress/art-20044469 (Mar. 1, 2022). Summer's longer daylight hours, improved weather, and accessible outdoor spaces create natural incentives to be active. Even modest movement, such as walking meetings or evening strolls, can decrease cortisol and elevate mood through endorphin release.

Spending time outdoors also boosts vitamin D levels, which support immune function and mood regulation. Michael F. Holick, *Vitamin D Deficiency*, 357 New Eng. J. Med. 266, 270–72 (2007). Incorporating weekly outdoor exercise sessions can be a foundational element of both physical stamina and mental clarity.

Focus on Seasonal Nutrition and Hydration

While evidence for nutrition is a little cloudy, there is some evidence that a healthy diet improves cognitive performance, mood stability, and sustained energy, which are essentials for legal practice. Fernando Gómez-Pinilla, *Brain Foods: The Effects of Nutrients on Brain Function*, 9 Nature Reviews Neuroscience 568 (2008), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC2805706/. Summer yields fresh, nutrient-rich produce like berries, leafy greens, tomatoes, and cucumbers. These foods are rich in antioxidants and fiber, supporting brain health and digestion.

Hydration, often overlooked in high-stress professions, is vital. Studies indicate that dehydration impairs attention, memory, and physical endurance. Harris R. Lieberman, *Hydration and*

Cognition: A Critical Review and Recommendations for Future Research, 26 J. Am. Coll. Nutr. 555S (2006). Keeping a refillable water bottle in your office or briefcase is a simple but effective measure.

Mindfulness and Meditation for Cognitive Resilience

Mindfulness, broadly defined as present-moment awareness, is increasingly adopted in high-performance professions, including law. Scott L. Rogers, *The Role of Mindfulness in the Ongoing Evolution of Legal Education*, 36 U. Ark. Little Rock L. Rev. 455 (2014). Short, daily meditation practices can reduce anxiety, improve focus, and increase emotional regulation.

Attorney and meditation advocate Hannah Beko has spoken publicly about how adopting mindfulness helped her recover from burnout and rediscover purpose in her legal career. Catherine Baksi, *I Burnt Out – Meditation Helped Me*, The Times (Aug. 16 2022), https://www.thetimes.co.uk/article/hannah-beko-i-burnt-out-meditation-helped-me-cpx3q7gk2. Resources like the *Mindfulness in Law Society* and mobile apps such as *Headspace* or *Calm* can help attorneys build a personalized practice. *See* Mindfulness In Law Soc'y, https://mindfulnessinlawsociety.org/ (last visited May 10, 2025).

Establish Boundaries and Disconnection Protocols

The omnipresence of technology has blurred the lines between work and rest. For lawyers, this "always on" culture can be mentally draining. Studies confirm that the inability to disconnect correlates with higher rates of burnout. Christina Maslach & Michael P. Leiter, *Understanding the Burnout Experience: Recent Research and Its Implications for Psychiatry*, 15 World Psychiatry 103 (2016).

Implementing basic boundary protocols – such as turning off email notifications after hours or using vacation auto-replies – can provide necessary recovery time. Consider "no-contact" weekends or even a tech-free half-day each week during summer months. These don't have to be absolute and can be a single day a week to still have meaningful benefits.

Leverage CLE for Wellness Education

The Utah State Bar allows its licensees to fulfill Continuing Legal Education (CLE) requirements through courses focused on mental health, wellness, and addiction awareness. For example, in May 2025 the Bar provided an event with one-hour CLE credit called, "The Social Rx: Boosting Well-Being with Connection in Legal Practice." Nearly 400 people participated online with forty lawyers attending in-person for interactive connection presentations.

Attending such programs not only fulfills a professional obligation but offers actionable strategies for improving life balance, coping with anxiety, and supporting colleagues in distress.

Integrate 'Booster Breaks' into the Workday

Short, intentional breaks, termed "Booster Breaks," can improve mood, focus, and cardiovascular health. Wendell C. Taylor, *Booster Breaks: An Easy-to-Implement Workplace Policy Designed to Improve Employee Health, Increase Productivity, and Lower Health Care Costs*, 26 J. of Workplace Behavioral Health 70 (2011). Examples include five-minute stretching routines, standing during calls, or brief walks between tasks. Encouraging firm-wide participation can build a culture of collective wellbeing.

Organizations such as the Centers for Disease Control and Prevention (CDC) have even studied workplace wellness interventions like these, finding consistent benefits in productivity and morale. *Workplace Health Model*, Ctrs. Disease Control & Prevention, https://www.cdc.gov/workplace-health-promotion/php/model/ (July 15, 2024). Such interventions also have a benefit of reducing musculoskeletal pain. Carols Tersa-Miralles et al., *Effectiveness of Workplace Exercise Interventions in the Treatment of Musculoskeletal Disorders in Office Workers*, 12:1 BJM Open e054288 (Jan. 2022), https://bmjopen.bmj.com/content/12/1/e054288.

Cultivate Social Connection and Support

Isolation remains a leading contributor to poor mental health among legal professionals, especially in solo or remote practice settings. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. Addict. Med. 46 (2016). Summer is a prime time to counteract this through informal gatherings, coffee meetups, firm picnics, or outdoor professional networking events.

Creating safe spaces for vulnerability and mutual support within the profession can foster resilience and emotional intelligence. Attorneys who feel supported are more likely to ask for help and less likely to suffer in silence.

Seek Professional Help When Needed

Wellness practices are not substitutes for clinical care. Attorneys dealing with depression, anxiety, or substance use should seek professional support. The Utah State Bar offers six free, confidential sessions through Tava Health (https://www.utahbar.org/thriving-practice/), along with peer support through Lawyers Helping Lawyers. *See* Utah Bar, *Thriving Practice*, https://www.utahbar.org/thriving-practice/ (last visited June 3, 2025). Accessing these resources early can prevent escalation and preserve career sustainability.

While awareness is a vital first step, true transformation lies in execution. With intention and structure, lawyers can harness the energy of the season to introduce habits that support resilience and performance. The weekly template below illustrates how simple, yet effective actions can be embedded into even the busiest summer schedule.

In a profession defined by urgency, deadlines, and service to others, lawyers must not neglect their duty to themselves. Summer offers a seasonally enriched opportunity to restore energy, reconnect with purpose, and reinforce habits that enhance personal and professional longevity.

Start with one change. Choose a day this week to try an idea above. Share your experience with a friend, propose a wellness check-in at your firm, or initiate a personal summer challenge. Small steps lead to systemic change.

By embedding wellness into your professional identity, you model sustainable excellence – for your clients, your colleagues, and yourself.

Day	Morning	Midday	Evening
Monday	15-min walk or yoga stretch	Hydrate + healthy lunch	Screen-free family or reading time
Tuesday	Deep-breathing or journaling	Outdoor lunch with colleague	Short meditation before bed
Wednesday	CLE or wellness webinar	Booster Break (walk or stretch)	Early tech disconnect
Thursday	Outdoor run or bike ride	Salad + hydration goal met	Social gathering (in person or virtual)
Friday	Gratitude journaling	Light activity + podcast	No email after 6 p.m.

Understanding UPEPA: A Guide for Utah Attorneys

by Cherise Bacalski

Introduction

Say hello to UPEPA, Utah's very own Uniform Public Expression Protection Act (the Act). UPEPA provides robust protections from frivolous lawsuits targeting political speech, speech in the public square, and other activities implicated by First Amendment protections. This type of litigation usually looks like large corporations targeting individuals "for exercising their constitutional rights to publish and speak freely, petition the government, and associate with others." UPEPA Prefatory Notes and Comments, 1. UPEPA aims to quickly dismiss meritless lawsuits that exist only to silence and harass.

UPEPA appeared on Utah's stage in March 2023. As of the date of this publication, the Utah appellate courts have not interpreted this statute. But that does not mean it is irrelevant. UPEPA is frequently invoked in Utah district courts.

Due to the rapid-fire expediency of a dismissal with prejudice under UPEPA, UPEPA's motion for expedited relief can be a powerful tool in any defendant's toolbox. Attorneys in Utah should, thus, familiarize themselves with UPEPA's provisions and understand the scope of its protections.

And because of UPEPA's unique right of direct appeal at an interlocutory stage in the proceedings, attorneys should also have potential appellate issues on their radars.

This article will outline UPEPA's procedures in the district court and raise awareness of considerations on appeal.

Let's begin.

The Purpose of UPEPA

UPEPA has a dual purpose.

UPEPA primarily protects individuals and entities from meritless lawsuits that generally arise from conduct falling within First Amendment protections. These lawsuits, filed to intimidate or financially burden actors, can chill free speech, artistic expression, and political activity. UPEPA ensures that those engaging in constitutionally protected activities have a mechanism to seek early dismissal of frivolous claims while also safeguarding legitimate legal actions from unwarranted dismissals.

In that respect, UPEPA also protects "the rights of people and entities to file meritorious lawsuits for real injuries." UPEPA Prefatory Notes and Comments, 3. It is not meant to kick out *meritorious* claims. It protects potentially meritorious claims by requiring district courts to engage in rigorous analyses in multiple phases and placing the burden on the defendant to show that dismissal with prejudice is warranted.

UPEPA is thus meant to weed out only meritless claims made for the sole purpose of harassing and hampering protected speech while protecting claims that might prove to have some merit in the end. A district court should only grant a UPEPA motion when it is clear that the plaintiff cannot win.

Key Provisions of UPEPA

UPEPA contains fifteen unique provisions, and most of them do heavy lifting.

Scope of the Act under section 102

The first question a district court must answer is whether UPEPA applies. The Act's broad scope is found in section 102.

While this is the first question, it is not the last. UPEPA's provisions do not require dismissal of a claim merely because the Act applies. If UPEPA applies, a district court will move on to step two. That is all.

UPEPA "shall be broadly construed" and applied to – or protect – legal claims arising from:

- free speech in a public forum related to an issue of public concern;
- the right of freedom of speech and of the press;
- the right to petition the government;
- the right of association; or
- the right to assemble.

CHERISE BACALSKI is an appellate practitioner and litigator licensed in Utah and California. Cherise is litigating two appeals under UPEPA in the Utah Supreme Court and has successfully defended against a UPEPA special motion for expedited relief in the district court.

UPEPA Prefatory Notes and Comments, 8; Utah Code Ann. § 78B-25-102(2). UPEPA also provides protections for the arts. UPEPA explains that it does not protect the sales or marketing communications of run-of-the-mill businesses "selling goods and services." *Id.* § 78B-25-102(3)(c). But "goods or services" *does not* include "the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work." *Id.* § 78B-25-102(1)(a). Thus, UPEPA does not protect normal businesses promoting their products *unless* their goods and services include the artistic works mentioned above. The language "goods and services does not include" in fact means that UPEPA *does* protect those categories. *Id.* This double negative provides exemption from non-protection. It thus applies to "dramatic, literary, musical, political, journalistic, or artistic work." *Id.*

This broad application ensures that individuals engaged in public discourse or matters of public concern are protected from litigation designed to harass them and suppress their speech.

Expedited dismissal under section 103

So how does a defendant use UPEPA to quickly get a case dismissed? By moving quickly.

A defendant should file a motion to dismiss early in the litigation. Section 103 provides that a defendant should file "a special motion for expedited relief to dismiss the cause of action" within sixty days of service of the complaint. *Id.* § 78B-25-103. However, please note that for "good cause" shown, a party may file her motion after this sixty-day deadline. *Id.*

Once the motion is filed, the following happens:

- The burden shifts to the plaintiff to demonstrate the legal sufficiency of the claim.
- Discovery is stayed while the motion is pending, preventing costly and unnecessary litigation burdens.
- The defendant can move for summary judgment before discovery.
- The court is required to rule on the motion promptly, ensuring a quick turnaround.

This is a unique process. It is not at all clear how many motions should be filed in this process, and all of this takes place before discovery.

So let's talk about the stay, and let's talk about discovery during the stay.

The stay, discovery, and the hearing under sections 104 and 105

Under section 104, once a defendant has filed a motion for expedited relief, *all proceedings are stayed*, and a district court has sixty days to hear the motion under section 105, unless the court *grants a party's motion for further discovery* or there is good cause for an enlargement of time within which to hear the motion. Utah Code Ann. §§ 78B-25-104–105. But delay under this provision is not endless. If the district court allows for additional discovery under section 104, then it must hear the motion within sixty days of allowing additional discovery.

A party seeking additional discovery should not hesitate to tell the court that it in fact needs the discovery in order to survive dismissal. Under section 104, "the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden … *and* the information is not reasonably available *unless* discovery is allowed." *Id.* § 78B-25-104. So if you feel you must ask the court for further discovery, explain to the court that you believe you may need the additional evidence in order to survive dismissal.

The motion under section 106

To get a cause of action dismissed, the defendant shoulders the following burdens: (1) showing that the underlying subject matter of the claim falls under UPEPA's protections; (2) showing that the plaintiff has not made a prima facie evidentiary showing of each element of the cause of action under review; and (3) *either* showing that the cause of action should be dismissed for failure to state a claim upon which relief can be granted or showing that the defendant should be granted summary judgment.

On reply, the plaintiff has the following burdens: (1) showing that the subject matter of the claim falls *outside the scope* of UPEPA's protections and (2) showing that it has indeed made a prima facie evidentiary showing of each essential element of the causes of action.

How can a plaintiff defend against dismissal under UPEPA from the very beginning? By ensuring that every element of the causes of action the plaintiff alleges are supported by at least *some* evidence.

The Utah Supreme Court recently spent some time explaining the prima facie standard in another context, and the court's explanation is helpful here.

The court explained that the term "prima facie showing" generally means an evidentiary showing that is "sufficient to establish a fact or raise a presumption unless disproved or rebutted." *State v. Clara*, 2024 UT 10, ¶ 33, 546 P.3d 963. Quoting Black's Law Dictionary, the court clarified this standard is "based on what seems to be true on first examination, even though it may later be proved to be untrue." *Id.* (quoting *Prima Facie*, Black's Law Dictionary (11th ed. 2019)). A party makes a prima facie showing when it produces "enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." *Prima Facie Case*, Black's Law Dictionary (11th ed. 2019). The court expounded that "this standard requires a party to clear a low bar by adducing *at least some evidence* on each element of a claim." *Clara*, 2024 UT 10, ¶ 34 (emphasis added).

The court also explained that the term's meaning is informed by the procedural posture in which it arises. *Id.* ¶ 33. Because a special motion to dismiss under UPEPA is brought before discovery within sixty days of the plaintiff filing the complaint, it is arguable that under this standard, a plaintiff must present enough evidence of the essential elements to entitle her to proceed to discovery. Utah Code Ann. § 78B-25-103.

Thus, the prima facie standard here might ask whether reasonable inferences available from the evidence could support the elements of the causes of action either to (1) allow the party to proceed to discovery *or* (2) to establish a fact based on what seems to be true on first examination.

The evidence before the court under section 106

In ruling on the motion, the district court *must* consider "the pleadings, the motion, any reply or response to the motion, and any evidence" that it could consider in ruling on a motion for summary judgment. *Id.* § 78B-25-106.

Rule 56 of the Utah Rules of Civil Procedure allows the court to broadly admit and consider "depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Utah R. Civ. P. 56(c)(1)(A). And even in the face of an unsupported factual assertion, a district court may allow a party to "address the defect" in the evidence or even consider unsupported evidence "for purposes of the motion." *Id.* R. 56(e)(1)–(2).

It is arguable that the district court, thus, has a duty to broadly consider any factual assertion before it for purposes of ruling on the UPEPA motion – even unsupported assertions within its broad discretion.

This is just one example of the way Utah's statute differs from California's Anti-SLAPP statute. In Utah, section 106 lists a wide panoply of things for the court to consider, whereas in California the superior court is limited to considering only the pleadings and supporting and opposing affidavits. Cal. Civ. Proc. Code

§ 425.16(b)(2) ("In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.").

The ruling under section 108

Once the district court has heard the motion, the court "shall rule on a motion" no longer than sixty days after the day of the hearing on the special motion to dismiss. Utah Code Ann. § 78B-25-108.

The appeal and continuing stay under section 109

If the defendant loses the UPEPA motion and the case is allowed to proceed, the defendant has a right to direct appeal. *Id.* § 78B-25-109. Please note that the stay on all other proceedings is in effect until the district court rules on the motion *and* the twenty-one-day period within which to file an appeal has run.

If the losing party elects to file a notice of appeal, all other proceedings are stayed "until the day on which the appeal concludes." *Id.* § 78B-25-104. This *might* mean the day on which the appellate opinion is filed. However, it might not.

Under the Utah Rules of Appellate procedure, a losing party on appeal may file a petition for writ of certiorari in the Utah Supreme Court or a motion for rehearing in the Utah Court of Appeals. Utah R. App. P. 48, 35. This likely means the litigation will continue to be stayed if either party files either of those motions. It would be a good idea for the party considering filing these motions to advise the district court of its plans – or for the appealing party to ask the Utah Supreme Court to retain the case in the first instance.

While all other proceedings remain stayed during the appeal, it is important to note that a motion for attorney fees under UPEPA section 110 does not. Utah Code Ann. § 78B-25-104(5). That means that the winning party may – and maybe even must – move the court fast for attorney fees under section 110.

The appellate stay does not prevent a party from voluntarily withdrawing a cause of action or part of a cause of action – or moving to sever a cause of action. This can be a significant consideration in negotiations.

During the appellate stay, the court may also hear motions that are unrelated to the UPEPA motion to dismiss, as well as injunctions to protect against "an imminent threat to public health or safety." *Id.* § 78B-25-104.

Costs, attorney fees, and expenses under section 110

If a UPEPA motion is successful, the prevailing party – the defendant – is entitled to recover attorney fees and costs. Utah Code Ann. § 78B-25-110(1).

But a plaintiff may also move for attorney fees if the defendant's special motion to dismiss under UPEPA was frivolous or filed "with the intent to delay the proceeding." *Id.* § 78B-25-110(2).

It's important to note that if a defendant moves for dismissal under UPEPA and a plaintiff files a voluntary dismissal *without* prejudice, the defendant may still seek attorney fees. However, if a plaintiff moves for voluntary dismissal with prejudice, the defendant may still seek attorney fees, and the voluntary dismissal with prejudice establishes for purposes of attorney fees "that the moving party" – the defendant – "prevailed on the motion." *Id.* § 78B-25-107.

The broad attorney fees provision itself will disincentivize many parties from bringing these types of claims – and defending them through appeal. Thus, courts must be very careful in assessing which complaints warrant dismissal due to lack of merit at this stage.

Appellate Rights under section 109

A key aspect of UPEPA is the right to an immediate appeal if a motion to dismiss is denied. This ensures that defendants can seek appellate review before engaging in prolonged litigation, preserving the purpose of the statute. *Id.* § 78B-25-109.

But make sure you pay attention to deadlines. UPEPA appeals are subject to Rule 4 of the Utah Rules of Appellate Procedure and that rule's ordinary guidelines. Rule 4 explains that notices of appeal brought under UPEPA must be filed within twenty-one days after the date of entry of the order appealed from. Utah R. App. P. 4(a)(2).

If you are the plaintiff, and you have lost at any step along the way, make sure that you file a cross-appeal with fourteen days of the defendant's notice of appeal. *Id.* R. 4(2)(d). That preserves your right to contest the rulings of the district court that you lost – even if you won against the motion to dismiss. That cross-appeal must be filed within fourteen days of the defendant's notice of appeal – so please act fast.

The time within which to file the notice of appeal is tolled by filing certain motions listed in rule 4, like a claim for attorney fees under Rule 73 of the Utah Rules of Civil Procedure. Please check this list under Rule 4 and ensure you are familiar with these filings and their individual requirements.

As with all appeals, the party filing the notice of appeal is responsible for ordering court transcripts and for paying the transcriber. But if the plaintiff – or appellee – believes any transcripts or evidence is missing from the record, the plaintiff may move to supplement the record. *Id.* R. 11(f).

Broad application under rule 111

In assessing whether UPEPA applies, defendants should consider making arguments that UPEPA applies to issues of public concern defined by both the United States and Utah constitutions. Utah Code Ann. § 78B-25-111. This generally means that if the Utah Constitution's free speech or additional provisions are deemed broader under Utah case law than the federal counterparts, defendants should take advantage of those additional protections and argue that UPEPA applies.

So when you research whether certain conduct does or does not warrant protection "on a matter of public concern," don't limit yourself to federal case law.

Consideration to uniformity under section 112

Utah's UPEPA is not governed by Anti-SLAPP case law from other jurisdictions, nor is it governed by UPEPA case law from other jurisdictions.

First things first. As noted above, Utah's UPEPA has not been interpreted by Utah's appellate courts, so no case law governs the way our courts must interpret the provisions here.

UPEPA is a unique statutory scheme, and it is uniquely adopted into each jurisdiction that has adopted it. Each iteration of UPEPA is unique. For example, Washington State's version contains a provision explaining that before a defendant files a special motion for expedited relief under UPEPA, the defendant must give the plaintiff "written notice … of its intent to file the motion at least fourteen days prior to filing the motion." RCW 4.105.020(1). During that time, the plaintiff may "withdraw or amend the pleadings" to meet UPEPA's requirements under local rules. *Id*. But Utah's UPEPA statute has no similar provision requiring advanced notice of intent to file a special motion under UPEPA. Because Washington State's notice requirement allows parties to obtain evidence and amend filings, the lack of that provision in Utah's UPEPA might have implications regarding how liberally the district courts here should grant further discovery if further discovery is requested by the plaintiff.

Thus, each jurisdiction to adopt UPEPA into its statutory scheme – eleven jurisdictions and counting – has done so at the discretion of its own legislative body. And each version is unique. UPEPA also differs from other Anti-SLAPP statutory schemes.

Some practitioners are confused about whether Anti-SLAPP precedent – or even UPEPA precedent in other jurisdictions – is controlling in Utah under section 112. Dear Gentle Reader, it is your author's firm opinion that *it is not*.

Let's look carefully at UPEPA's "consideration to uniformity" provision.

Utah's UPEPA includes a provision stating that "uniformity" with other jurisdictions that have enacted "this uniform act" should be a consideration when Utah courts interpret its statutory scheme. Utah Code Ann. § 78B-25-112. But that does not mean that Utah's UPEPA *must* be interpreted consistently with other jurisdictions that have adopted the uniform act – and it certainly does not mean that Anti-SLAPP case law in other jurisdictions controls here. This merely identifies one consideration. And the reference to "uniform act" refers to UPEPA, not general Anti-SLAPP statutes around "the ton."

To be clear, section 112 states in full, "In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to the uniform law's subject matter among states that enact the uniform law." *Id*. § 78B-25-112. But nothing in this language suggests that Utah's UPEPA should be construed consistently with Anti-SLAPP precedent.

Parties hoping to argue that Anti-SLAPP case law applies in Utah should make a plain language argument comparing UPEPA to the Anti-SLAPP statute in question, noting their similarities and distinctions and asking our courts to adopt that jurisdiction's holding or rationale for good reason.

This language still leaves our courts – both appellate and district – open to performing a robust plain language analysis under the unique terms of our statutory scheme.

Sections 113, 114, and 115

Please be advised that UPEPA also contains a transitional provision (section 113), a savings clause (section 114), and a severability clause (section 115). Govern yourselves accordingly.

Conclusion

UPEPA represents a critical development in Utah's legal landscape, offering protections for individuals and entities engaged in public expression while ensuring that legitimate claims can proceed. For attorneys, understanding UPEPA's procedural mechanisms and appellate implications is key to effectively advocating for clients. By leveraging the Act's protections and navigating its appellate issues strategically, attorneys can ensure that the principles of free speech and fair litigation remain upheld in Utah's courts. This conclusion was written by AI.

A Cowboy's Guide to AI Ethics

by Keith A. Call

I turned sixteen in 1980. My dad let me drive our 1963 green Chevy truck with a three-speed manual transmission. It was old and dusty. It had no radio other than my portable cassette player. A screwdriver worked in the ignition as well as the key. It wasn't fast, and it used a lot of gas. But it was reliable and got me where I needed to go, including to my job hauling hay and milking cows on a nearby dairy farm.

A couple of months ago, I got my first electric vehicle. I love it. It's comfortable, clean, and convenient. It's super fast. And the self-driving capabilities are astonishing. I'm pretty sure I could log on to ChatGPT and prompt it to write a whole brief while it drives me to work.

Enticing, right? But before you hit the auto-pilot button, the American Bar Association has a few things to say about taking AI out for a spin.

In its recent Formal Opinion 512, issued July 29, 2024, the ABA Standing Committee on Ethics and Professional Responsibility lays out ethical guidance for lawyers using generative AI (GAI) tools. And let's be honest – it's not just science fiction anymore. Lawyers everywhere are using GAI to draft memos, summarize contracts, predict litigation outcomes, and yes, even write cowboy poems about civil procedure (or is that just me?).

But new tech brings new pitfalls. Opinion 512 reminds us that whether we're powered by gas or electricity, lawyers are still bound by the old standbys: competence, confidentiality, candor, communication, supervision, and charging reasonable fees. Let's mosey through the opinion and see what nuggets of wisdom it holds for today's digitally curious attorney.

Competence: You Don't Have to Be a Computer Cowboy, But You'd Better Know the Trail

Rule 1.1 of the Model Rules of Professional Conduct says we must be competent. No surprise there. But Opinion 512 updates that rule of the range: if you're going to use GAI in your practice, you need a "reasonable understanding" of the capabilities and limitations of the specific GAI technology you use.

Good news – you don't have to become an AI engineer. But you do have to know whether the GAI tool you're using tends to hallucinate, whether its data is reliable, and whether the output makes any actual sense. "[A] lawyer's reliance on, and submissions of, a GAI tool's output – without an appropriate degree of independent verification or review of its output – could violate the duty to provide competent representation." Opinion 512, pp. 3–4.

Practice Pointer:
Before using GAI to draft a brief or review documents, test it out. Feed it a known sample and see what it spits back. If the output is nonsense or just too good to be true, it probably is. And always, always verify the GAI tool's work. You're the lawyer – it's your job to verify and polish what the machine produces.

Confidentiality: Don't Feed Client Secrets into the Digital Woodchipper

This one's a biggie. Rule 1.6 says you must protect client confidences, and that doesn't change just because your paralegal is now a chatbot.

Some GAI tools are "self-learning," meaning they keep what you feed them to improve their own smarts. That's fine for streaming services or dating apps, but not for your client's proprietary trade secrets or criminal confessions. "[A] client's informed consent is required prior to inputting information relating to the representation into … a GAI tool." Opinion 512, p. 7. The opinion stressed the informed part of "informed consent." And no, boilerplate language in your engagement letter won't cut it.

KEITH A. CALL is a shareholder at Spencer Fane LLP. His practice includes professional liability defense, IP and technology litigation, and general commercial litigation. After a hiatus from the early 2000s, he is now serving his third term as a member of the Ethics Advisory Opinion Committee.

Practice Pointer:
Never put client information into a GAI tool without knowing exactly what will happen to it. Read the Terms of Use (yes, seriously), and if the tool stores or reuses data, don't use it unless you've got informed, written client consent.

Communication: Should You Tell the Client You're Using AI?

Sometimes yes, sometimes no. Rule 1.4 says we have to communicate material matters with our clients. If your use of GAI impacts the client's case – say it helps determine strategy or predicts a settlement range – you likely need to tell them.

But if you're using it to brainstorm arguments or outline a letter (without feeding in confidential info), disclosure may not be necessary.

Practice Pointer:
When in doubt, disclose. Clients generally appreciate transparency. You might even add a section to your engagement letter that says, "We may use secure AI tools to assist in drafting or research, but all outputs are reviewed by an attorney before use."

Candor Toward the Tribunal: Don't File Fake Cases from Fake Judges

We've all read the headlines: lawyers submitting briefs filled with GAI-generated case law that doesn't exist. That's a one-way ticket to sanctions.

Model Rules 3.1, 3.3, and 8.4 prohibit frivolous filings, false statements, and dishonest conduct. GAI can be astonishingly fluent – but it doesn't understand truth, logic, or precedent. It just makes statistically plausible guesses.

Practice Pointer:
Never file anything GAI wrote without verifying every single fact, citation, and assertion. It's your license on the line, not the AI's.

Supervision: If Your Team Uses AI, You're Still the Sheriff in Town

Under Rules 5.1 and 5.3, supervising lawyers must ensure all firm personnel are using GAI ethically. That includes setting internal policies, training staff, and making sure no one's feeding sensitive data into unstable or unvetted platforms. This obligation even extends to outside vendors (that's a biggie!).

"Managerial lawyers must establish clear policies regarding the law firm's permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm's lawyers and nonlawyers comply with their professional obligations when using GAI tools." Opinion 512, p. 10.

Practice Pointer:
Set up a GAI usage policy. Decide what tools are allowed, what tasks they can be used for, and how outputs must be reviewed. Consider labeling AI-generated documents in your files for future clarity.

Fees: Don't Charge a Full Hour for Ten Seconds of Prompting

Let's say GAI drafts a lease agreement in thirty seconds flat. Can you bill the client for two hours because that's how long it used to take? Not unless you enjoy disciplinary hearings.

Rule 1.5 requires fees to be reasonable. You can charge for the time spent prompting the AI and reviewing its output – but not for work you didn't actually do.

Practice Pointer:
If you use GAI tools with a per-use cost, disclose those expenses up front and pass them through without markup – just like court reporter fees or travel costs. And no, you can't charge a client to teach yourself how to use ChatGPT.

Wrapping Up: Know Your Tool, Know Your Duty

Generative AI isn't going away. It's powerful, it's fast, and when used carefully, it can be a valuable co-pilot. But remember: the machine may write the first draft, but your name goes on the final.

So, stay curious, stay skeptical, and don't forget to check the citations.

Or as we say out here in the legal wilderness: trust, but verify. And maybe keep one hand on the reins.

The first draft of this article was prepared using ChatGPT 4.0. The author remains responsible for all content.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case.

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.

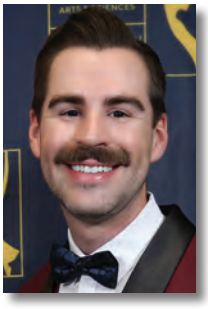
Commission Highlights

The Utah State Bar Commissioners received the following reports and took the actions indicated by vote during the May 16, 2025 meeting held at the Law & Justice Center in Salt Lake City.

- The Commission certified the 2025 Bar Election results: Tyler Young as President-elect, Matt Hansen as 2nd Division Bar Commissioner, Jess Couser as 3rd Division Bar Commissioner, Tom Bayles as 5th Division Bar Commissioner.
- The Commission received a report from Ron Gordon and Michael Drechsel from the Administrative Office of the Court, with Jacey Skinner, Frank Pignanelli, and Steve Styler, the Bar's governmental relations representatives, regarding the 2025 Utah Legislative Session. There was also discussion about an upcoming bill regarding Bar licensure and the possible creation of a law school at Utah Valley University.
- The Commission received a report from Erik Christiansen regarding the 2025 ABA Day in Washington DC.
- The Commission received a report from Nick Stiles regarding the courts' request to have study groups complete reports on regulatory reforms based on info and data from the Sandbox.
- The Commission approved the 2025–26 budget.
- The Commission voted to appoint Cecilia Romero and Christina Jepson as co-chairs for the 2026 Summer Convention in Sun Valley.
- The Commission voted to approve the creation of AI and the Law Committee.
- Minutes of the February 14, 2025 Bar Commission Meeting and the list of 2024–25 Bar Committee Chairs were approved by Consent Agenda.

The minute text of this and other meetings of the Bar Commission are available on the Bar's website at www.utahbar.org.

Utah State Bar Welcomes Spencer Twede as New IT Director



We are pleased to announce the appointment of Spencer Twede as the Bar's new Director of Information Technology. Spencer brings a strong background in technology support and leadership, having most recently led a team at Canyons School District that maintained more than 50,000 devices used in daily instruction. He also provided support services for Apple and holds a bachelor's degree in psychology with a minor in Spanish from Weber State University.

In 2024, Spencer earned a Master of Science in Information Technology Management from Western Governors University, further strengthening his ability to drive innovation and deliver high-quality IT solutions. He is passionate about using technology to solve problems, improve services, and support the needs of organizations and the people they serve.

A native of Ogden, Spencer lives in Sandy with his husband, Mike, where they are remodeling their home and building community roots. Outside of work, Spencer enjoys traveling, live theater, camping, biking, and spending time with family – including their nine beloved nieces and nephews. Please join us in welcoming Spencer to the Bar.

Annual Meeting Awards

The following awards were presented on June 26, during the Utah State Bar's Annual Meeting at This is the Place Heritage Park:

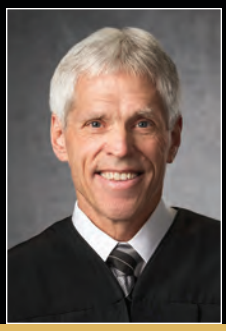
ELDER LAW SECTION & ESTATE LAW SECTION

FUND FOR CLIENT PROTECTION

Lifetime Service Award

JENSIE ANDERSON

Lifetime Service Award



HON. NOEL HYDE

Lifetime Service Award

REYES AGUILAR

Mandatory Online Licensing

The annual Utah State Bar online licensing renewal process has begun. An email containing the necessary steps to renew online at https://services.utahbar.org was sent on June 2nd.

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

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

Your renewal and fee payment must be received by July 31st to avoid a $100 late fee. If your renewal is not complete and fees paid before September 1st, your license will be suspended.

Honorees Recognized at the Utah State Bar Law Day CLE Luncheon

The Utah State Bar gathered at the Grand America Hotel to commemorate Law Day on May 2nd with a luncheon featuring a distinguished CLE panel and the presentation of the annual Pro Bono Publico Awards. This year's ceremony shined a spotlight on lawyers, law students, and institutions that have demonstrated an extraordinary commitment to pro bono service, reinforcing the legal profession's vital role in serving the public good.

The theme of Law Day, "The Constitution's Promise: Out of Many, One," was brought to life by those honored, each of whom exemplifies the power of the law to empower marginalized communities through advocacy, compassion, and access to justice.

Pro Bono Publico Award Recipients

Presented by the Bar's Pro Bono Commission, the Pro Bono Publico Awards recognize exceptional individuals and institutions for their dedication to providing volunteer legal services. This year's honorees include:

Young Lawyer of the Year: Annie Yi

Annie Yi has distinguished herself as a passionate advocate for underrepresented clients. Her work in housing and immigration law has provided vital legal assistance to vulnerable Utahns, and her leadership continues to inspire other young attorneys to engage in public service.

Law Student of the Year: Lauren Harvey

Lauren Harvey has made an indelible mark through her commitment to legal clinics and public interest work. Her deep empathy and tireless volunteerism have earned her recognition as a future leader in access to justice initiatives.

Top Performing Law Student, Pro Bono Challenge: Breanna Hickerson

Breanna Hickerson led her peers in pro bono hours this year, reflecting not only her work ethic but also her belief in the transformative power of legal service.

Law Firm of the Year: Mayer Brown

Mayer Brown was honored for its sustained institutional commitment to pro bono representation. Their attorneys have provided substantial support in asylum, civil rights, and social justice cases, setting a standard for large law firm involvement in community legal services.

Young Lawyers Division Awards

In addition to the Pro Bono Publico recognition, the Bar's Young Lawyers Division presented its own awards during the ceremony:

Young Lawyer of the Year: Ashley Biehl

Ashley Biehl has demonstrated exceptional legal acumen and a strong dedication to community service. Her mentorship, advocacy, and leadership exemplify the ideals of a rising legal professional.

Liberty Bell Award: RASA Legal

RASA Legal received the Liberty Bell Award for its outstanding service in streamlining the record clearance process to help people on the path to a brighter future. Through its innovative technology, RASA is making clearing a criminal record simple and affordable for everyone.

A Day to Reflect and Recommit

The event featured a panel of past Bar Presidents, John Adams and the Hon. Augustus G. Chin, and then President-Elect Kim Cordova. They discussed the evolving role of attorneys in promoting justice and democracy. Their insights underscored the importance of collective responsibility in upholding the rule of law and fostering inclusive access to legal resources.

Law Day is more than a celebration; it's a call to action. The Utah State Bar congratulates all award recipients and reaffirms its commitment to supporting the pro bono work that strengthens our legal system and the communities it serves.

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.

Domestic Family Law Pro Se Calendar

Grace Acosta
Mary Bevan
Marco Brown
Brent Chipman
Heather Comeau Rupp
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Kristin Jacobs
Stefan James
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Robb Jones
Gabrielle Jones
John Kunckler
Christopher Martinez
Sydney Mateus
Bryant McConkie
Susan Morandy
Mckinzie Owen
Alexandra Paschal
Stewart Ralphs
Alison Satterlee
Micah Scholes
Angela Schroepfer
Linda Smith
Emily Smoak
Chad Steur
Diana Telfer
Sade Turner
Chase Walker
Sherri Walton
Orson West
Annie Yi

Family Justice Center

Felipe Brino
Carlee Cannon
Taylor Crofts
Daimion Davis
Jessica Ekblad
Karissa Gillespie
Michael Harrison
Jenny Hoppie
Thomas J Scribner
Suzie Jo
Steven Johnson
Gabrielle Jones
Sarah Martin
Victor Moxley
Ruth Peterson
Cesar Plascencia
Spencer Walker
Susan Watts
Rachel Whipple
David Wilding

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Celia Ockey
Lillian Reedy
Victoria Smith
T Christopher Wharton

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Alessandra Amato
Jessica Arthurs
Amanda Bloxham
Alexander Chang
Lauren Cormany
Daniel Crook
McKaela Dangerfield
Michael Farrell
Ana Flores
Sergio Garcia
Jennie Garner
Jeffry Gittins
Samantha Hawe
Ezzy Khaosanga
Dino Lauricella
Kenneth McCabe
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Eugene Mischenko
John Morrison
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Madeleine Ballard
Corttany Brooks
Chris Burt
Erin Byington
Hisrael (Izzy) Carranza
Caitlin Ceci
Patrick Charest
Brant Christensen
Joshua Christner
Megan Connelly
Kenyon Dove
Leslie P. Francis
Randall Gaither
Viviana Gonzalez
Esperanza Granados
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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.

PUBLIC REPRIMAND

On April 8, 2025, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Public Reprimand against Travis R. Christiansen for violations of Rule 1.1 (Competence), Rule 1.4(a) (Communication), Rule 5.3(c) (Responsibilities regarding nonlawyers), and Rule 5.5(a) (Unauthorized practice of law; Multijurisdictional practice of law) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Christiansen and the Office of Professional Conduct.

In summary:

Mr. Christiansen filed a complaint for damages on behalf of his client in a breach of contract matter. Mr. Christiansen recommended that his client involve an attorney not licensed in Utah as an "expert" in real estate law to advise on the matter. The attorney/expert was supposed to be a title and real estate expert consultant concerning title and related issues. The attorney/expert had previously been disciplined in North Dakota for the unlicensed practice of law in Utah.

Mr. Christiansen's client contacted the other attorney/expert. He was asked to sign a retainer agreement and instructed to wire payments directly to the attorney/expert. The attorney/expert, who was to be acting only as an expert, had the client sign a retainer agreement for legal services. The attorney/expert also sent an invoice indicating that he was charging for legal services. The attorney/expert sent a closing letter in which he indicated that he was co-counsel on the case. While it was Mr. Christiansen's intent that the attorney/expert assist in the case only as an expert consultant on title issues, Mr. Christiansen did not review or sufficiently oversee the attorney/expert's communications with his client and did not sufficiently communicate to his client the limited role of an expert witness.

The client emailed Mr. Christiansen regarding the timeline of the case and requested that he file the *Lis Pendens* with the new parcel numbers. Mr. Christiansen filed a *Lis Pendens* on two of the parcels of property at issue. When the client noticed a discrepancy in parcel numbers, he pointed it out to Mr. Christiansen's paralegal, who assured him it was correct according to Mr. Christiansen. The opposing attorney then filed

DISCIPLINE PROCESS INFORMATION OFFICE

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

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a Motion to Release *Lis Pendens*, asserting that the *Lis Pendens* was improper because the claims asserted by Mr. Christiansen's client would not entitle him to a remedy that conveyed an interest in the property or affected title. Mr. Christiansen emailed his client and told him that his paralegal had incorrectly identified the parcels. He offered to credit the client's bill because of the error. The court granted the defendants' motion to release the *Lis Pendens*, as well as their request for attorney's fees. When the client asked the paralegal what had happened, she stated that the error on the *Lis Pendens* was not hers alone.

Mitigating circumstances:
Mr. Christiansen was cooperative with the investigation and disciplinary proceedings.

PROBATION

On May 7, 2025, the Honorable Mark Kouris, Third Judicial District Court, entered an Order of Discipline against Benjamin B. Grindstaff, placing him on probation for two years for violations of Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 1.4(a) (Communication), Rule 1.4(b) (Communication), Rule 1.16(d) (Declining or terminating Representation), Rule 3.3(a) (Candor toward the tribunal), and Rule 8.4(c) (Misconduct) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Grindstaff and the Office of Professional Conduct.

In summary:
A former client filed a complaint against Mr. Grindstaff with the Office of Professional Conduct alleging various problems with Mr. Grindstaff's representation in her child custody case. In 2019, the court had entered an order awarding the client joint legal and physical custody of the parties' minor child. In July 2020, the opposing attorney filed a Petition to Modify Custody and Child Support. The client had twenty days to file an answer. The client retained Mr. Grindstaff to file the answer to the petition to modify as well as a notice of relocation because she was preparing to move out of state. Mr. Grindstaff failed to file an answer by the due date as required. He also did not file a notice of relocation.

Shortly thereafter, the opposing party filed a verified Rule 106 motion requesting sole physical and legal custody of the minor child. Mr. Grindstaff failed to inform his client that the motion had been filed. The court set a hearing to hear arguments for the Rule 106 motion. Mr. Grindstaff did not inform his client of this hearing or that the motion had been filed.

In September 2020, Mr. Grindstaff's client moved to Wyoming. She informed Mr. Grindstaff of her move and notified him that she had a new email address. On October 2, 2020, the court sent Mr. Grindstaff an email with a WebEx link for the hearing on the Rule 106 motion which was scheduled for October 5, 2020. On October 2, 2020, Mr. Grindstaff forwarded the court's email to his client using an email address she was no longer using. On October 4, 2020, Mr. Grindstaff forwarded the email to his client at her correct email address and, although he informed his client that the hearing was scheduled, he did not tell her the purpose of the hearing. The client appeared at the hearing believing that the subject of the hearing was her notice of relocation, which had not been filed; she did not know that the hearing was on the motion to modify, about which Mr. Grindstaff had not informed her. The court admonished Mr. Grindstaff's client for her failure to file the required documents for the hearing and awarded temporary physical custody to the opposing party. In addition to failing to inform his client about the purpose of the hearing, Mr. Grindstaff failed to notify his client of the notice of due dates sent by the court and the date for serving Initial Disclosures, which resulted in further litigation. Mr. Grindstaff also failed to inform his client that the opposing attorney had requested the parties attend mediation and had requested a date to take his client's deposition.

On December 2, 2020, four months after the answer to the petition to modify was due, and after the opposing attorney had filed a motion for a default certificate, Mr. Grindstaff filed an untimely answer. A hearing was scheduled for January 11, 2021. Mr. Grindstaff informed his client of the hearing on January 10, 2021, just one day before the hearing. Mr. Grindstaff forwarded the email from the court which included the WebEx link for the hearing the next day. On the morning of January 11, Mr. Grindstaff sent another email to his client falsely stating that he received notice from WebEx that the hearing was cancelled. The court had not cancelled the hearing.

The opposing attorney appeared for the hearing, but Mr. Grindstaff and his client were not there. The court entered an order directing Mr. Grindstaff to appear and state why he should not be held in contempt for failing to appear for the hearing. The order to show cause hearing was held on January 25, 2021. Mr. Grindstaff appeared, but his client did not appear because Mr. Grindstaff had not told her about the hearing. The opposing attorney filed a motion for sanctions against the client/party for her failure to appear and for her failure to appear for her deposition. Mr. Grindstaff had not informed his client of the potential sanctions regarding the missed hearing and deposition.

Ultimately, the opposing attorney filed a Motion for Sanctions regarding dilatory conduct on behalf of Mr. Grindstaff and his

client. Mr. Grindstaff failed to file a response or inform his client that the motion had been filed. Instead, Mr. Grindstaff filed a Notice of Withdrawal of Counsel stating that no motions were pending when, in fact, two motions were pending at the time.

On August 23, 2021, the court held a hearing and granted the motion for sanctions that had been filed, in part because no opposition had been filed by Mr. Grindstaff. Mr. Grindstaff's client was not present at the hearing. The court entered an order for sanctions against the client/party and granted the motion to modify the divorce decree as requested by the opposing party.

Thereafter, the client retained a new attorney who asked Mr. Grindstaff for the client's file. Mr. Grindstaff produced the file only after multiple requests had been made. The new attorney filed a motion to set aside the order entered against the client/party. The court granted the motion and set aside the previous order due to Mr. Grindstaff's "gross neglect." The court stated that Mr. Grindstaff

> failed to respond to her questions, failed to file certain pleadings, misled her about filing certain pleadings, failed to provide required discovery, failed to meet deadlines, misled the Court and opposing counsel on the reasons certain items were not filed or delivered, misled the Court and opposing counsel about the reasons for continuing hearings, depositions, among other things.

PROBATION

On March 4, 2025, the Honorable Richard Pehrson, Third Judicial District Court, entered an Order of Discipline placing Jared Pearson on probation for six months for violations of Rule 1.4(a) (Communication), Rule 1.15(a) (Safekeeping Property), Rule 1.15(c) (Safekeeping Property), and Rule 1.16(d) (Declining or Terminating Representation) of the Utah Rules of Professional Conduct. The order was based on a Consent to Discipline and Settlement Agreement between Mr. Pearson and the Office of Professional Conduct.

In summary:
This disciplinary case involved two matters investigated by the Office of Professional Conduct (OPC). The OPC opened and investigated the first matter after it received a Notice of

Insufficient Funds from the financial institution that maintains Mr. Pearson's trust account. Rule 1.15(a) of the Utah Rules of Professional Conduct requires that trust accounts "may only be maintained in a financial institution that agrees to report to the OPC in the event and instrument in properly payable form is presented against the attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored." The second matter was opened for investigation after Mr. Pearson's former client filed a complaint against him.

In the first matter, Mr. Pearson was holding personal funds as well as client funds in his trust account. He had been paying personal debts directly from his trust account, including his malpractice insurance premium, his Utah State Bar licensing fees, and his American Express credit card bill. Mr. Pearson wrote a check from his trust account to a third party in the amount of $36,000 for a "pool." There were also various Venmo transactions in and out of the trust account. Additionally, Mr. Pearson had given permission to his wife to use the trust account, which she did.

On May 13, 2022, Mr. Pearson attempted to make a payment to American Express in the amount of $14,404.30, but the transaction was returned because there were insufficient funds in the trust account. After this payment was rejected, Mr. Pearson made an additional payment to American Express from his trust account. On May 17, 2024, the OPC received a second notice of insufficient funds from Mr. Pearson's bank concerning Mr. Pearson's trust account. The transaction that caused the overdraft was a withdrawal in the amount of $600.00. At the time, the trust account balance was $140.56, leaving a negative balance in the account.

In the second matter, Mr. Pearson's former client filed a complaint with the OPC concerning a refund that he believed he was owed. The client paid a $1,000 retainer to Mr. Pearson by check to be deposited into his trust account. During the time of the representation, Mr. Pearson's trust account should have contained all unearned funds. However, during the time of the representation, the OPC received a notice of insufficient funds concerning Mr. Pearson's trust account. The trust account balance was $4,599.11 when a check for $14,404.30 was presented for payment. The check was returned due to insufficient funds in the account.

The former client emailed Mr. Pearson to say that he no longer required representation and asked for a refund of the unused portion of the retainer. The client sent numerous emails to Mr. Pearson inquiring about a refund of the unearned portion of the $1,000 retainer. During the time of the representation Mr. Pearson's trust account balance fell below $450, the amount that he eventually refunded to his client as unearned.

In summary, Mr. Pearson failed to adequately respond for approximately nine months to his client's emails requesting a refund of unearned fees; commingled funds and did not keep earned and personal funds separate from client funds; failed to have reasonable accounting practices in place to maintain separation between earned and unearned funds; utilized unearned client funds for his own personal expenses; and failed to provide a refund to his client upon request and in a timely way.

PROBATION

On May 7, 2025, the Honorable Linda Jones, Third Judicial District Court, entered an Order of Discipline: Probation against Margarita Claribel Tejada for violating Rule 1.5(a) (Fees) and Rule 1.15(a) (Safekeeping Property) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Ms. Tejada and the Office of Professional Conduct.

In summary:
A client retained Ms. Tejada to represent her in an immigration proceeding. The client signed an engagement agreement and paid a retainer fee of $5,000. Ms. Tejada deposited the retainer fee into her operating account instead of her IOLTA account, thereby commingling the client's unearned funds with Ms. Tejada's earned funds. Approximately three weeks later, the client and Ms. Tejada terminated the client-attorney relationship. Ms. Tejada sent the client a final invoice with a balance owing of $4,418.98, which included expenses that Ms. Tejada had not incurred. Ms. Tejada billed the client $400 per hour not only for her own work on the client's case, but also for the work of her non-lawyer staff. Ms. Tejada sent to the client the forms and documents she had prepared during the representation, but Ms. Tejada did not file any documents with immigration on behalf of the client.

Mitigating circumstances:
Absence of prior record of discipline

SUSPENSION

On March 17, 2025, the Honorable Dianna M. Gibson, Third Judicial District Court, entered an Order Sanctioning Terry R. Spencer – two Year Suspension and Order of Restitution for violating Rule 8.4(d) (Misconduct) of the Utah Rules of Professional Conduct.

In summary:
A client retained and paid Mr. Spencer $2,000.00 to assist him in seeking appointment as the personal representative of his mother's estate. Mr. Spencer filed a petition on behalf of his client but took no further action. The case was dismissed two years later for failure to prosecute. During the two years, Mr. Spencer did not communicate with his client. Mr. Spencer lied to his client and the title company working with his client, telling them that the client had been appointed as personal representative when that was not the case. Two years later, the client contacted Mr. Spencer again to request the documents showing that he was the personal representative so that he could refinance property in the estate. Mr. Spencer claimed to have provided the documents to his client, although the client did not have them and there were no such documents in the case docket. Mr. Spencer then advised his client that he owed an additional $1,853.00. Mr. Spencer withdrew from the representation and subsequently filed a Notice of Attorney's Lien against his client's property, identifying the amount owed as $1,853.00.

Mr. Spencer failed to provide the services that his client retained him to provide and that he paid for. The client was never appointed as personal representative. Because of this, the client had no choice but to contact Mr. Spencer for assistance. Mr. Spencer charged for additional time, which was unnecessary. Had Mr. Spencer done the work in the first place and ensured that the client was appointed as personal representative, no further assistance from Mr. Spencer would have been necessary.

The client eventually learned that he had never been appointed as a personal representative and had to hire a new attorney. The client incurred an additional $2,000.00 in attorney fees so that he could be appointed as the personal representative of his mother's estate. The client was preparing to sell the property from the estate when he learned that Mr. Spencer had placed an attorney's lien on his property. The client filed a complaint with OPC. He was also compelled to negotiate with Mr. Spencer for the removal of the lien. Mr. Spencer and the client agreed that the client would pay Mr. Spencer $2,500.00 to release the lien, an amount that was greater than the lien amount. When the client dropped off the payment, Mr. Spencer unilaterally modified the agreement stating that he would not release the lien until the client withdrew the OPC complaint. The client reluctantly agreed and withdrew his complaint but advised the OPC that he would still testify if the case went forward.

The court found the following aggravating circumstances: prior discipline, dishonest and selfish motive to prevent any investigation into his misconduct, a pattern of misconduct towards his client,

Mr. Spencer's testimony at trial was not credible, refusal to acknowledge that he was wrong, and failure to take any steps to rectify the consequences of his actions or reimburse the client for any legal fees paid.

SUSPENSION

On April 9, 2025, the Honorable Thomas Low, Fourth Judicial District Court, entered an Order of Suspension against Levi S. Adams, suspending him from the practice of law for three years. The court ruled that Mr. Adams violated four counts of Rule 8.4(b) (Misconduct), two counts of Rule 1.3 (Diligence), two counts of Rule 1.4(a) (Communication), one count of Rule 1.16(a) (Declining or terminating representation), and one count of Rule 3.3(a) (Candor toward the tribunal) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Adams and the Office of Professional Conduct.

In summary:
The disciplinary case was comprised of three matters. The first disciplinary matter involved five criminal cases brought against Mr. Adams, each of which involved multiple charges. In two of the cases, Mr. Adams entered into plea in abeyance agreements regarding charges of criminal mischief and commission of domestic violence in the presence of a child. In two cases, Mr. Adams entered no contest pleas to charges of disorderly conduct and three counts of violating a protective order. In the last case, Mr. Adams pleaded guilty to an assault charge.

In the second disciplinary matter, Mr. Adams was representing a plaintiff in a personal injury case. Mr. Adams failed to respond to several motions, which resulted in the entry of orders that seriously harmed his client's case. Mr. Adams also failed to communicate with his client and failed to appear at several hearings. When Mr. Adams later filed a motion to withdraw as counsel, he stated that he had been working with the Utah State Bar to voluntarily surrender his license, which was not true.

In the third disciplinary matter, a client retained Mr. Adams to assist her in an immigration matter and removal proceedings. Mr. Adams failed to timely file an application and motion to continue, which resulted in the denial of the client's application. Mr. Adams then failed to timely file an appeal on the client's behalf. Mr. Adams thereafter stopped communicating with the client.

2025 Paralegal of the Year: Congratulations Ricki Stephens!

by Greg Wayment

On Thursday, May 15, 2025, the Paralegal Division of the Utah State Bar held the Annual Paralegal Day celebration. Virginia Lynn Sudbury was the keynote speaker and spoke about her book *Sweatshops in Paradise: A True Story of Slavery in Modern America*. The division would like to thank all those who organized and hosted the event.

One of the highlights of the event is the opportunity to recognize individuals who have achieved their national certification through the National Association of Legal Assistants. This year five individuals were recognized for obtaining a Certified Paralegal designation: Kirstyn R. Anderberg, Maria A. Beck, Johnna Myers, Kelly J. White, and Julia M. Youkstetter. In addition, four individuals were recognized for obtaining an Advanced Certified Paralegal designation: Pauline Marie Koranicki, Carolyn K. Marlowe, Zachary Vance, and Leah Marie Wright. Congratulations!

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

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

The hard-working individuals on the 2025 selection committee included: Judge Bolinder, Scotti Hill, Sharee Laidlaw, Jacob Clark, and Michelle Yeates. We are pleased to announce that the winner of the 2025 Utah Distinguished Paralegal of the Year Award is Ricki Stephens.

Ricki has over thirty-three years of experience as a paralegal. Ricki attended the University of California at Riverside where she studied workers' compensation law. She attended numerous educational courses and successfully passed the examination to become a licensed Workers' Compensation Self-Insurance Administrator in California. Ricki was one of the few paralegals allowed to appear before the judges at the Workers' Compensation Appeals Board in California as a Hearing Representative back in the 1990s. Ricki is currently a Senior Litigation Paralegal at the law firm of Barney McKenna & Olmstead in St. George, where she has been for twelve years. She also served as their Firm Administrator until recently. Before that, she spent fifteen years at Vondra & Shields in Victorville, California, and seven years with Gillette Loof Langton & Hagner in Southern California.

Ricki Stephens, 2025 Paralegal of the Year!

In recognition of Ricki's dedication to the paralegal profession and her outstanding involvement with the community, we are honored to recognize her as the 2025 Utah Paralegal Division Paralegal of the Year. Congratulations, Ricki!


Randi Clark & Ricki Stephens.

The division would also like to especially thank Judge Brian Bolinder, Scotti Hill, Sharee Laidlaw, Jacob Clark, and Michelle Yeates for their work on the Paralegal of the Year Selection Committee. We would also like to thank Zachary Snipe and everyone at Barney McKenna & Olmstead for their support for Ricki.

From Zachary Snipe, Attorney
Barney McKenna & Olmstead:
Far beyond merely looking for spelling errors or typos, Ricki consistently offers incredible insight and perspective along the wealth of experience that only comes with many years of diligent work in her chosen field. Her wise counsel is appreciated by every attorney in the law firm, and the time I have spent with her has made me a far more effective litigator and advocate for my clients.

From Katie Hall, Firm Administrator
Barney McKenna & Olmstead:
From the most routine matters to the most complex legal challenges, Ricki approaches every task with unmatched dedication and focus. Her tenacity in the face of demanding deadlines and evolving casework sets her apart as a cornerstone of our legal team. She brings a level of professionalism and determination that continually drives successful outcomes and inspires those around her.

From Jeff McKenna, Shareholder
Barney McKenna & Olmstead:
Mrs. Stephens is an amazing mentor. She is a mentor to young legal secretaries and file clerks. She is an invaluable resource to the other paralegals. She is the best and most qualified to help new attorneys navigate the technicalities of the judicial system. What makes her role so amazing is that she does this for attorneys practicing in four different states!

From Miguel Muñoz, Attorney
Barney McKenna & Olmstead:
There is a difference between a good paralegal and a great paralegal. A good paralegal is skilled, dependable, and valuable to any law firm. But a great paralegal is indispensable. Ricki has a wealth of institutional knowledge who has spent her career tirelessly perfecting her craft. She is to the legal profession what Picasso was to art and Mozart to music.

From Randi Clark, Senior Paralegal
Barney McKenna & Olmstead:
Ricki always knows the answer or knows how to find the answers to everyone's questions. She is dependable and will always go to bat for you. She is always the one to stay late and finish the job. From assisting with all day mediations and late-night drafting of settlement agreements, you can count on Ricki. She is truly irreplaceable.


Ricki Stephens with Eric Olmstead of Barney McKenna & Olmstead

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