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Cover Photo

An Overcast Afternoon in Bryce Canyon by Utah State Bar licensee Robert Church.

BOB CHURCH is the Director of the Utah Prosecution Council (UPC). UPC is statutorily mandated to train Utah's prosecutors so it sponsors conferences all year long all over Utah – giving Bob the opportunity to explore and take in the beauty of our great state.

Asked how he came to take this cover photo, Bob said, "I was at Ruby's Inn for a conference in 2024 and took the opportunity to hike one of the many trails in Bryce Canyon. The day was overcast, which made it great for hiking. As I came upon this rock formation, the lighting was just right and really made the colors in the rock and trees 'pop.' It was a perfect day."



HOW TO SUBMIT A POTENTIAL COVER PHOTO

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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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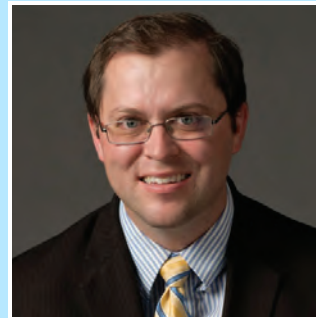
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Upholding Justice Together: Our Responsibility to Support Civil Legal Aid

by Kim Cordova

AUTHOR'S NOTE: *The author thanks Staci Duke, Executive Director of And Justice for All, for contributing to this article.*

As attorneys, we are entrusted with safeguarding justice. That responsibility extends beyond our clients to the public and the legal system itself. Justice is not self-executing. It requires access, advocacy, and resources. Access to justice is simply not a desirable goal but a fundamental requirement for fairness, equity, and stability. Courts and legal systems are designed to resolve disputes, uphold rights, and ensure that laws are applied consistently.

Yet in Utah, as across the nation, far too many of our neighbors face life-altering legal issues without the means to secure counsel. They are evicted without a fair hearing, denied benefits that keep their families afloat, or trapped in cycles of abuse without legal protection. The law touches nearly every aspect of life, but justice remains elusive when legal help is out of reach.

This is where civil legal aid steps in. Legal aid, broadly defined, is the provision of free or affordable legal services to individuals who cannot otherwise afford representation. At its heart, legal aid ensures that justice is not a privilege for the wealthy but a right accessible to everyone, regardless of economic status. And so, this is where we, as members of the Utah State Bar, must ask ourselves: what is our role in ensuring that justice is not a privilege reserved for the few, but a right secured for all?

The Justice Gap in Utah

The numbers tell a stark story. The Utah Foundation reported that 86% of civil legal needs among low-income Utahns go unmet. See Utah Foundation, *The Justice Gap: Addressing the Unmet Legal Needs of Lower-Income Utahns* (April 2020), <https://www.utahfoundation.org/uploads/rr776.pdf>. That translates into hundreds of thousands of unresolved problems each year – families losing homes, survivors of domestic violence unable to find safety, seniors denied healthcare or benefits, and people with disabilities left without protections.

Legal aid balances the scales by providing these individuals with the tools and expertise they need to be heard. It is not about winning or losing a case, it is about ensuring that every person has

a fair chance in the legal process. Civil legal aid organizations exist to narrow this gap, but they are stretched thin. They rely on limited government funding, philanthropy, and most importantly, the legal profession's willingness to step up.

And Justice for All: A Utah Model of Collaboration

Utah is fortunate to have a nationally recognized model in And Justice for All (AJFA). Founded in 1999, AJFA unites three cornerstone providers:

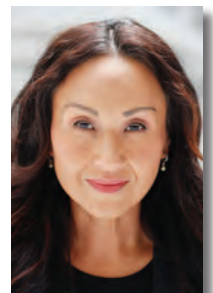
- **Utah Legal Services** – representation in housing, consumer protection, and public benefits
- **Legal Aid Society of Salt Lake** – family law expertise, particularly domestic violence, and child custody
- **Disability Law Center** – protecting the rights of people with disabilities through advocacy and litigation

Together, these organizations serve more than 30,000 Utahns each year. By fundraising jointly, sharing space at the James B. Lee Justice Center, and coordinating services, AJFA reduces overhead and maximizes resources. More dollars go directly to clients.

But even with this efficiency, demand continues to outpace capacity. And now, our core agencies face the possibility of losing up to 50% of their funding if federal cuts move forward. Such a loss would be devastating, and tens of thousands of Utahns could be left without help. That is why the role of our Bar community is not optional. It is urgent, and it is essential.

Why Civil Legal Aid Matters to the Profession

Supporting legal aid is not just charity; it fulfills our oath. When individuals cannot access the courts, the rule of law itself is weakened. Without representation, our system risks devolving into one where outcomes depend more on resources than on rights. Legal aid strengthens the justice system by ensuring that cases are argued competently and that courts hear both sides of the dispute.



This leads to better informed decision making by the judiciary and a more efficient legal process. When a litigant appears unrepresented, cases often take longer, as judges must take extra care to ensure fairness or correct a procedural mistake. By providing professional assistance, legal aid reduces these inefficiencies and improve overall access to justice.

Civil legal aid also strengthens communities and promotes self-sufficiency. Consider:

- When child support is enforced, children are lifted out of poverty.
- When tenants have counsel, unlawful evictions decline, and housing stability is preserved.
- When benefits like Medicaid are restored, families avoid medical debt and economic ruin.

Every legal aid success story reduces reliance on public assistance, prevents crises from spiraling, and allows individuals to contribute more fully to society. Many legal problems – unpaid wages, unlawful evictions, denial of healthcare, predatory lending practices – disproportionately affect those already living in poverty. Left unresolved, these issues can spiral leading to homelessness, unemployment, or family breakdown. By intervening early, legal aid can prevent problems from escalating. It can empower individuals

by providing them with knowledge and confidence to assert their rights. Over time, this creates stronger, more resilient communities in which people are better able to participate fully in civic life. Consequently, every time legal aid strengthens a family or prevents a crisis, it also affirms the core values of our profession.

Moreover, while legal aid programs require investment, they also produce significant economic social returns. Every dollar spent on legal aid can save multiple dollars in avoided costs, such as emergency housing or medical care. In addition, legal aid supports economic productivity. Workers who secure unpaid wages, tenants who maintain stable housing and families who resolve custodial disputes are better able to contribute to their communities and economies. In this way, legal aid is not simply a charitable service but an essential part of a healthy, functioning society.

The Lawyer's Role: Pro Bono, Giving, and Advocacy

Our profession has a proud tradition of service. But the scale of today's justice gap demands that each of us consider how we can help. Utah Rule of Professional Conduct 6.1 reminds us that this is more than goodwill – it is a professional responsibility. Lawyers are called to devote time, financial support, or programmatic involvement to ensure equal access to justice.

I see three primary avenues:

Pro Bono Representation

The Utah State Bar's Access to Justice Office, together with AJFA partners, coordinates numerous opportunities – from pro se calendars to virtual legal clinics. Even a few hours of your time can change the trajectory of someone's life.

Financial Support

Individual attorney gifts and law firm contributions through the Leadership Campaign for Equal Justice provide the steady funding that keeps AJFA's partners serving clients every day. This support is essential; without it, thousands of Utahns would be left without help.

Advocacy and Leadership

We must also use our voices to advocate for robust public funding of legal aid. Federal and state dollars are at risk, even as demand grows. Legislators, policymakers, and the public need to hear from us that civil legal aid is essential infrastructure, not an optional add-on.

A Call to the Utah Bar Community

As your Bar President, I view this not only as an invitation but as an obligation. Access to justice is the cornerstone of our legal system, and it cannot be realized without the active participation of the legal profession.



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- Tell legislators and community leaders why legal aid matters.

These are not abstract ideals. They are urgent, concrete steps we must take – together – to strengthen both our profession and our society.

Building a Just Community

The ultimate measure of our community is how we serve those most in need of legal protection. A society committed to justice must ensure that its most vulnerable members are not excluded from the legal system because of their financial circumstances. Equal justice under the law is not merely a slogan; it is a promise that requires constant vigilance, commitment, and investment.

And Justice for All embodies what is possible when collaboration, efficiency, and compassion meet. But it cannot succeed without us. As lawyers, we carry not only the privilege of practicing law but the responsibility of ensuring justice is accessible to all Utahns.

The importance of legal aid cannot be overstated. It safeguards fairness, protects human rights, breaks cycles of poverty, strengthens the justice system, and yields significant economic and social benefits. Legal aid is more than a service; it is a cornerstone of democratic society and the rule of law. By investing in legal aid, we affirm our shared belief that justice must be available to everyone.

As we enter this holiday season, I am especially mindful of the generosity of Utah's legal community. Your service and support have already changed lives. Yet the needs ahead are great, and the season of giving is the perfect time to renew our shared commitment to justice.

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Off the Shelf, Off the Mark – What to Do When MUJI Gets It Wrong

by Carolyn LeDuc

Litigation often turns on robust legal research. *Does the statute apply? Is the case on point? Procedural posture? Dicta? Distinguishable?* We attorneys work through endless strings of near-misses, hoping to land the one code section or case that proves unimpeachable. In the absence of that, we'll cobble together the authorities most likely to hold sway. Motion practice puts our work to judicial scrutiny – and sometimes vigorous battle. But after motion practice, our piles of careful research – now highlighted, dog-eared, bejeweled in post-its – must be reduced to a single set of concise jury instructions. Short, declarative sentences. Subject-verb-object. Active voice, preferably. For each issue, one clean statement of the law. The Model Utah Jury Instructions, colloquially called “MUJI,” purport to help that process along.

On the eve of trial, as we dicker with opposing counsel over proposed instructions, it always happens: one side pitches a model instruction with modifications; while the other side, self-righteously smug, pitches the MUJI version *verbatim*. This unsullied instruction, it is postured with a raised brow and a look down the nose, is the *holier* form.

The implied message is that an attorney with the truest intent to honor the law will simply pull up the MUJI website, make a fast grab for the most pertinent lines, and simply run with them. You may not know this (we learned it in the course of preparing this article), but the MUJI website actually facilitates this grab-and-go approach. You can scroll through the list of model instructions, check a box for each item you find relevant, click the tab that says “Generate Document,” and *voilà!* The website spits out a custom-fit set of instructions, each item click-and-draggable within the generated document, for ease of re-ordering. This tidy package in hand, you may feel well-armed for your holy war.

The trouble is, you're not. As the Utah appellate courts have repeatedly warned, the model instructions have been known to “get it wrong.”

Our firm learned this lesson a few years ago, in the course of work on a complex commercial dispute. A key issue in the case was the covenant of good faith and fair dealing. The MUJI instruction, boasting all the right *bona fides*, declared that the covenant of good faith “does not establish new, independent rights or duties that [the parties] did not agree to.” MUJI 2d CV 2119. The instruction, though familiar in its verbiage, seemed directly at odds with the very essence of the covenant of good faith. By its nature, the “unwritten” covenant had to establish rights and duties not spelled out in the parties' agreement, lest it be useless. At best, the model instruction was confusing. At worst, it was self-contradictory and misleading. With the covenant of good faith being the most critical issue in the nine-figure case we were about to try, this instruction could make the difference between an all-important win and an existential loss for our client.

In briefing on summary judgment, we'd been pleased to discover on-point authority from the Utah Supreme Court. In a footnote in *Young Living Essential Oils, LC v. Marin*, 2011 UT 64, ¶ 10 n.4, 266 P.3d 814, Justice Lee, writing for a unanimous court, pointed out that “the covenant [of good faith] would be completely negated if it could never establish any independent rights not expressly agreed to by contract.” He went on, “To the extent our cases suggest otherwise – indicating a broad proscription against ever using the covenant to establish duties not expressly agreed to by the parties – we disavow those suggestions here.” *Id.* The implied covenant, Justice Lee clarified, *could* supplement the terms of the contract, so long as it did not create rights or duties *inconsistent with* the contract language. *Id.*

CAROLYN LEDUC is a partner with the civil litigation firm of Burbidge | Mitchell in Salt Lake City.



Our case was going to trial in the fall of 2022. Even still, the MUJI addressing the implied covenant retained the confusing language that Justice Lee, on behalf of the entire Utah Supreme Court, had disavowed in 2011. When it came time to swap proposed jury instructions with opposing counsel, we pitched an instruction based on the model, but modified to reflect Justice Lee's footnote. Opposing counsel, predictably, pushed for the MUJI version unmodified.

For the war over words that ensued, we went in armed with a few decisions from Utah appellate courts that called out potential problems with MUJI. In *Jones v. Cyprus Plateau Mining. Corp.*, 944 P.2d 357, 359 (Utah 1997), for example, the district court had used a certain jury instruction "because it was taken directly from the Model Utah Jury Instructions (MUJI)." The Utah Supreme Court cautioned, "While we affirm this ruling, we explicitly distinguish Utah law from the MUJI. That is, the MUJI are merely advisory and do not necessarily represent correct statements of Utah law." *Id.* In 2009, the court of appeals echoed these comments, again observing that MUJI instructions "are merely advisory." *Clayton v. Ford Motor Co.*, 2009 UT App 154, ¶ 31, 214 P.3d 865.

As it turned out, our 2022 case settled on the eve of trial, and we never got to see how the judge would have ruled on the parties'

competing instructions. But we vowed that when consulting MUJI from that time forward, we would be more vigilant.

Just within the past couple of years, the Utah Supreme Court has been called upon twice to comment on whether a model instruction was sufficient. While the instructions at issue in both cases turned out to be acceptable, the court took the opportunity (twice!) to remind the Bar not to confuse MUJI with the law. "It is incumbent on the litigants and the trial court, in each case, to make sure that the instructions accurately convey the law, regardless of whether they come from MUJI," the court warned. *State v. Wall*, 2025 UT App 30, ¶ 53, 566 P.3d 833; *see also Meeks v. Peng*, 2024 UT 5, ¶ 36, 545 P.3d 226 ("Although the Model Utah Jury Instructions (MUJI) provide guidance to attorneys and district courts about how to instruct a jury, those instructions are merely advisory and do not necessarily represent correct statements of Utah law.") (citation modified).

To be clear, we mean no disrespect to those who drafted the model instructions; no doubt the models sprang from the best of intentions. Starting in 1957, members of the Utah Bar looked to the Jury Instruction Forms for Utah (JIFU) — a model set of instructions that, for a few decades, appears to have served its



purpose well. Over time, however, the JIFU became stale. In the early '90s, the Board of District Court Judges for the State of Utah commissioned a set of new and improved model instructions. A Bar committee, chaired by John L. Young, gave “thousands of lawyer-hours” to the project, with the ambition to create instructions “that may be relied upon with some assurance as to accuracy.” *See* Resolution, Board of District Court Judges for the State of Utah, Apr. 16, 1993, at 1. Following exhaustive review by the bench and Bar, the first iteration of the Model Utah Jury Instructions took effect October 1, 1993. *See id.* at 2. The Bar released an updated set of instructions, known by the moniker MUJI 2d, in 2011. *See generally* Model Utah Jury Instructions, Second Edition, <https://legacy.utcourts.gov/muji/?cat=3>. The Utah Code of Judicial Administration captures the Bar’s noble objective: “[t]o develop jury instructions that are an accurate statement of Utah law using simple structure and, where possible, words of ordinary meaning.” Utah R. Jud. Admin Rule 3-418.

Even still, MUJI 2d purports to be a “work in progress.” *See* MUJI 2d Introduction. It’s been fifteen years since the latest major rework. The Bar has established standing committees to review and revise the model instructions on an ongoing basis. But these committee members are volunteers, presumably with regular

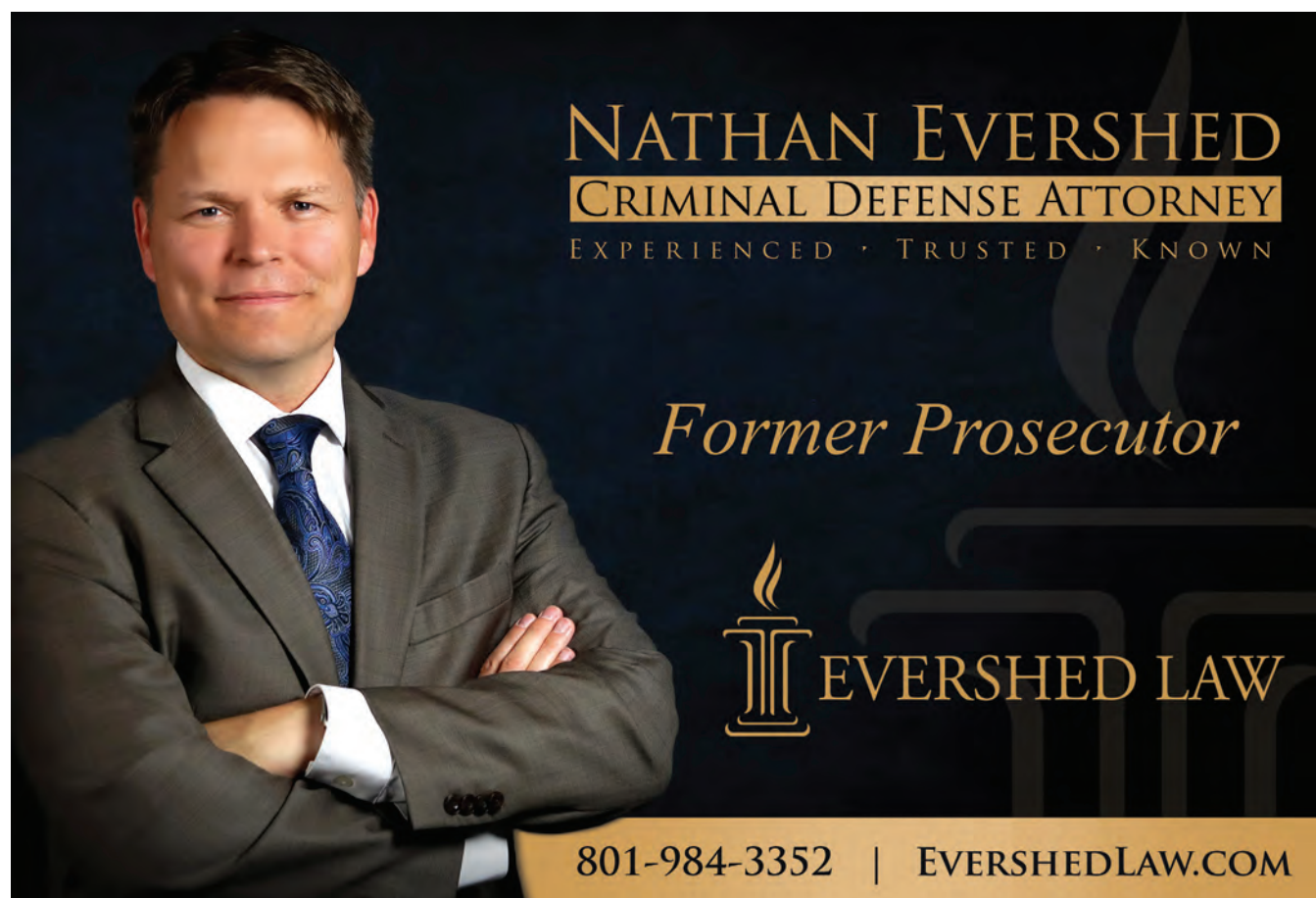
day jobs, and the law is constantly changing. Despite their best efforts (for which we sincerely thank them), members of these committees cannot be expected to catch everything. Unavoidably, the circumstances in which MUJI 2d may be insufficient are many.

The most glaring issue is, as reflected in our 2022 case involving the covenant of good faith, when the MUJI version is outdated and therefore inconsistent with Utah law.

But the problems may be more subtle. You may find, for example, that the MUJI covers the common law, when your case is controlled instead by the Utah Code. The code, of course, controls.

The model instruction may be incomplete – as was the case in *Peterson v. Hyundai Motor Co.*, 2021 UT App 128, ¶ 54, 502 P.3d 320, where the Utah Court of Appeals remanded a matter for a new trial, because the model instructions used in that case had not explained who bore the burden of proof on negligence and strict liability.

Depending on the complexity of the case, there may be issues of law that MUJI 2d just doesn’t address. In our 2022 case alone, there were dozens of instructions that had to be tailor-made for



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the parties' multi-faceted dispute. *What was the significance of the contract's integration clause? Did the law require an act that would be useless or futile? Did the covenant of good faith require a party to modify a contract if asked to do so? What qualified as a force majeure?* Without clean and accurate guidance on each of these issues, the jury's deliberations could have easily gone haywire.

Humbly, the introduction to MUJI 2d acknowledges its limitations: "These instructions are a summary statement of Utah law," the drafters observe, "but they are not the final expression of the law. Thus, in any case before them, a judge may review a model instruction for legal sufficiency."

To underscore the point: the model instructions are not gospel; the drafters do not purport to be omniscient.

When crafting proposed jury instructions, there may be no easy formula. However, we'll note that the Utah courts and the Judicial Council have endorsed the following pointers:

First, check MUJI. Is there an instruction on point? If so, check again to see how MUJI holds up to the law. Does the model instruction comport with the latest authorities? Just as importantly, is the instruction clear and concise? If not, consider revisions, perhaps looking to the model as a "useful starting point." See *State v. Eyre*, 2019 UT App 162, ¶ 17 n.4, 452 P.3d 1197. Keep in mind that "[j]ury instructions require no particular form so long as they accurately convey the law." *State v. Johnson*, 2016 UT App 223, ¶ 28, 387 P.3d 1048 (citation modified). Note that even if the MUJI gets the law right and is clear and concise, you should edit freely to clean up incidental problems like misfit pronouns, and for the insertion of party names instead of "plaintiff" and "defendant" – both edits specifically encouraged by the MUJI drafters. See MUJI 2d Introduction.

Second, if there is no on-point MUJI, does any state or federal statute control? Any agency regulation? If so, look to the operative language, but resist the temptation to copy the language *verbatim*, particularly if the controlling code is dense with legalese or multi-tiered subsections likely to confuse or mislead. Importantly, Utah courts "have never required jury instructions to mirror the exact language on which they are based." *Meeks*, 2024 UT 5, ¶ 35. What's more, "the rewording of a statute as a jury instruction is not error as long as it does not change the essential meaning of the statute." See *Gorostieta v. Parkinsin*, 2000 UT 99, ¶ 46, 17 P.3d 1110.

Third, if there is no MUJI on point, and no relevant statute or administrative code, craft an instruction from the common law.

In general, the shorter the better. And keep the language plain – target a sixth-grade audience. As the introduction to MUJI 2d explains, "accuracy is meaningless if the statement is not understood, or is misunderstood, by jurors." See MUJI 2d Introduction.

Fourth, in the course of debate with the court or with opposing counsel, if you find some proposed instruction objectionable, be sure to put your objection on the record, and be clear about the basis. See Utah R. Civ. P. 51(f); Utah R. Crim. P. 19(e). In both civil and criminal trials, objections to written instructions must be made before the instructions are given to the jury; for oral instructions, the objection must be made before the jury retires. *Id.* Absent a proper objection, the instruction will be reviewed only under the "manifest injustice" or "plain error" standard. *Id.*; see also *Kelly v. Timber Lakes Prop. Owners Assoc.*, 2022 UT App 23, ¶ 41, 507 P.3d 357. And if you go so far as to put your non-objection (assent) on the record, whether "by statement or act," waiver is inescapable; not even the "plain error" standard can help you. *State v. Chavez-Espinoza*, 2008 UT App 191, ¶¶ 12–13, 186 P.3d 1023, *cert. denied*, 199 P.3d 367; *Moore v. Smith*, 2007 UT App 101, ¶ 30, 158 P.3d 562.

Finally, know that the Bar's standing committees openly solicit your help. In the words of the MUJI 2d drafters, "The Judicial Council encourages lawyers and judges to share their experiences and suggestions with the standing committees. Judges and lawyers who draft a clearer instruction than is contained in these model instructions are also encouraged to share it with the appropriate committee." See MUJI 2d Introduction. If you like your own instruction better than the model, don't be shy about passing it along.

My colleagues and I are embarrassed to admit, we're now three years delinquent in advising the relevant committee of our concerns about the commercial contract "good faith" instruction. We've discovered, however, that the introduction page for MUJI 2d includes convenient links to information about current members of the drafting committees, other links for comments on instructions presently under review, and still more links to allow feedback and suggestions on any instructions of incidental concern. As of this writing, the link labeled "Contact the Committee" for civil instructions happens to be broken – a temporary glitch, no doubt. We'll be watching for the fix. But in the meantime, we'd love for this article to serve as our gentle nudge to the powers that be – please update Civil Instruction 2119, and let Justice Lee's clarifying footnote in *Young Living* serve as the basis to better instruct civil juries in the future.

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Civil Depositions 101: Strategy, Tactics, and Witness Preparation

by Andrew Morse

Taking and defending depositions are the mainstay of case development in civil litigation. This article explores the strategies, methods, and tactics underlying depositions. It concludes with a detailed guide to witness preparation.

Why Depose the Witness?

Be very strategic about whom you depose. After making complete Rule 26 disclosures, think twice about educating your opponent about a favorable witness's testimony through deposition. If the witness is favorable, healthy, and within your subpoena power, seriously consider not taking her deposition. Rather, develop that witness's testimony yourself and, within Rule 26, protect the evidence from your opponent until trial.

At the start of the case, leave no stone unturned in investigating the facts. Talk to anyone who might help or hurt your case who is willing to visit with you informally. Know that everything you say and write to a fact witness is discoverable. Everything you receive from a fact witness is discoverable through a subpoena to the witness.

Make Early Contact with Potential Fact Witnesses.

If a witness is reluctant to talk, explain that you could serve her with a subpoena, and she would have to appear at a deposition in front of a bunch of lawyers. On the other hand, she could visit with you for a few minutes so you can determine whether she has any relevant information. You will soon learn whether the witness is friendly, reluctant, or hostile. These visits should, if at all possible, be in-person and at the witness's home or workplace, or a neutral location, and not in your office, which is intimidating.

Develop a friendly relationship with the potential witnesses, but first explain that you are not her lawyer. After you speak with a witness, send the witness a letter or an email stating that you are not her lawyer and identify your client. Identify the other parties and their lawyers and inform the witness that she should feel

free to talk to any lawyer in the case, lest you be accused of keeping the witness under a blanket.

If the witness will supply helpful evidence, send her a summary of the evidence that she has given you and ask her to correct anything that you have not stated correctly. This document, although not sworn, can be used to refresh her recollection or to impeach if the witness turns on you. It is also discoverable should your opponent subpoena or depose the witness. Be careful.

Deposition Purposes.

The type of deposition you conduct depends on how you use the testimony. If there is a reasonable probability that the case will be tried, then your deposition should be more strategic and limited than if the case will likely resolve after discovery. If you do not know whether that case will be tried or settle, assume it will be tried. If the case could be tried, do not cross-examine an adverse witness like you would at trial. It does no good to fully cross-examine a witness in a deposition, because they will be more prepared to meet your cross at trial. Instead, have the trial cross-examination in hand and use the deposition to prepare for that cross.

If a case will be tried, your objective is to simply understand the witness's story and the supporting documents. Do not overdo it. If the witness is adverse, nail down her testimony and her supporting witnesses and documents. If the witness is neutral, then cabin the witness's testimony so that you do not have any trial surprises. If the witness will be unavailable at trial or outside your subpoena power, you must cross her thoroughly at the deposition.

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



If the case is likely going to be resolved, then cross the witness as if at trial and use it to foster resolution. This is especially true if the witness will be unavailable at trial. The likelihood of resolution or trial dictates the type of deposition and deposition objectives.

Objectives.

Broadly speaking, there are only two objectives for a deposition – develop evidence that helps your case or discover the evidence that hurts. The evidentiary objectives should not exceed a handful. Do not reveal too much of your case in any deposition. Be sure to fully comply with the commendable rules of disclosure, while still protecting your position and case as much as possible.

The most critical discovery objective is to know your opponent's best case. In order to stand your best chance of winning, you must first understand how you will lose. Too many of us focus only on our case and are completely surprised at trial that our opponents have a lot to talk about. There is no room in trial preparation for avoidance, denial, and suppression of your opponents' case. Use depositions to discover and test the strengths of your opponent's case.

Objectives should include drawing out helpful evidence that the witness should provide and evidence that the witness might provide. Objectives for adverse fact and party witnesses include discovering all the hurtful evidence that the witness will or could provide. Define the limits of the adverse witness's foundation. Establish the sources of their information: documents, another witness, counsel's statements. Distinguish what the witness knows from what she thinks she knows.

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Tactics.

There are many deposition tactics. They range from asking friendly, open-ended questions at first to asking pointed, accusatory questions to start in order to establish your case theme and to disrupt the witness.

For example, I defended a trailer lessor who had leased a dump trailer to the plaintiff. Plaintiff overloaded it and towed it too fast down a mountain road. He lost control and rolled his pickup and the trailer, injuring himself and killing his passenger – his father-in-law. My defense was that it was all plaintiff's fault. At plaintiff's videotaped deposition, I first asked his name and then turned to, "Why wasn't this accident 100% your fault?" The question surprised both the witness and his lawyer. Plaintiff defensively stuttered, stammered, and made bad excuses. My second question did not follow up on his answer, but was instead, "How are you and your wife getting along after you killed her father in the accident?" Another stuttering, stammering stream of excuses. His anger and guilt were palpable. The case settled.

This fast, aggressive, pointed attack is not useful in most cases. Generally, the best method to elicit full and favorable testimony is to first put the witness at ease, whether it is a party or a fact witness, a treating physician, or a before-and-after witness. Begin with general open-ended questions that get the witness to talk about herself, her background, education, and family. This puts the witness somewhat at ease in a stressful situation. Over the course of the next hour, you can develop evidence with more targeted questions, using baby steps to get to the ultimate fact that you believe you can develop. Once you have what you need – stop. If the witness is cagey, or you believe a bit sneaky and she may change her testimony later at trial, cabin her testimony by asking whether there are any documents or other witnesses that might refresh her recollection about the evidence she has given. Most of the time the witness will say no to both questions, making a change in testimony less likely. Carefully outline these baby-step questions. Design most to elicit a yes/no answer. Finally, ask only questions in the proper form.

The most important deposition skill is listening. You must hear and understand all questions and the responses. Imagine how the record testimony will effectively be used to impeach the witness if she changes her story. Make the record as clear as possible. In addition, you must understand the testimony before you can effectively pin the witness down.

Know each exhibit to be used with the witness. Explore with the witness other exhibits that might be relevant that you do not yet have. Remember, you have just one shot at a deposition. Courts rarely allow a second shot unless the circumstances are extraordinary.

Carefully craft clear questions in the proper form designed to elicit admissible evidence on important points. Take a moment to jot down the question. Be short and clear.

Deposition Preparation.

Party Depositions

Before your client is deposed, he or she must be familiar with all known facts, legal claims, and relevant defenses. Plan at least two preparation sessions, beginning with one long session to go over everything. Use the twenty-five-point guide, below, to prepare the witness. Then plan a second short session a day or two prior to answer questions, review the twenty-five points again, and go over other issues. Allow time to allay concerns and anxiety.

In the first session, interview your client at length about what he knows and does not know. Review key documents and show him likely exhibits and review issues and likely questions concerning each. Be careful not to show the client documents that your opponent may not have. What the witness reviews with you is discoverable. What you tell him is not. It is privileged. Instead, read the document to him and prep him as if he had seen the document. This way, he will be prepared to talk about a document that he had theretofore truthfully never seen.

Fact Witnesses

If the witness will allow it, prep important fact witnesses. When preparing a fact witness, assume everything you say is subject to broad discovery at the deposition. Reveal enough of your case theme to implicitly get the witness on your side.

The first objective is to make him less anxious and fearful about the event. Explain the room, position of the court reporter, where counsel will be, that they will take turns asking questions.

For thirty years I used the following guide to prepare both fact and client depositions.

1. Bring Nothing.

Do not bring any materials (including personal notes) to the deposition room unless they have been specifically reviewed and approved in advance by your counsel. Anything you consult at the deposition must be made available to the examiner if he or she asks for it. If you would find it useful to have a brief chronology or other notes in front of you during your testimony, discuss it with counsel.

2. Listen.

Listen carefully to each and every question. Be sure you understand it entirely. Do not be shy about asking for clarification or for a rereading of the question.

3. Be Understood.

Speak slowly, clearly and audibly, so that the court reporter will be able to take down every word. Do not mumble. And do not speak while the examiner or anyone else is speaking. The reporter cannot take down two speakers at once.

4. Be Careful with Documents/Exhibits.

If asked questions relating to a document in the possession of the examiner, ask to see it and read it carefully before beginning to answer. If useful, read the entire document or

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section, not just the sentence or page to which your attention is directed. If you do not recall the document, or know to an absolute certainty what its author meant, say so. Do not guess at what may have been meant.

5. Pause and Think.

Pause briefly before beginning each and every answer. This gives you time to reflect on the question and formulate a response. It also gives counsel time to object. The question may not be as simple as it seems. The written transcript will not reflect how long you take to answer a question or how long you pause. Immediately stop answering the moment your counsel starts talking.

6. Disputes Between Lawyers.

Do not get involved in arguments between counsel. But pay careful attention to what is said, particularly by your own counsel, since their argument may alert you to problems. In general, if your counsel indicates he or she has some problem in understanding the question, it should alert you to the possibility that there may be a problem with the question you have not considered. Usually after an argument between the lawyers, you will have forgotten the question or some part of it; ask to have the question read back.

7. Signal for Help.

You may consult privately with your counsel at any time. Where possible, however, do so at breaks or in-between questions. If you want to change or amplify a previous answer, discuss it with your counsel at a break. If you want to talk with counsel, ask for a bathroom break as long as no question is pending. Your counsel will do the same if he or she wants to speak with you.

8. Qualify Answers.

Qualify your answers when appropriate with “to the best of my recollection,” “as best as I can recall,” “my best recollection is,” or “I believe . . . happened about 5 p.m., or on or about May 6.” On the other hand, where you are certain about a fact, do not hedge or weaken the force of a strong answer.

9. No Speculation.

Never guess or speculate. If you do not know the answer, say so. You are not expected to know the answer to every question. Do not venture an opinion unless it is specifically called for, and then only after giving counsel an opportunity to object. If asked about a date or when something happened, do not be more precise than your actual knowledge permits. Do not say “February 2025” unless you know to a certainty it was in that month.

10. Confined Answers.

Answer only the question that is asked. Do not try to anticipate the next question. Do not volunteer information not specifically called for. Keep your answers short. “Yes” or “no” is the ideal answer, whenever possible. But when a short answer would be misleading, you have a right to explain your answer. If the examiner waits silently and expectantly after you have finished an answer, do not feel obliged to fill the “vacuum” by adding something to your answer. Do not be sucked in.

11. Instructions Not to Answer.

If instructed not to answer by your counsel, do not answer even if you believe the answer would be helpful. During a break, you can discuss the matter further with your counsel in private.

12. No Undertakings.

In general, do not make undertakings unless cleared first with your counsel. Do not, for example, promise to look up information or to obtain materials, to make calculations, etc. Do not volunteer that you have a document back in the office that would refresh your recollection, unless you are directly asked if any such documents exist.

13. Be Nice.

Be courteous to the examiner at all times. Do not argue. Avoid any display of hostility. The examiner may try to provoke you in the hope that anger will cloud your judgment. Do not let this tactic succeed. Keep your temper.

14. You are Just a Witness.

Be mindful that this deposition is only one phase of the case. Do not be concerned that all relevant facts may not be elicited during the deposition or that the examiner’s questions create a misleading or partial picture. We will have an opportunity later on to marshal and present our own evidence or to clarify your answers on cross-examination.

15. Stay in Your Lane.

Stay within your own realm. Stick with what you know. If you do not know, say you do not know. Do not be afraid of looking dumb or uninformed. Do not volunteer who might know more.

16. Take Your Time.

On complicated or difficult questions, you may state that you need time to consider the answer, and then take the time.

17. Breaks.

If you feel tired or uncomfortable at any point, ask for a break. But do not do so while an unanswered question is pending.

18. Examiner is No Friend.

Do not be influenced by the examiner's friendliness, apparent cooperativeness, or courtesy. The examiner is not your friend. Do not be lulled into a pattern or rhythm of giving the opposition the answers he wants. Do not be concerned about convincing the examiner about the merit or credibility of your testimony. Subject to the caveat contained in Guideline twenty-five below, what the examiner believes does not matter.

19. Ignore Examiner's Reactions.

Do not be concerned whether the examiner understands or seems to understand what you are saying as long as you are satisfied with the answer. If, on the other hand, your counsel indicates some problem with your answer, rethink it very carefully. You can ask at any point for your answer or for a question to be read back to you.

20. Don't Get Rattled.

Do not be upset by the examiner's accusation that your testimony is inconsistent with some document, or with another person's testimony, or with your own prior testimony. It is a common tactic for the examiner to suggest an inconsistency when none may exist. Do not let this ploy rattle you.

21. Be Careful.

Do not assume that the examiner has accurately described your prior testimony, or that of another witness, or a document when he or she purports to do so. Give your counsel time to object to any inaccuracy. Think hard before accepting the accuracy of the examiner's statement about what you, or another, has said. Above all, do not let the examiner put words in your mouth.

22. Depo Prep Questions.

Expect to be asked what you have done, to whom you have talked, and what papers you have examined in preparation for your deposition. Discuss this subject with your counsel before the deposition.

23. Honesty Always.

It is essential to answer every question honestly. You are under oath and intentionally false answers may constitute a crime. Moreover, falsehoods on the most minor or irrelevant points may be used to destroy your credibility on more important issues. This does not mean you have to volunteer information that is not expressly called for by the questions asked. Indeed, do not do so. If you think you should volunteer something, discuss it with your counsel first.

24. Trust Your Counsel.

If you are concerned about something you know that might prove embarrassing, or about anything you have done either in the transaction at issue or in preparing for the deposition, discuss it candidly with your counsel well before the deposition. Let your counsel decide whether the matter is relevant. Then you can together formulate a position if the matter is sensitive. Above all, do not spring any surprises on your own counsel during the deposition.

25. Be Believed.

The examiner will form an impression of what kind of trial witness you will make on the basis of your appearance and performance at the deposition. That impression may affect the value your adversary puts on the case. Put your best foot forward, be in command of yourself, and be a believable witness.

Conclusion

By following these strategies, tactics, and suggestions, you will take better depositions and your clients and fact witnesses will make better witnesses.

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Competence and Well-Being in Legal Practice: Insights from a 2025 Survey of Legal Professionals

by Elizabeth L. Silvestrini

Introduction

Legal competence is a multidimensional concept, encompassing both technical knowledge and the ability to apply judgment under pressure. While traditional measures of competence focus on knowledge of the law and procedural skill, recent ethical guidance underscores that lawyer well-being is also important for maintaining professional competence.

Comment 9 to Rule 1.1 of the Utah Rules of Professional Conduct states:

Lawyers should be aware that their mental, emotional, and physical well-being may impact their ability to represent clients and, as such, is an important aspect of maintaining competence to practice law and compliance with the standards of professionalism and civility. Resources supporting lawyer well-being are available through the Utah State Bar.

In August 2025, the Bar offered a CLE presentation titled: “The Ethical Duty of Well-Being: From Survival to Sustainable Competence” that explored the ethical and practical dimensions of this guidance. Participants engaged with hypothetical scenarios to examine how wellness issues intersect with professional obligations. This article presents the results of four informal surveys taken during that presentation. Results suggest that attorneys recognize their internal capacities – emotional regulation, tolerance for uncertainty, and decisionmaking – as important components of competent and ethical practice.

Background

Historically, discussions of legal ethics and competency emphasized technical knowledge, legal reasoning, and adherence to procedural norms. Competency, as codified in Rule 1.1 of the Utah Rules of Professional Conduct, traditionally focused on mastery of substantive law, procedural skill, and diligence in client representation. However, the past two decades have seen growing attention to the role of lawyer

wellness in sustaining professional competency. Research demonstrates that chronic stress, anxiety, and depression are prevalent in legal populations, affecting decision-making, attention, and interpersonal functioning. Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J ADDICT. MED. 46, 51 (2016).

The literature indicates that lawyers experience higher rates of depression and anxiety than the general population, with estimates suggesting that 10–12% of U.S. attorneys have contemplated suicide, compared to 4.2% of the general population. Patrick R. Krill et al., *Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk*, 11 HEALTHCARE (BASEL) 536, 536 (2023).

The phenomenon of burnout – characterized by emotional exhaustion, depersonalization, and reduced personal accomplishment – is particularly acute in high-pressure practice areas and in environments with high workloads. Yi-lang Tang, Antonino Raffone & Samuel Yeugn Shan Wong, *Burnout and Stress: New Insights and Interventions*, 15 SCI. REP. 8335, 8335 (2025). Importantly, emerging scholarship links burnout and stress-related impairment directly to lapses in professional competence, highlighting a need for ethical guidance that integrates wellness considerations. Rizal Angelo N. Grande et al., *The Moderating Effect of Burnout on Professionalism, Values and Competence of Nurses in Saudi Arabia Amidst the COVID-19 Pandemic: A Structural Equation Modelling Approach*, 30 J. NURSING MGMT. 2523, 2524 (2022).

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Comment 9 to Rule 1.1 represents a significant evolution in ethical thought, acknowledging that professional competency is not solely technical or cognitive but integrally connected to physical and emotional health. Attorneys are thus responsible for monitoring their wellness and seeking intervention when impairment threatens competent representation. The Utah Code of Judicial Conduct, particularly Rule 2.8, reinforces these principles for judges, emphasizing impartiality, fairness, and avoidance of impropriety, which may also be affected by emotional strain.

Adopted on May 17, 2023, by Supreme Court Order, Comment 9 to Rule 1.1 is intended to guide, rather than impose, and de-stigmatize conversation about mental health in the legal profession. An entry posted on the Utah Court's website reads: "Comment 9 to Rule 1.1 ... is not meant to be punitive or impose additional requirements or burdens on lawyers. Rather, it is intended to be educational and point lawyers to the importance of prioritizing their well-being." *Rules of Professional Conduct – Effective May 17, 2023*, UT COURTS, <https://legacy.utcourts.gov/utc/rules-approved/2023/05/17/rules-of-professional-conduct-effective-may-17-2023/> (May 17, 2023).

The August 7, 2025 CLE presentation was intended to informally gauge how lawyers are interpreting the comment and whether it has had any impact to their legal practice in the two years since it was adopted.

Methodology

The 141 participants were invited to complete surveys via a public link during the CLE event. Data from three surveys and a qualitative question are presented here:

Definitions of legal competence

Eighty-eight responded to the question: "What does it mean to be a competent lawyer?" Respondents rated the importance of ten competencies on a scale of "Essential," "Important," "Helpful," "Nice But Unnecessary," and "Irrelevant."

Impact of stress, anxiety, or depression on professional performance

Seventy responded to the question: "Has stress/anxiety/depression ever impacted your performance as a legal professional?" with three options for response: "Decreases," "Increases," and "No Impact/Neutral."

Impact of Comment 9 to RPC 1.1 on Lawyers

Between sixty-four and sixty-seven attendees registered their agreement or disagreement with ten statements about the impact of this comment on their personal and professional life on a scale of "Agree," "Tend to Agree," "Neutral," "Tend to Disagree," and "Disagree."

Qualitative Data

Attendees were invited to add their own responses in follow up to Survey Three with the question: "Does Comment 9 to Rule 1.1 impact you in other ways?"

Responses were anonymized.

Results

Definitions of Legal Competence

Analysis of this survey revealed that following the law, meeting deadlines, and knowing the law were ranked "essential" by most participants.

Following the Law: 81% of participants ranked this competency as essential.

Meeting Deadlines: 77% of participants ranked this competency as essential.

Knowing the Law: 63% of participants ranked this competency as essential.

Dedication to clients, decision-making under pressure, emotional regulation, and tolerance for uncertainty were the four competencies most frequently rated as "important" by participants. Specifically:

- **Dedication to Clients:** 56% of participants ranked this competency as important (33% ranked this as "essential").
- **Decisionmaking Under Pressure:** 54% of participants ranked this competency as important (29% ranked this as "essential").
- **Emotional Regulation:** 52% of participants ranked this competency as important (24% ranked this as "essential").
- **Tolerance for Uncertainty:** 49% ranked this competency as important (24% ranked this as "essential").

Good judgment and a strong moral compass also ranked highest as "essential" competencies. Nearly half of participants found business development skills to be "helpful" (rather than "essential" or "important") for legal competence.

- **Good Judgment:** 57% of participants ranked this competency as essential (38% ranked this as "important").
- **Strong Moral Compass:** 46% of participants ranked this competency as essential (39% ranked it as "important").
- **Business Development Skills:** 49% of participants ranked this competency as helpful (3% ranked this as "essential" and 28% ranked it as "important").

These results indicate an awareness among lawyers that internal capacities such as good judgment, emotional regulation, and tolerance for uncertainty are not peripheral skills but “essential” or “important” for competency. While technical knowledge and diligence remain primary, nearly half of participants recognized these “softer” skills as part of maintaining ethical and effective practice.

Impact of Stress, Anxiety, or Depression on Professional Performance

Analysis of this survey revealed an awareness of the impact of stress, anxiety, and depression on professional performance. Of seventy respondents, twenty-two reported experiencing stress, anxiety, or depression that often impacted their professional performance:

- **Yes, Often:** twenty-two respondents (31%)
- **Yes, Sometimes:** forty-two respondents (60%)
- **No, Not Really:** six respondents (9%)

These findings highlight a critical reality: nearly all legal professionals acknowledge that mental health concerns have, at least occasionally, affected their ability to perform competently. The distribution also suggests variability in the frequency and intensity of impact, which may correlate with factors such as years of practice, practice area, or personal coping strategies.

Impact of Comment 9 to RPC 1.1 on Lawyers

The third survey asked participants specific questions about the impact Comment 9 to Rule 1.1 had on their life and legal practice.

For many, the comment seems to encourage well-being.

- **“Paying attention to well-being is hard sometimes. This is a good reminder to practice.”:** fifty-two respondents (81%) said “Agree” or “Tend to Agree.”
- **“It feels like a welcome permission slip to start taking care of myself.”:** thirty-seven respondents (55%) said “Agree” or “Tend to Agree.”
- **“I wish this comment had been added earlier in my legal career.”:** twenty-eight respondents (42%) said “Agree” or “Tend to Agree.”

But there are still questions about how this comment can be applied in practice.

- **“I’m confused about how to take care of myself and still be competent.”:** twenty-six respondents (40%) said “Agree” or “Tend to Agree.”
- **“I feel most competent when I’m stressed or anxious.”:** fourteen respondents (22%) said “Tend to Agree.”

- **“I worry it will open the door to procrastination and poor work ethic.”:** fourteen respondents (21%) said “Agree” or “Tend to Agree.”

The good news is that many people are open to trying new well-being practices, at least in concept. It seems like there is a call for more support around implementing this in practice.

- **“I’m open to well-being as a concept and I’d like to experience it for myself”:** fifty respondents (78%) said “Agree” or “Tend to Agree.”
- **“I know well-being is important but it feels like another thing to check off a list”:** thirty-eight respondents (58%) said “Agree” or “Tend to Agree.”

Qualitative Data

In response to the question “Is there anything else you’d like to add (about Comment 9 to Rule 1.1)?” respondents said the following:

- **“It’s a nice sentiment, but the reality imposed by firms, clients, and the legal culture is a far cry from what this rule envisions.”**
- **“All of this seems so wise and useful, and yet so distant and out of step with the real practice of law and the unwritten rules of being a lawyer.”**
- **“Can we talk about how to prioritize well being when one’s management doesn’t consider it a priority by their actions? And let’s please not say ‘find another job.’”**

The data highlight a tension between individual and organizational responsibility. While attorneys are ethically obligated to monitor and manage their well-being, organizational culture, workload, and supervision also play a decisive role in enabling or constraining sustainable practice.

One question for future research is whether assumption and cognitive distortion play a part in exacerbating the tension between individual and organizational responsibility. A consensus statement offered by the International Society of Sports Psychology suggests that mental and emotional health is an important resource for sustained peak performance (even among those who are in top physical shape). Kristoffer Henriksen, et al., *Consensus Statement on Improving Mental Health of High Performance Athletes*, 18 INT’L J. OF SPORT AND EXERCISE PSYCH. 553, 554-55 (2019).

Mutual investment in mental health seems like a win-win for individuals and organizations, though it is difficult to predict how this investment will play out in the long-term for either party. We need more financial and experiential data to view trends as investments and outcomes certainly vary from case to case.

Data Summary

These surveys highlight three critical themes:

Competence is multidimensional.

While knowledge of the law and procedural skill remain central, participants emphasize that judgment, emotional regulation, and tolerance for uncertainty are important for effective practice. The qualitative responses suggest that these “soft competencies” are undervalued in traditional metrics of professional success.

Well-being is integral to performance.

With over 90% of respondents reporting that stress, anxiety, or depression impacted their work, the data support Comment 9 to Rule 1.1: competence requires attention to mental and emotional health. Ignoring well-being is not only detrimental to individual lawyers but may compromise client service and ethical obligations.

Organizational culture shapes perceptions of balance between competence and well-being.

Comments regarding firm management indicate that cultural factors – rewarding survival over resilience or discouraging change – affect how lawyers experience and prioritize skills like emotional regulation and adaptability.

Discussion

Many attorneys rely on what can be termed “survival competence”: a capacity to endure high stress, long hours, and emotional strain to meet immediate demands. Survival competence enables short-term performance but is inherently unstable and leads to ethical vulnerability. This strategy increases the likelihood of errors, missed deadlines, and lapses in client communication. These lapses not only compromise professional integrity but also create cascading consequences for client outcomes, firm reputation, and the broader justice system. Beyond professional consequences, survival competence exacts a personal toll, contributing to strained relationships, diminished life satisfaction, and long-term health complications.

In contrast, sustainable competence emphasizes resilience, intentional self-care, emotional awareness, and the development of internal capacities that support long-term professional performance. Sustainable competence allows attorneys to meet client needs effectively while preserving personal health, ethical integrity, and professional satisfaction. Cultivating sustainable competence requires both individual commitment and organizational support, creating environments where wellness is valued alongside billable productivity.

Toward Sustainable Competence

Sustainable competence requires integrating wellness strategies into daily practice. Key components include:

Emotional Regulation:

Developing mindfulness, reflective practices, and stress-management skills to maintain composure in high-stakes situations.

Tolerance for Uncertainty:

Cultivating comfort with ambiguity and unpredictability, allowing attorneys to make ethical, informed decisions even under incomplete information.

Self-Care Practices:

Prioritizing sleep, exercise, nutrition, and leisure as essential tools for maintaining emotional regulation and tolerance for uncertainty.

Organizational Support:

Fostering firm and institutional cultures that recognize the importance of wellness, including flexible scheduling, mentorship, time for reflection and mental health resources. CLE programs and firm wellness initiatives can reward judgment, communication, and supporting healthy boundaries to help lawyers meet ethical obligations while sustaining long-term performance.

Ethical Reflection:

Integrating ongoing self-assessment regarding competency and wellness into routine practice, in alignment with Rule 1.1.

By adopting these strategies, attorneys (and legal organizations) can transition from survival-based practice to a model of sustainable competence that protects client interests, personal well-being, and longevity of the profession.

Conclusion

The August 7, 2025 survey illuminates how legal professionals perceive competence and the tangible impact of mental health on their work. Nearly all participants reported that stress, anxiety, or depression had impacted their performance, and internal capacities such as emotional regulation and tolerance for uncertainty were recognized by the majority as essential or important competencies for law practice. These findings reinforce the ethical guidance adopted in Utah’s Rules of Professional Conduct 1.1 Comment 9: attorneys must monitor and address wellness issues to maintain competence.

Looking forward, the Utah legal profession has an opportunity to expand education, mentorship, and institutional structures that support sustainable competence. Longitudinal research examining the impact of wellness interventions, best practices for firm culture, and competency outcomes will further strengthen the ethical and practical framework for attorney well-being. By prioritizing sustainable competence, Utah lawyers can better serve their clients, their colleagues, and themselves – aligning ethical obligation with human flourishing.

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The Attorney's Voice: A Powerful Force in Judicial Accountability

by Mary-Margaret Pingree

As an attorney, your voice carries weight, and it has the power to shape the quality of Utah's judiciary. You see the courtroom up close and understand what fairness, preparation, and professionalism look like in practice. Your feedback, collected through Judicial Performance Evaluation Commission (JPEC) surveys every two years, helps equip Utah's judiciary to meet the highest standards, and provides the foundation for meaningful, credible evaluations.

Your input matters because it directly impacts both judges and voters across the state. This year, JPEC is asking attorneys to evaluate judges in four key areas: Legal Ability, Integrity & Judicial Temperament, Administrative Skills, and Procedural Fairness. You are also invited to provide written comments, which judges often find invaluable as they work to improve their performance. Whether you have already completed your surveys or they are still waiting in your inbox, your feedback is essential. Your input is vital to Utah's judicial evaluation system, providing insights that no other group can offer. It not only helps judges grow in their role but also gives voters reliable information they can trust when making decisions at the ballot box.

We understand that completing these surveys takes time – especially for attorneys who approach them thoughtfully – and we sincerely appreciate your participation. In the information below, we'll share with you six specific reasons why your voice matters and the real difference it makes for judges, voters, and the integrity of the evaluation process.

Attorneys are the only group qualified to evaluate a judge's legal ability.

Unlike other survey respondents, you have the training and experience to assess how well a judge applies the law and manages proceedings in accordance with legal standards. No other group we survey can provide this insight. Without your evaluations, a core part of judicial performance would go unmeasured, leaving the public with an incomplete picture of a judge's work.

Although we send surveys to several groups, attorneys represent more than 80% of the total surveys we receive.

Without you, the system we use simply wouldn't work. Your professional interactions provide the basis for each judge's evaluation.

JPEC Commissioners rely on your insights to understand how judges are performing.

The concerns you raise and the positive feedback you share give them information they cannot get anywhere else. During deliberations, commissioners carefully read every survey comment. While JPEC carefully guards your anonymity, commissioners know you have firsthand experience in the courtroom – and they place tremendous value on your perspective.

The evaluation process only works if survey results reflect the full range of attorney perspectives.

Your response helps ensure the findings are accurate and representative of the broader legal community. Even if you don't have strong opinions about a particular judge, your input still matters – it strengthens the survey, gives balance to the results, and helps us draw fair conclusions.

Judges want to improve, and they truly value the feedback they receive from attorneys.

Once a judge takes the bench, opportunities for performance feedback are rare. Most of the time, they hear little more than

MARY-MARGARET PINGREE is the Executive Director of the Judicial Performance Evaluation Commission.



appellate rulings or occasional comments from colleagues, neither of which gives a full picture of how they are doing in the courtroom. That is why your perspective is so important. Your constructive suggestions highlight strengths and identify areas where judges can grow, giving them the practical insight they need to refine their approach and better serve the people who appear before them.

As an attorney, you are uniquely positioned to provide meaningful feedback because you understand that judicial performance is not measured by case outcomes.

With training and experience similar to that of judges, you can recognize what a fair and effective legal process looks like – and your perspective helps ensure evaluations reflect that

standard. Unlike most citizens, you spend time in court and see judges in action. Voters rely on your insights to understand judicial performance and to make informed decisions about whether to retain judges on their ballots.

There are many ways Utah could evaluate its judges, but it has chosen a merit-based system that relies on the perspectives of attorneys. This gives you a meaningful voice – and the responsibility to use it wisely. Your input not only reflects the experience of practicing attorneys, but it also strengthens a system that builds public confidence in fair and reliable evaluations. If you have received a survey, we urge you to complete it. If you have already submitted one, we thank you for playing a vital role in this important process.



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AI in Practice: Proactive Safeguards After *Garner v. Kadince*

by Adam Bondy and Alexander Chang

The integration of Artificial Intelligence (AI) into legal practice continues. It's increasingly clear that AI isn't a futuristic hypothetical or an ignorable fad. It's reality, and it comes with both great potential and significant peril. These opportunities and risks don't exist solely for younger attorneys. Even experienced attorneys must understand the technology to know when it is being used and how that use must be supervised.

Even setting aside the practical benefits of the efficiency and productivity AI tools provide, we can't simply ignore or ban the use of AI tools, as tempting as that may be. Rule 1.1 of the Utah Rules of Professional Conduct imposes on us a duty of competence. And Comment 8 to that rule states, "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology* . . ." Utah R. Pro. Cond. 1.1 cmt. 8 (emphasis added). This principle was perfectly illustrated in a recent Utah Court of Appeals case concerning attorneys who did not even know their filing contained AI-generated work product.

In *Garner v. Kadince, Inc.*, 2025 UT App 80, 571 P.3d 812 (per curiam), counsel was sanctioned for filing a petition containing "fabricated legal authority" generated by ChatGPT. *Id.* ¶¶ 5, 16. Counsel admitted that they did not have an AI policy in place at the time and that the supervising attorney had not independently verified the work of an unlicensed law clerk who had used ChatGPT. *Id.* ¶ 5. In fact, "counsel were not aware that the law clerk was using ChatGPT in the preparation of their

firm's legal work." *Id.* This case and similar cases emerging nationwide underscore a critical message: while AI is a powerful tool, our fundamental duties of diligence, competence, and candor to the court remain sacrosanct.

Even if you elect not to use AI tools, you will need to come to terms with their prevalence. Malpractice insurers are already beginning to inquire about firms' AI policies. While many do not yet dictate specific content in those policies, the writing is on the wall. Demonstrating proactive compliance and risk mitigation with respect to AI will soon be non-negotiable. The time to act is now, not after a costly mistake or sanction order.

The Core Problem: The Allure and Deception of AI

Generative AI tools are remarkably adept at producing polished, coherent-sounding text. This "illusion of competence" is precisely where the danger lies. Traditional review methods – checking for general legal reasoning, logical flow, spelling, and grammar – are insufficient to catch AI errors, particularly "hallucinations" where AI invents cases, statutes, or factual assertions.

The *Garner* court observed, "When done right, AI can be incredibly beneficial for attorneys and the public. However, the current state of AI has its shortcomings." *Id.* ¶ 7 (quoting *Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 493 (D. Wyo. 2025)). "The legal profession must be cautious of AI due to its tendency to hallucinate information." *Id.* This tendency is fundamental to the nature of AI. The models are trained and designed to

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respond to and complete prompts in ways that are facially similar to human-generated examples, even if it means fabricating information to do so. This is because AI emulates the look and feel of legal work product by using probabilistic guessing, not genuine understanding.

So what should we do? How can we balance the benefits of AI with its inherent risks?

A Framework for a Prudent AI Policy: Whitelist, Greylist, Blacklist

A practical first step for any firm is to develop a clear, accessible AI usage policy. A written policy provides instant clarity for both internal consultation and for malpractice insurance requirements. One recommended component of a model policy involves sorting AI tools into a set of pre-determined tiers: so-called whitelists, greylists, and blacklists.

Whitelist:

These are AI-powered tools that are generally approved for use, often with specific guidelines.

Examples: Research and drafting tools integrated into established legal research platforms, such as Westlaw and LexisNexis. Such tools have robust client data privacy protections and internal verification mechanisms.

Even with whitelisted tools, *independent verification of all citations and substantive legal propositions is non-negotiable*. The final draft of any filing, especially those incorporating AI-assisted work product, should be cite-checked, either through pulling cases manually or through established services as LexisNexis' Shepardizing or Westlaw's KeyCite. "[A]ttorneys must verify each source cited in their legal filings and 'must still read the case'" to ensure that the sources exist, are good law, and "support their propositions and arguments." *Garner*, 2025 UT App 80, ¶ 7 (quoting *Wadsworth*, 348 F.R.D. at 493).

Greylist:

These are tools that may be permissible but require pre-approval from a designated "AI czar." The AI czar might be an individual or committee with AI-specific knowledge and training. The AI czar is charged with scrutinizing the proposed use and selecting and imposing specific restrictions appropriate to the situation (a process sometimes called "de-risking").

Examples: Using certain generative AI models for internal brainstorming; drafting preliminary outlines; summarizing

voluminous datasets; generating generic, non-sensitive communication templates (e.g., a basic template for a debtor demand letter or a litigation hold/spoliation letter).

An attorney or clerk who wishes to use a greylisted AI tool would contact their AI czar or committee with a detailed explanation of how they want to use that tool. The AI czar examines the proposed use, the data protection of the AI tool, and the risk of hallucination before imposing appropriate restrictions. After reviewing the data protection policy, the AI czar might determine that confidential client information cannot be submitted to the tool. Or the czar might mandate that the AI's output only be used for internal research and never directly sent to a client or tribunal, that an expert be retained to verify a summary prepared by AI, or that a partner knowledgeable in AI risks supervise and sign-off on the use of any AI-generated content.

Blacklist:

These are tools or practices that are strictly prohibited due to unacceptable risks to client confidentiality, data security, or work product integrity.

Examples: Inputting confidential client data into public-facing, unsecured AI models like the free version of ChatGPT or other platforms with unclear data retention and usage policies. Using AI to generate final drafts of substantive legal arguments or filings without rigorous human oversight and verification.

Most tools incorporating AI will end up on the blacklist, not so much because the tool is unreliable or has poor data protection but because the firm has not *proven to its satisfaction* that the tool is reliable and protects client data. In other words, any AI not specifically investigated and approved belongs on the blacklist by default. Almost every free AI will also be on this list – the adage that "if you aren't paying for the product, you are the product" aptly sums up the tendency of free AI tools to incorporate any inputted data into the learning model of the AI.

Beyond the Written Policy: Cultivating a Culture of Responsible AI Use

A written policy is only effective if understood, embraced, and enforced. This requires:

Mandatory Verification:

The most critical safeguard is the *unwavering requirement to verify* all AI-generated legal citations and substantive claims. Citation checking tools (including those provided by Westlaw and LexisNexis) are invaluable. A "super red flag" should arise

if a cited case cannot be readily found. This step alone would have prevented the issues in *Garner* and many other similar AI-related sanction cases.

Destigmatizing Responsible Use & Fostering Transparency:

A significant challenge is the current stigma associated with AI use. Attorneys fear appearing lazy or incompetent if they admit to using AI. But the benefits of using AI are too tempting to ignore in our time- and cost-sensitive practices. This drives AI use “underground,” making oversight impossible. Firms should foster an environment where attorneys feel comfortable disclosing their *responsible* use of AI tools within policy guidelines. This allows for better regulation, shared learning, and collective identification of potential pitfalls.

Understanding the New Red Flags:

Attorneys reviewing AI-assisted work must adapt. The old red flags to look for when reviewing legal work (poor grammar, illogical arguments, discrepancy from existing general knowledge) may be absent. The new red flags include perfectly cited but non-existent cases or correct legal concepts attributed to irrelevant or misquoted authorities. Identifying these problems requires a deeper level of scrutiny than a “gut feeling” or a superficial gloss of the arguments.

Ongoing Training and Education:

The AI landscape is evolving rapidly. What we know today may be obsolete tomorrow (or even this afternoon). Regular and continuing training on AI policy, emerging tools, identified risks,

and best practices is essential for all legal professionals, including paralegals and law clerks, as *Garner* painfully illustrates.

Privacy as a Paramount Concern:

Beyond hallucinations, the privacy of client information is critical. Policies must explicitly forbid inputting confidential data into AI models that don’t guarantee enterprise-grade security protocols and client data isolation.

The Unchanging Duty

“[A]s ‘attorneys transition to the world of AI, the duty to check their sources and make a reasonable inquiry into existing law remains unchanged.’” *Garner*, 2025 UT App 80, ¶ 7 (quoting *Wadsworth*, 348 F.R.D. at 493). Technology evolves, but our ethical obligations endure. While Silicon Valley might promise future AI iterations with fewer or even zero hallucinations, the current reality – and likely the foreseeable future – is that AI output requires meticulous human oversight and post-processing verification.

The dramatic potential AI tools offer for increased efficiency and productivity can only be safely realized if we adopt a proactive, cautious, and informed approach to their use. Implementing a well-defined AI policy, centered on rigorous verification and ethical use, is no longer a luxury but a necessity to protect our clients, our firms, and the integrity of our legal system. The lessons from *Garner v. Kadince* are clear: the time to formalize your firm’s approach to AI is now.

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Hayden T. Moss
Associate



Hayden Moss is an associate attorney at Clyde Snow & Sessions. His practice focuses on Corporate Law, Estate Planning, Probate and Trust Litigation, and Civil Litigation. He graduated summa cum laude from Utah State University with a degree in Economics before attending law school at the J. Reuben Clark Law School at Brigham Young University. Before attending law school, Hayden was a sponsored pickleball player. In his free time, he enjoys golf, snowboarding, and spending time with his wife and young son.

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Vaccines, Vouchers, and Other Vexing Issues: How Religion and the First Amendment Affect Utah's Public Schools

by David S. Doty

Thirty years ago, public schools across the country, including those in Utah, were embroiled in a host of divisive lawsuits involving religious rights and values. Such conflicts drew national attention to the Salt Lake City School District when students at West High School ignored a United States Tenth Circuit appellate court order barring the school choir from performing a religious song at graduation and when the district denied the application of LGBTQ+ students to form a “Gay Straight Alliance” after-school club under the Equal Access Act. *Bauchman v. W. High Sch.*, 900 F. Supp. 254 (D. Utah 1995), *aff’d*, 132 F.3d 542 (10th Cir. 1997), *cert. denied*, 118 S. Ct. 2370 (1998); *E. High Gay/Straight All. v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999). However, in the aftermath of these conflicts, Utah became a national model of religious tolerance based on the dedicated work of the Utah 3Rs Project, which supported school districts in adopting inclusive school board policies and providing comprehensive history and civics training to teachers throughout the state. Alan Edwards, *Project to Promote Tolerance*, DESERET NEWS (Dec. 16, 1996), <https://www.deseret.com/1996/12/17/19303359/project-to-promote-tolerance/>.

Based on this highly collaborative work by educators and lawyers, Utah schools enjoyed many years of relative peace with respect to religious conflict. Unfortunately, as Utah’s approximately 670,000 public school students go back to class this year, the cultural and political environments in which Utah schools operate have changed significantly, increasing the possibility that conflicts involving moral and religious values may flare up. Knowledge of how the First Amendment and state laws impact these disputes can be helpful for Utah lawyers whether they engage as parents, community leaders, or advocates.

Overview of the First Amendment Religion Clauses

The First Amendment to the United States Constitution opens with two well-known clauses: “Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof. . . .” U.S. CONST. amend. I. For many years the courts interpreted the first of these, the Establishment Clause, according to the “Lemon” test, derived from the Supreme Court’s decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). According to this three-pronged test, a government statute, rule, or policy must meet three standards in order to be constitutional: “First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster ‘an excessive government entanglement with religion.’” *Id.* at 612–13 (internal citation omitted). In other words, government action must be neutral when it comes to its purpose and effect: it can’t favor, burden, or be overly entwined with religion.

More recently, in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), the Court indicated that “[i]n place of *Lemon* and the endorsement test, [the Court] has instructed that the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” *Id.* at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). However, the Court did not clearly overrule *Lemon* or other decisions applying that test, which leaves First Amendment Establishment Clause guidance murky at best. As far back as 1995, Justice Clarence Thomas wrote in a concurring opinion in *Rosenberger v. Rector & Visitors of University of Virginia*, 515 U.S. 819, 861 (1995), that the Court’s “Establishment Clause jurisprudence is in hopeless disarray” and not much has changed since then.

DAVID S. DOTY, J.D., Ph.D. is Lead Academic Program Manager, School of Education, at Western Governors University.



The flip side of the First Amendment religion coin is the Free Exercise Clause, which is often invoked by plaintiffs in tandem with Establishment Clause claims to assert that the government's non-neutral, over-zealous accommodation or prohibition of religion also burdens their right to freely pursue their individual beliefs and practices. Free Exercise jurisprudence is not much easier to navigate than Establishment Clause law. In a case rejecting the claims of Native Americans in Oregon that they had the right to religiously use peyote, the Court held that neutral state laws that are generally applicable to all citizens (such as the classification of a drug as illegal and prohibiting its use for any reason) do not violate the Free Exercise Clause even if they burden religious practices. *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872 (1990). In response to *Smith*, Congress passed the Religious Freedom Restoration Act (RFRA) of 1993, 42 U.S.C. § 2000bb, which allows government to burden the right to Free Exercise only in the "furtherance of a compelling government interest" and in the least restrictive manner to accomplish its purposes.

Confusion around Free Exercise law arises because: 1) the Court held in 1997 that RFRA was applicable only to the federal government and not the states, *City of Boerne v. Flores*, 521 U.S. 507 (1997); and 2) in 2024 the Utah Legislature followed in the steps of several other states and enacted its own state-level "RFRA" titled "Free Exercise of Religion," Utah Code Ann. § 63G-33-201 (2025), but to date only one court decision has interpreted Utah's statute. In *Jensen v. Utah County*, No. 2:24-cv-00887-JNP-CMR (D. Utah Feb. 20, 2025) (FindLaw), a case very similar to *Smith*, U.S. District Court Judge Jill Parrish granted a preliminary injunction against Utah County and Provo City, which had seized ceremonial psychedelic

mushrooms from the Singularism church. Judge Parrish reasoned: "For that guarantee of religious liberty to mean anything, the laws must protect unfamiliar religions equally with familiar ones, both in design and in practice." Kelsey Dallas, *The First-of-its-Kind Case Putting Utah's New Religious Freedom Law to the Test*, DESERET NEWS (Mar. 21, 2025, 9:07 PM), <https://www.deseret.com/faith/2025/03/21/utah-religious-freedom-restoration-act-singularism/>. How both state and federal courts will interpret Utah's "RFRA" in other contexts, including public schools and universities, has yet to be determined.

Application of the First Amendment Religion Clauses to Utah Public Schools

Over the past few years, states around the country have been actively challenging existing First Amendment precedent, implementing new laws to challenge everything from health policy to curriculum to the funding of public schools based on religion. Data compiled by Americans United for Separation of Church and State found that in 2024 alone, legislators in twenty-nine states proposed at least ninety-one bills promoting religion in public schools, based in part by what they viewed as excessive secularism in school curricula and a Supreme Court that appears willing to reconsider existing First Amendment precedent. Liya Cui & Joseph Ax, *How U.S. Public Schools Became a New Religious Battleground*, REUTERS (Aug. 7, 2024, 11:09 AM), <https://www.reuters.com/world/us/how-us-public-schools-became-new-religious-battleground-2024-08-07/>.

Utah's public schools have not been immune from religious turmoil, and it seems very possible that Utah federal and state courts, as in the 1990s, will again be called upon to address a

Congratulations, Family Law Associates

Senior Associate Adrienne Wiseman has been appointed to the Family Law Section Executive Committee of the Utah State Bar.

Stefan J. James joined the firm in 2023 and is a frequent member of the Pro Bono Honor Roll.

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variety of religious conflicts in the future. Although many different issues could be highlighted, four are particularly current and relevant.

Vaccinations

Importantly, because public schools are a state responsibility, state law governs vaccination requirements for public school children. A national scan demonstrates wide variety in the strength and enforcement of school vaccination laws. According to the National Conference on State Legislatures, all fifty states and Washington, D.C. have laws mandating specific vaccines as a precondition to school attendance, and all fifty states allow some form of medical exemption from vaccine mandates. Yet twenty-nine states and the District of Columbia also permit parents to exempt their children from vaccine requirements based on religious objections. Parents in other states have even more latitude; fourteen states allow exemptions for either religious or personal reasons. Only two states, Louisiana and Minnesota, do not require parents to articulate whether their child's non-medical exemption is for religious or personal reasons. Finally, five states (California, West Virginia, New York, Connecticut, and Maine) do not allow any type of non-medical exemption. *State Non-Medical Exemptions from School Immunization Requirements*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/health/state-non-medical-exemptions-from-school-immunization-requirements> (Updated July 24, 2025).

Utah is one of the fourteen states that allows exemptions for either religious or personal reasons. Utah Code Ann. § 53G-9-303. Clarifying that public schools cannot deny a student with a valid exemption entrance in any manner, the statute emphasizes that school districts offering both remote and in-person learning “may not deny a student who is exempt from a requirement to receive a vaccine . . . to participate in an in-person learning option based upon the student's vaccination status.” *Id.* § 53G-9-303(5).

The foundation for vaccine exemption laws is found in both the First Amendment's Free Exercise Clause as well as the Fourteenth Amendment's Due Process Clause. One hundred years ago, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and nearly fifty years later in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Supreme Court held that parents have First Amendment rights and liberty interests to direct the education and upbringing of their children. It is also based on the Utah Constitution, which states that the Legislature shall provide for “a public education system, which *shall be open to all children of the state.*” UTAH CONST. art. X, § 1 (emphasis added).

While seemingly straightforward, these statutes and precedents leave a number of questions unresolved. First, the extent to which

parental rights override the government's interest in ensuring a safe school environment for both students and employees, as well as the rights of immunocompromised students or others medically unable to obtain vaccines, is unclear. The state constitutional mandate to maintain public schools that are “open to all children of the state” could be easily interpreted two ways: 1) it could bolster the First Amendment Free Exercise and parental rights claims of parents who seek religious exemptions from vaccine requirements for their children; or 2) it could form the basis for the parents of medically fragile children unable to be vaccinated to bring both a state constitutional claim that the schools are “closed” for their children, and/or possibly a Fourteenth Amendment equal protection and due process claim if such parents claim that *their* parental rights are violated by effectively being denied their right to send their children to public school.

There is also the unaddressed question of whether public schools could acquire tort liability by allowing unvaccinated children to attend school where school officials know that a communicable disease outbreak is highly possible and likely fatal to medically fragile or immunocompromised staff and students. While Utah's public schools generally enjoy broad immunity under the state Governmental Immunity Act, Utah Code Ann. Title 63G, Chapter 7, they can be liable for gross negligence, that is, extremely reckless conduct involving deliberate indifference to the safety, life, or rights of others.

While the reasons are not quite clear, Utah's vaccination exemption rate is now the second highest in the nation. Erin Alberty, *Utah Vaccine Exemption Rate Rises to No. 2 in Nation*, AXIOS (Aug. 4, 2025), <https://www.axios.com/local/salt-lake-city/2025/08/04/utah-vaccine-exemption-rate-second-highest>. For the 2024–2025 school year, only 86.9% of Utah kindergartners were fully vaccinated, which is the second lowest rate in the country, and well below the 95% threshold required for herd immunity. Brock Marchant, *Dry Wood in a Wildfire: Utah Schools' Low Vaccination Rates Prompt Measles Woes*, SALT LAKE TRIB. (Aug. 21, 2025 10:05 AM), <https://www.sltrib.com/news/2025/08/21/utahs-summer-measles-surge-eases/>; *Coronavirus Disease (COVID-19): Herd Immunity, Lockdowns, and COVID-19*, WORLD HEALTH ORG., (Dec. 31, 2020), <https://www.who.int/news-room/questions-and-answers/item/herd-immunity-lockdowns-and-covid-19>. At the same time, it was reported in early October 2025 that a measles outbreak in southwest Utah and northern Arizona (resulting in forty-four confirmed measles cases in Utah) was presently the largest measles outbreak in the country. Lois M. Collins, *Measles Count in Utah Rises to 44, New Report Says*, KSL, (Oct. 1, 2025), <https://www.ksl.com/article/51384002/measles-count-in-utah-rises-to-44-new-report-says>.

It seems certain that vaccine litigation, involving both public school students and employees, is far from over. On July 31, 2025, the Ninth Circuit Court of Appeals issued an *en banc* decision granting judgment on the pleadings in favor of the Los Angeles Unified School District, which in August 2021 issued a mandatory vaccination requirement for all employees. *Health Freedom Def. Fund, Inc. v. Carvalho*, No. 22-55908 (9th Cir. 2025) (en banc). While the policy allowed employees to apply for religious or medical exemptions, even “exempt” employees were excludable “[i]f a risk to the health and safety of others [could not] be reduced to an acceptable level through a workplace accommodation.” *Id.* The plaintiff employees’ equal protection and substantive due process claims were not specifically First Amendment Free Exercise claims but they did assert a “freedom of conscience” type claim by alleging that the vaccine mandate violated their fundamental right to bodily integrity in refusing medical treatment. *Id.* Similar claims, combined with Free Exercise claims, have been brought by Jehovah’s Witnesses, who refuse blood transfusions based on religious belief. *See, e.g.,* Geraldine Koenke Russell & Donald Wallace, *Jehovah’s Witnesses and the Refusal of Blood Transfusions: A Balance of Interests*, 33 THE CATHOLIC LAW. 361, 381 (2017).

Moreover, despite having denied certiorari on a host of vaccine cases since 2021, the Supreme Court is currently considering three more petitions involving COVID-19 mandates, raising the possibility that the Court may finally decide to take up one of these cases in its 2025–2026 term. Kelsea Dallas, *Will the Supreme Court Reenter the Vaccine Wars?*, SCOTUS BLOG (Aug. 6, 2025), <https://www.scotusblog.com/2025/08/supreme-court-covid-vaccine-mandates/>.

Curriculum Censorship and Book Banning

Another area that has become a hotbed of First Amendment religion litigation concerns the authority of states and school districts to prohibit or censor curriculum materials, library books, and other instructional resources. With respect to curriculum, courts have generally been unsympathetic to parental claims that textbooks and other approved instructional materials violate either the Establishment or Free Exercise clauses. Typical of these cases is *Fleischfresser v. Directors of School District 200*, 15 F.3d 680 (7th Cir. 1994), in which Christian parents sued their local school district over its use of an elementary-level reading series that included a variety of folk and fairy tales. Plaintiffs claimed that the series “fosters a religious belief in the existence of superior beings exercising power over human beings by imposing rules of conduct, with the promise and threat of future rewards and punishments,” and that it focused on “supernatural beings including ‘wizards, sorcerers, giants and unspecified creatures with supernatural powers.’” *Id.* at 683. Ruling for the school district, the Seventh

Circuit held that use of the reading series did not violate the Establishment Clause, because the presentation of “religious concepts, found in paganism and branches of witchcraft and satanism . . . hardly sounds like the establishment of a coherent religion.” *Id.* at 687. In addition, the court held that in the absence of coercion on the part of the district, the plaintiffs could not prevail on their Free Exercise claim. *Id.* at 689–90.

However, the authority of states and school districts to control the curriculum is far from settled. In 2022, Florida passed H.B. 1577, known officially as “Parental Rights In Education,” and unofficially as the “Don’t Say Gay” law, which severely restricted what teachers could say related to LGBTQ+ issues and topics in public school classrooms. A group of plaintiffs immediately challenged the law in federal court, alleging multiple violations of the Constitution, including the rights to freedom of speech and expression, the right to receive information and ideas, and the right to equal protection. Second Amended Complaint for Declaratory, Injunctive, and Other Relief, *Cousins v. Grady*, No. 6:22-cv-01312-WWB-LHP (M.D. Fla. Nov. 3, 2022). The lawsuit was ultimately settled, with the state agreeing to roll back most of the law’s most onerous mandates. Danielle Prieur, *Court Overturns Large Part of Florida’s So-Called ‘Don’t Say Gay’ Law*, NAT’L PUB. RADIO (Mar. 12, 2024, 4:55 PM), <https://www.npr.org/2024/03/12/1238113992/court-overturns-large-part-of-floridas-so-called-dont-say-gay-law>.

Another decision regarding LGBTQ+ issues, right at the end of the Supreme Court’s 2024–2025 term, came down in favor of the parents. In *Mahmoud v. Taylor*, No. 24-297 (U.S. June 27, 2025), the plaintiffs were a group of parents who objected to the use of “LGBTQ+-inclusive storybooks” in the curriculum, claiming that because the Montgomery County Board of



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Education would not grant the parents opt-outs or some other type of accommodation, the school district unconstitutionally burdened their free exercise of religion as well as their parental rights to direct the upbringing of their children.

Rejecting the school board's arguments that by "merely exposing" the children to the books, it was not coercing beliefs, and that it was administratively unworkable and unduly disruptive to process dozens of opt-out requests, the court ruled in favor of the plaintiffs, finding that the school board's inclusion of the books, combined with a no-opt-out policy, substantially burdened the plaintiffs' free exercise and parental rights. Addressing the school board's desire to include the LGBTQ+ books to create a safe and inclusive environment for all students, the court reasoned: "A classroom environment that is welcoming to all students is something to be commended, but such an environment cannot be achieved through hostility toward the religious beliefs of students and their parents."

"The challenge now facing school districts is how to respect individual beliefs while still providing a robust and inclusive education for all students."

The full impact of this decision may not be known for some time. However, further litigation over curricular matters seems highly probable. As one author noted: "The challenge now facing school districts is how to respect individual beliefs while still providing a robust and inclusive education for all students. The Court offered little guidance on where to draw these lines." Kate Fioravanti, *Parental Rights vs. Inclusive Curriculum: What the Supreme Court's Decision Means for Public Schools*, SYRACUSE L. REV. BLOG (July 7, 2025), <https://lawreview.syr.edu/parental-rights-vs-inclusive-curriculum-what-the-supreme-courts-decision-means-for-public-schools/>.

Importantly, Utah law allows for parental opt-outs of school curricula and assignments based on religious belief: "A student's parent may waive the student's participation in any aspect of school that violates the student's or the student's parent's religious belief or right of conscience." Utah Code Ann. § 53G-10-205(4). Furthermore, Utah public schools may not "penalize or discriminate against a student for refraining from participation due to the student's or the student's parent's religious belief or right of conscience." *Id.* § 53G-10-205(2)(b)(iii).

The law concerning book banning and censorship is also in flux. The seminal case in this area is *Board of Education, Island Trees Union Free School District v. Pico*, 457 U.S. 853 (1982). In this case, the board of education removed several books from junior high and high school libraries on the grounds that they were "anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy." *Id.* at 857. The Court recognized the broad discretion that state and local school boards have over the compulsory curriculum, as well as books that the school board may choose to *add* to the library. *Id.* at 871. However, highlighting that the Constitution "protects the right to receive information and ideas," the Court held that the removal of books already in the libraries violated students' First Amendment rights, stating: "[L]ocal school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'" *Id.* at 869, 878 (internal citation omitted).

Unfortunately, *Island Trees* is not dispositive of First Amendment claims involving school library book bans. First, the Court decision was a plurality, rather than a majority opinion, which has left the door open for advocates on both sides of the issue to challenge the decision's legitimacy. Second, a rash of state laws has been passed to establish the parameters of library book approval and removal. This has led to a significant surge in the number of book bans across the country. One advocacy group, PEN America, documented more than 6,800 instances of school library book bans across the United States during the 2024–2025 school year; these bans occurred in twenty-three states and eighty-seven public school districts. Brooke Sopelsa, *The 15 Most Banned Books in U.S. Schools*, NBC NEWS (Oct. 5, 2025), <https://www.nbcnews.com/nbc-out/out-news/15-banned-books-us-schools-rcna235157>.

PEN America has called Utah's book banning law, initially enacted as H.B. 29 during the 2024 legislative session and amended during the 2025 session, "the most extreme state book-banning bill currently in place" because it essentially allows a handful of school districts to create a "No Read List" for schools across the state. *Id.* In other words, not only can local school boards determine to remove "sensitive material" from their own schools, under certain circumstances they can force removal from all Utah public schools. If at least three school districts, or at least two school districts and five charter schools, decide to remove sensitive material, "each LEA statewide shall remove the relevant instructional material from student access." Utah Code Ann. §53G-10-103(7)(a)–(b) (2025). To date, this law has been invoked to ban a total of seventeen books statewide. *Utah Banned a 17th Book from All Public Schools*, KCPW (Mar. 10, 2025 4:21 PM), <https://www.kpcw.org/state-regional/2025-03-10/utah-banned-a-17th-book-from-all-public-schools>.

The constitutionality of this law has not been tested but a challenge may be likely given that the statute authorizes school districts completely separate from where a student attends school to determine that student's access to library books. What one (or in this case, three) school districts deem inappropriate "sensitive material" may not be consistent with the views and decisions of the school district where the student resides, thus allowing school officials far removed from a student's home district to dictate their First Amendment "right to read and receive information." It is also foreseeable that parental rights could be the basis for a challenge to this law. The Utah School Library Association argues that the law "condones the censorship of literature, infringes on students' First Amendment rights, and the rights of parents to choose their own children's reading material." Martha Harris, *These are the 13 Books Now Banned Statewide from Utah Schools*, KUER (Aug. 5, 2024, 7:51 AM), <https://www.kuer.org/education/2024-08-02/these-are-the-13-books-now-banned-statewide-from-utah-schools>.

Promotion of the Ten Commandments and Other Religious Messages

A third issue that has the potential to lead to First Amendment litigation concerns legislative efforts to require all schools to display and/or discuss religious texts. These efforts include mandates to display and teach the Ten Commandments, as well as mandates to display other religious messages such as "In God We Trust."

As opposed to vaccines and book bans, the law on Ten Commandments displays has been well settled for over twenty-five years. The Supreme Court, in *Stone v. Graham*, 449 U.S. 39 (1980), held that a Kentucky statute requiring the posting of the Ten Commandments in every public school was unconstitutional because the law had no secular legislative purpose.

More recently, a federal district court issued a preliminary injunction barring the implementation of S.B. 10, a Texas law requiring the posting of the Ten Commandments in all public schools. Order Concerning Plaintiffs' Motion for Preliminary Injunction and Defendant's Motion to Dismiss, *Nathan v. Alamo Heights Indep. Sch. Dist.*, No. SA-25-cv-00756-FB (W.D. Tex. Aug. 20, 2025). The court, utilizing the Establishment Clause test articulated by the Supreme Court in *Kennedy*, reasoned that to succeed on the merits, the plaintiffs had to show the posting of the Ten Commandments in public school classrooms does not "fit within" and is not "consistent with" a broader tradition existing at the time of the founding. *Id.* at 46. The court began by finding that is "insufficient evidence of a broader tradition of using the Ten Commandments in public education, and there is

no tradition of permanently displaying the Ten Commandments in public-school classrooms." *Id.* at 49. Moving to the second part of the "historical practices and understandings test," the court found that it was religiously coercive to subject public-school students to compulsory displays of the Ten Commandments. *Id.* Finally, the court found that the state of Texas did not have a genuine interest in enforcing a regulation that violates federal law. *Id.* at 51. The court reiterated that the Establishment clause requires that the government maintain "neutrality" in matters of religion, and that this law was far from neutral because "the displays are likely to pressure the child-Plaintiffs into religious observance, meditation on, veneration, and adoption of the State's favored religious scripture, and into suppressing expression of their own religious or nonreligious backgrounds and beliefs while at school." *Id.* at 52.

Likewise, a federal district court in Arkansas recently issued a preliminary injunction barring the implementation of a state law requiring the display of the Ten Commandments in every public-school classroom and library. Memorandum Opinion and Order, *Stinson v. Fayetteville Sch. Dist. No. 1*, No. 5:25-CV-5127, 2025 WL 2231053 (W.D. Ark. Aug. 4, 2025).

Notwithstanding this clear legal precedent, the Utah Legislature has, like Arkansas and Texas, tested the waters of mandatory displays and discussions of the Ten Commandments and other religious messages in public schools. During the 2024 legislative session, Representative Michael Petersen (R-North Logan) sponsored H.B. 269, which in its original form would have required all Utah public schools to display a "poster or framed copy" of the Ten Commandments in a "prominent location." However, after considerable opposition, the bill was modified, with the posting requirement removed in lieu of a provision that requires school curricula to include a "thorough study of historical documents and principles" such as "the Ten Commandments." The modified bill also now requires all Utah public schools to display "In God We Trust" in "one or more prominent places within each school building." Utah Code Ann. § 53G-10-302. While this new law has yet to be tested in court, during the bill's hearings a legislative attorney urged caution, telling legislators that it was "definitely a possibility" that the bill "runs afoul" of a provision of the Utah Constitution stating that "no public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment." Katie McKellar, *Utah House Approves Watered Down Ten Commandments Bill Despite Constitutional Concerns*, UTAH NEWS DISPATCH (Feb. 23, 2024, 2:58 PM), <https://utahnewsdispatch.com/2024/02/23/utah-ten-commandments-religion-bill-schools/>.

School Vouchers

Perhaps the most significant religious issue affecting Utah public schools is Utah's school voucher legislation, known as the "Utah Fits All Scholarship" program. Utah Code Ann. § 53F-6-402. This law was initially passed by the legislature, and signed into law by Governor Spencer Cox, as H.B. 213 during the 2023 legislative session. The program first received a state budget allocation of \$42 million for the 2024–2025 school year, which was enough funding for approximately 5,000 students to each receive the full \$8,000 "scholarship," which parents could apply toward the costs of private school or home school. Then in February 2024, legislators added another \$40 million of funding so that up to 10,000 students could take advantage of the scholarship. One more major funding increase was approved during the 2025 legislative session, bumping funding by 25% so that the program's entire budget now exceeds \$100 million annually. Carmen Nesbitt, *What's Next for Utah's School Voucher Program After Judge Declared It Unconstitutional? Here's What We Know So Far*, SALT LAKE TRIB. (Apr. 21, 2025, 3:00 PM) <https://www.sltrib.com/news/education/2025/04/21/utahs-school-voucher-program-limbo/>.

The program has been intensely controversial from the outset, with opponents challenging both the siphoning of funds dedicated to public education for private purposes as well as the perceived egregiousness of some families using scholarship funds for paddleboards, ski passes, and music and swim lessons for their children. Against the backdrop of this public controversy, a lawsuit filed by parent plaintiffs and the Utah Education Association challenging the law has been winding its way through the Utah courts.

On April 18, 2025, Third Circuit Judge Laura Scott struck down the law, holding it unconstitutional under article X and article XIII of the Utah Constitution. Ruling and Order Re: Defendants' Motions to Dismiss and Plaintiffs' Motion for Summary Judgment, *Labresh v. Cox*, No. 240902193 (Utah 3d. Dist. Apr. 18, 2025). Judge Scott's decision was based on two key findings: 1) that because it creates a separate education system that not all students can access (the program allows private schools to deny admission based on religion, race, gender, disability, etc.) or afford (the \$8,000 scholarship may not be enough to fund the full amount of a private school's tuition), the Utah Fits All program violates article X of the Utah Constitution, which requires all public schools to be "open to all children of the state" and, with the exception of certain fees, to be "free;" and 2) that because it appropriates income tax funds to purposes outside of public education and higher education, the program violates Article XIII of the Utah Constitution.

Two Supreme Court cases have addressed the legality of state school voucher programs based on First Amendment claims that the programs violated the Establishment Clause by funding

private religious schools. In *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), the Court held that an Ohio school voucher program did not violate the Establishment Clause because parents, and not state government, chose what to do with the voucher funds, making the program neutral with respect to religion. In *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464 (2020), the Court held that the state of Montana could not discriminate against parents who wanted to use a state-established tuition tax credit to send their children to private religious schools. The Court reasoned that allowing parents to use the tax credit for religious education was not a violation of the Establishment Clause because "the government support makes its way to religious schools only as a result of Montanans independently choosing to spend their scholarships at such schools." *Id.* at 467.

These cases may not ultimately have any bearing on the Utah Fits All decision, which has been appealed to the Utah Supreme Court. Matthew Drachman, *Attorney General Files Appeal to Utah Fits All Ruling*, ABC4 (May 10, 2025, 9:24 AM), <https://www.abc4.com/news/politics/inside-utah-politics/utah-legislature-appeal-utah-fits-all/>. *Zelman* and *Espinoza* both dealt with First Amendment religious issues, but Judge Scott's decision did not rely on the Utah Constitution's requirement that Utah's public schools must be "free from sectarian control." UTAH CONST. art. X, § 1. Therefore, if the Supreme Court affirms Judge Scott, it will likely do so based on state constitutional funding mandates, similar to the South Carolina Supreme Court in *Eidson v. South Carolina Department of Education*, Appellate Case No. 2023-001673 (S.C. Sept. 11, 2024) (Justia Law) (holding that South Carolina's Education Scholarship Trust Fund, which provided \$6,000 per student scholarships for private school tuition violated a state constitutional ban on the use of public funds for the "direct benefit" of private educational institutions).

Conclusion

Religion, and the Constitutional and statutory provisions protecting individuals from government authoritarianism and intrusion regarding its place in our public institutions, is one of the most important, and revered, parts of American life. Yet the interpretation of the First Amendment and other laws outlining the parameters of religion in schools has a lengthy and convoluted history, with no clear resolution in sight. Perhaps the best lawyers can do is to remember the observation by U.S. District Judge Fred Biery in his *Nathan* opinion: "Ultimately, in matters of conscience, faith, beliefs and the soul, most people are Garbo-esque. They just want to be left alone, neither proselytized nor ostracized, including what occurs to their children in government run schools." *Nathan*, at 54. And when disagreements around religion in schools surface, as they surely will, Utah lawyers would do well to listen to Judge Biery's parting counsel, wishing "Grace" and "Peace" to all who would disagree on these matters with "threats, vulgarities, and violence," and inviting "humankind of all faiths, beliefs, and non-beliefs be reconciled to one another." *Id.*

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Appellate Highlights

by Rodney R. Parker, Dani Cepernich, Benjamin J. Cilwick, Richard W. Poll, 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. Blake **2025 UT 21 (July 25, 2025)**

As part of sentencing, the district court entered a restitution order requiring Blake to reimburse the Utah Office for Victims of Crime for the medical expenses incurred by the victim. Blake appealed this order and the Utah Court of Appeals reversed but failed to explicitly remand the case for further proceedings. (*State v. Blake*, 2022 UT App 104). The district court, over Blake's objection, held a second restitution hearing and entered a new restitution order. Blake appealed again, claiming the district court could not hold a second restitution hearing without an express remand. The Utah Supreme Court held that the district court was permitted to hold the second restitution hearing and enter the second restitution order. **Without an express mandate from the appellate court, a district court must look to the context of the order to determine whether and what further proceedings are needed.** After the court of appeals reversed the original restitution order, Blake's sentence was incomplete and the sentencing court was obligated by statute to complete the restitution portion of sentencing upon a timely motion by the prosecution.

Ross v. Kracht **2025 UT 22 (July 25, 2025)**

The Utah Supreme Court held Utah Code § 78B-6-112(3) creates a statutory exception to the final judgment rule which allows for interlocutory appeals of orders terminating parental rights, overruling *In re Adoption of K.R.S.*, 2024 UT App 165. In *Ross*, the parties sought to appeal of the nonfinal termination order. The

supreme court emphasized the distinction between appellate jurisdiction in child welfare cases, in which there is strict adherence to the final judgment rule, and such jurisdiction in parental right termination cases, for which the supreme court concluded the legislature had adequately conveyed its intent to create an exception to the final judgment rule.

Armenta v. Unified Fire **2025 UT 26 (August 7, 2025)**

Utah's Governmental Immunity Act provides that a governmental entity and its employees are immune from claims of negligence arising from the provision of "emergency medical assistance." As a matter of first impression, the Utah Supreme Court concluded **the phrase "emergency medical assistance" in the GIA applies only to medical care provided in response to "a disastrous – or potentially disastrous – event," such as a "fire or dam burst," but not the smaller-scale 911 response at issue in this case.**

Mathews v. McCown **2025 UT 34 (August 14, 2025)**

The Utah Supreme Court addressed several novel or unresolved issues in Utah defamation law. First, the court disavowed prior Utah caselaw suggesting that "unquestionably political speech" is categorically nondefamatory; instead, **"political speech" may be found to have defamatory meaning under the same standard applied to other speech.** Next, the court announced that, "consistent with the respect ... afford[ed] constitutionally protected speech," **a defamation plaintiff is not entitled to "the benefit of an inference that a pleaded statement is one of fact and not opinion" on a motion to dismiss.** Finally, the court concluded that **a defamation plaintiff need not anticipatorily plead around an affirmative defense, including a defense of privilege.**

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

In re Estate of Davies**2025 UT 36 (August 21, 2025)**

A granddaughter of a deceased person filed a timely petition for probate at the very end of the three-year period allowed by Utah Code § 75-3-107 for filing a probate action. Her petition was later dismissed for failure to prosecute and 364 days later, she filed a new petition claiming that her action survived under Utah's Savings Statute, Utah Code § 78B-2-111. The supreme court held that **the deadline in the Probate Code is one of finality and “forecloses the application of the Savings Statute.”** Where it speaks in prohibitory terms, instead of permissive terms like other statutes of limitation and repose, the direct command of the Probate Code conflicts with the Savings Statute. Thus, probate petitions may not rely on the Savings Statute to recommence a failed probate action.

Mackey v. Krause**2025 UT 37 (August 28, 2025)**

A teacher at the Utah Military Academy brought claims for defamation, intentional infliction of emotional distress, abuse of legal process, and tortious interference with economic interests, against a student's father who had publicly alleged the teacher physically abused students. The district court denied the father's motion to dismiss brought under Utah's anti-SLAPP statute, the Public Expression Protection Act (UPEPA), ruling the parent had failed to show UPEPA applied and that the teacher had alleged a prima facie case for each cause of action. On appeal, the supreme court **interpreted for the first time “matter of public concern” within UPEPA to include speech “when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.”** Applying this definition, the court held the district court erred in ruling UPEPA did not apply to the teacher's claims.

Tenth Circuit Court of Appeals***Snyder v. Beam Technologies, Inc.*****147 F.4th 1246 (August 5, 2025)**

Snyder brought federal trade secret claims and state law employment claims against his former employer. The district court excluded Snyder's damages expert under Fed. R. Evid. 702, but the Rule 702 order went further, precluding Snyder from offering any evidence or witnesses, including fact witnesses, on the issue of lost wages. The district court spent “the bulk” of its order analyzing the underlying claims and evidence and

“significantly broadened its holding beyond the exclusion of one expert witness.” The Tenth Circuit held that the district court entered summary judgment without complying with Fed. R. Civ. P. 56. **The filing of summary judgment motions comes with certain protections and procedural requirements that were not afforded to Snyder. If a district court is to convert a non-summary judgment motion into one for summary judgment, the non-moving party must be properly notified and receive the procedural protections of Rule 56.**

Ortega v. Grisham**148 F.4th 1134 (August 19, 2025)**

New Mexico enacted a categorical seven-day “cool-off” period for any and all gun sales. The statute made no exceptions for individualized circumstances but included certain categorical exemptions. The Tenth Circuit, relying on recent United States Supreme Court precedent and analogizing to other rights such as the right to free press and the right to freely practice religion, held that the cooling off period impermissibly burdens Second Amendment rights. **The government may not restrict a right simply because the government “believes its interests, on balance, are more important than the individual's.” The government cannot delay a person from exercising constitutional rights simply because the government believes that person may misuse those rights without sufficient prior reflection.** Second Amendment rights are subject to the same body of rules as the other Bill of Rights guarantees.

Gaddy v. Corporation of the President**148 F.4th 1202 (August 26, 2025)**

Former members of the Church of Jesus Christ of Latter-day Saints brought a class-action suit against the Church's religious corporation, alleging fraud in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968. The former members alleged that church leaders fraudulently misrepresented aspects of the church's history and misused members' tithes for commercial ventures. The Tenth Circuit affirmed dismissal of the former members' claims, holding **the long-standing “church autonomy doctrine” – rooted in the religious protections of the First Amendment – precluded federal courts from adjudicating “ecclesiastical questions” such as the “truth or falsity of religious beliefs.”** The court affirmed dismissal of the “misuse-of-tithes” claims on other grounds, with Judge Phillips arguing in concurrence that the church autonomy doctrine should not bar those claims given the secular nature of the alleged misuse.

Can You Withdraw Without Cause? ABA Weighs In

by Keith A. Call and Madison Droubay

A lawyer can ordinarily decline to represent a client for almost any reason. Or perhaps you don't even need a reason other than "I choose not to." But is the rule different after you have accepted an engagement and formed an attorney-client relationship? Can a lawyer terminate an attorney-client relationship at any time for any reason, or even for no reason?

Utah Rule of Professional Conduct 1.16(b) provides seven reasons why a lawyer may terminate a representation. The first possibility is very general: a lawyer may withdraw if "withdrawal can be accomplished without material adverse effect on the interests of the client." Rule 1.16(b)(1). This is identical to the ABA Model Rule.

The phrase "material adverse effect" is the fulcrum. What does that mean? Recently, the ABA Standing Committee on Ethics and Professional Responsibility issued an opinion explaining when "material adverse effect" may prevent permissive withdrawal. ABA Comm. on Ethics & Pro. Resp., Formal Op. 516 (2025).

What Counts as "Material Adverse Effect?"

According to Opinion 516, withdrawal causes a material adverse effect if it significantly harms the client's interests in the matter at hand. The opinion explains that this can happen in three main ways:

1. Significant harm to forward progress.
2. Significant increase in cost.
3. Significant harm to achieving the client's objectives.

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.



Examples of material harm include deals falling apart because no substitute lawyer can step in quickly enough, a client being unable to find replacement counsel, or successor counsel duplicating months of work at great expense.

Sometimes these adverse effects can be remediated. For example, the withdrawing lawyer may help the client find a new lawyer, collaborate with successor counsel to bring the new lawyer up to speed, and/or refund or waive legal fees for work that will have to be duplicated.

By contrast, the opinion gives examples of when withdrawal will likely have no material adverse effect. For example, the ABA Committee opines that significant harm can be avoided where the representation "has barely gotten off the ground" or lawyers notify clients of their intention to withdraw early on in the litigation. Other circumstances include where co-counsel can successfully complete the remaining work, any remaining work does not require the lawyer's particular knowledge, and there is no ongoing or imminent matter at the time of withdrawal.

The opinion also points out that the client's desires, disappointment in losing the lawyer's services, or perception that the lawyer is being disloyal do not prohibit withdrawal. In general, "the lawyer owes the client a full explanation for withdrawing... , but not an explanation that necessarily satisfies the client." Opinion at 5–6.

The "Hot Potato" Problem

Opinion 516 also address the "hot potato" problem – withdrawing from representing one client in order to take on a different client with conflicting interests. In what may be a surprise to

MADISON DROUBAY is a 3L at BYU's J. Reuben Clark Law School.



NEED ETHICS HELP?

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

Contact the Utah State Bar's Ethics Hotline for advice at ethicshotline@utahbar.org.

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.



some, the Opinion 516 concludes that Rule 1.16 does *not* prevent a lawyer from dropping one client in order to represent another. Under Rule 1.16(b)(1), “the lawyer’s motivation [for withdrawing] is irrelevant.” Opinion at 6. “The salient question . . . is whether, by withdrawing from a representation, the lawyer will materially adversely affect the client’s interests in the matter in which the lawyer represented the client, not whether the lawyer will be adverse to the client in an unrelated matter after the representation is over.” *Id.* at 8.

But don’t get too excited. The opinion is quick to point out that courts still have inherent authority to disqualify (or otherwise sanction) lawyers who drop one client in order to advocate against that client in another case. And a dissenting opinion (which is unusual for an ABA ethics opinion) argues that dropping one client in order to turn around and sue that same client may inflict a material adverse effect on the client being dropped. So, Opinion 516 is not a free pass to play hot potato with your clients.

Practical Takeaways

What does this all mean for your day-to-day practice? Here are a few suggestions:

1. Think hard before you say yes.
2. Withdraw early if you must.
3. Document your efforts to remediate.
4. Communicate candidly.
5. Close files clearly.
6. Beware of disqualification.

In short: don’t just walk away – walk away responsibly.

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

SNOW JENSEN & REECE, P.C. CONGRATULATES SEAN J. ROMNEY, DEVON J. HERRMANN, AND TREVOR EVERETT ON BECOMING SHAREHOLDERS, AND KATHRYN LUSTY ON BEING APPOINTED OF COUNSEL TO THE FIRM



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Notice of Bar Commission Election



First, Second, Third, and Fourth Divisions

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

- One member from the First Division (Box Elder, Cache, and Rich Counties), and
- One member from the Second Division (Davis, Morgan, and Weber Counties), and
- Three members from the Third Division (Salt Lake, Summit, and Tooele Counties), and
- One member from the Fourth Division (Wasatch, Utah, Juab, and Millard Counties).

Bar Commissioners serve a three-year term. Terms will begin in July 2026.

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

Nominating petitions are available at <https://www.utahbar.org/bar-operations/election-information/>. Completed petitions must be submitted to Christy Abad (cabad@utahbar.org), Executive Assistant, no later than February 2, 2026, by 5:00 p.m.

2026 Spring Convention Awards

The Board of Bar Commissioners is seeking applications for three Bar awards to be given at the 2026 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession.



Please submit your nomination for a 2026 Spring Convention Award no later than Friday, January 19, 2026. Use the Award Form located at <https://www.utahbar.org/awards/> to propose your candidate in the following categories:

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

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

Notice of Petition for Reinstatement to the Utah State Bar

Pursuant to Rule 11-591(d), Utah Supreme Court Rules of Professional Practice, the Office of Professional Conduct hereby publishes notice that Hunt W. Garner has filed a Verified Petition for Reinstatement in *In re Hunt W. Garner*, Third Judicial District Court, Civil No. 180908924. Any individuals wishing to oppose or concur with the petition are requested to file a notice with the district court within twenty-eight days of the date of this publication.

2025 Fall Forum Awards Recipients

Congratulations to the following people who will be honored during the 2025 Utah State Bar Fall Forum!

Thomas R. Barton
James B. Lee Mentor Award

Wendy M. Brown
Charlotte L. Miller Mentor Award

F. Joseph Paldino
Paul T. Moxley Mentor Award

Julianne P. Blanch
Professionalism Award

**Chelsey Phelps and the Association of
Family and Conciliation Courts, Utah Chapter**
Distinguished Community Member

S. Brandon Owen
Special Service Award

Christine T. Greenwood, #8187
Michelle R. Daniels, #17403
OFFICE OF PROFESSIONAL CONDUCT
645 South 200 East
Salt Lake City, UT 84111
(801) 531-9110
opcfileing@opc.utah.gov

IN THE FOURTH JUDICIAL DISTRICT IN AND FOR UTAH COUNTY, STATE OF UTAH

In the Matter of the Discipline of A. Samuel Primavera, # 5413, Respondent.	SUMMONS Civil No. 250402490 Judge Kraig Powell Discovery Tier 2
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THE STATE OF UTAH TO: **A. Samuel Primavera**
1042 West Center St. D-108
Orem, UT 84057

You are hereby summoned and required to file an Answer in writing to the Complaint filed with the Clerk of the Fourth Judicial District Court at 137 N. Freedom Blvd, Suite 100, Provo, UT, 84601 and to serve upon Christine T. Greenwood, Chief Disciplinary Counsel, Office of Professional Conduct, a copy of said Answer within thirty (30) days after service of this Summons upon you. The complaint alleges that you violated the Utah Rules of Professional Conduct and seeks appropriate discipline as determined by the Court.

If you fail to Answer within the time fixed by this Summons, the Court may enter your default, deem the allegations admitted, and proceed to fix the time and judgment by default will be taken against you for any other relief demanded in said Complaint, a copy of which is on file with the Fourth Judicial District Court.

DATED October 9, 2025.
/s/ Christine T. Greenwood
Christine T. Greenwood
Chief Disciplinary Counsel
Office of Professional Conduct

Utah's Mock Trial Program Seeks Volunteer Judges and Coaches for 2026 Season

Whether you are an attorney, law student, or community member with an interest in education and the law, this is an excellent opportunity to make a meaningful impact on students across the state.

About Utah Mock Trial

Sponsored by Utah Law-Related Education, the Mock Trial program brings legal education to life for middle and high school students. Participants step into the roles of attorneys and witnesses, gaining real-world experience in critical thinking, teamwork, public speaking, and advocacy. With your guidance, students engage in a dynamic, hands-on legal experience that inspires future leaders.

Key Details

- Each trial lasts approximately 2.5 hours
- Volunteers must be eighteen or older
- We will need approximately 120 judges per day for the following all-day competitions:

Saturday, January 31 – trials at 9:30 a.m. and 2:30 p.m.
Saturday, February 7 – trials at 9:30 a.m. and 2:30 p.m.
Saturday, February 21 – trials at 9:30 a.m. and 1:30 p.m.

Additional trials will take place throughout the season. Please see the full Calendar of Events for details.

MCLE Credit

Judges and attorney coaches may be eligible for MCLE credit. Please see program details for more information.

Ready to Get Involved?

Scan the QR code and join us in supporting Utah students while strengthening the future of our legal community.



Governor Cox Appoints Judge John Nielsen to the Utah Supreme Court

Governor Spencer J. Cox announced the appointment of Judge John Nielsen to serve as the next justice of the Utah Supreme Court, filling the vacancy created by the pending retirement of Justice John A. Pearce. Justice Pearce's last day on the court is December 1.

After extensive interviews and a review of written work and case records, the governor selected Judge Nielsen, a respected expert in appellate and constitutional law with experience as an Assistant Solicitor General, service as a judge on Utah's Third District Court, and roles teaching appellate practice at Brigham Young University and the University of Utah law schools.

"Utah's Constitution established a merit-based system that puts qualifications, character, and independence above politics," Governor Cox said. "After a rigorous review, Judge Nielsen stood out for his legal reasoning, clarity, and deep respect for the proper role of the judiciary. I am confident he will apply the law faithfully and serve the people of Utah with integrity and humility."

"I am deeply humbled and beyond honored to be nominated for the Utah Supreme Court," Judge Nielsen said. "I have great respect for the court as an institution and for each justice. Should I be confirmed, I would relish working with them and serving the people of Utah. I love our state and our judicial branch, and I am grateful for the prospect of serving in this new role."

Under the Utah Constitution, the appointment now goes to the Utah Senate for consent. The Senate Judicial Confirmation Committee will review Judge Nielsen's record and hold a confirmation hearing prior to a vote of the full Senate.



I N M E M O R I A M

The January/February 2026 issue of the *Utah Bar Journal* will include an in memoriam list of Utah legal professionals who passed away during 2025. If you are aware of any current or former members of the Utah State Bar, including paralegals and judges, whose deaths occurred during 2025, please let us know. Email their name(s) and, if possible, a link to their obituary to: BarJournal@utahbar.org.

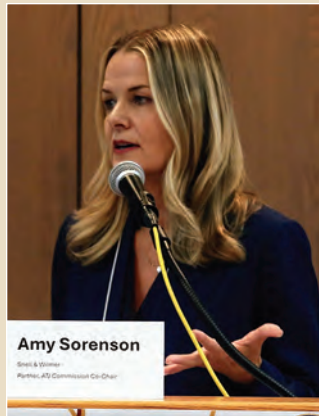
To be included in the list, names must be received by December 12, 2025.



Building Connection in Times of Challenge: Reflections from the 7th Annual Access to Justice Summit

On October 3rd, more than 100 advocates, attorneys, community leaders, and service providers gathered at the Utah Law & Justice Center for the **7th Annual Access to Justice Summit**. Hosted by the Utah State Bar Access to Justice Office, the summit was an opportunity to reflect, connect, and recommit to the shared mission of expanding access to justice across our state.

Amy Sorenson, partner at Snell & Wilmer and Co-Chair of the Access to Justice Commission, opened the day with a keynote that supported the summit theme: *“Moving Forward Together: Connection, Strength, Impact.”* She drew from her own experiences as well as lessons from disaster response, reminding participants that even in times of uncertainty and loss, there is hope, and there is purpose.



Sorenson began her remarks with an insight she had written down from a recent lecture based on the quote from Professor Rosabeth Moss Kanter: *“The most radical thing you can do is introduce people to one another.”* That single line, she said, perfectly captured the spirit of the summit. The event exists to create connections between legal aid providers, law firms, community organizations, and the individuals and families who rely on them.

“That’s why we’re here,” she said. “Connection, strength, and impact. That’s what today is about.”

Sorenson also acknowledged the difficult realities facing the access to justice community this year:

- Government funding cuts are threatening essential programs and staffing.
- Increasing client needs outpace available resources.
- New barriers – particularly in immigration – make it harder for vulnerable individuals to seek support.

“These challenges can feel overwhelming,” Sorenson noted. “They can even pose an existential threat to some organizations. But we can’t stand back and admire the problem. We have no choice but to find the courage to move forward, even when forward means change, and change always brings loss.”

To illustrate resilience in the face of loss, Sorenson shared one of her earliest pro bono experiences: the aftermath of Hurricane Katrina in 2005.

Utah became a resettlement location for hundreds of evacuees from New Orleans. When planes landed at Camp Williams, evacuees were met by nearly 900 Utah volunteers, more volunteers than evacuees themselves. Volunteers helped families find housing, file insurance claims, locate lost pets, and reconnect with relatives.

“It was law, it was social work, but mostly, it was just helping,” Sorenson reflected.

She reminded the audience that in times of disaster, human instinct is not selfish but generous. Studies of disaster response consistently show that people are wired for meaning and purpose – and crises awaken those instincts.

In New Orleans, locals formed what became known as the “Cajun Navy,” taking fishing boats and skiffs into floodwaters to rescue strangers stranded on rooftops.

“Any one boat couldn’t rescue everyone,” Sorenson said. “But rescuing someone was enough. The impact of helping one person was worth the risk.”

Moving Forward with Purpose

Sorenson’s message set the tone for a day of courage, purpose, and forward-looking innovation. She closed by urging participants to embrace that same instinct for purpose and connection in the work of access to justice.

“We’d rather move forward together than stay safe at home or admire the problem from afar,” she said. “We are wired to live lives of meaning and purpose, and even in times of change and loss, that instinct is what will carry us forward.”

One of the most compelling moments of the summit was the Plenary Courts Panel, moderated by **Maryt Fredrickson** of the Utah Supreme Court. Panelists included:

- **Judge Richard Mrazik**, Third District Court Judge
- **Jonathan Puente**, Director of the Office of Fairness and Accountability
- **Janine Liebert**, Director of the Utah State Courts Self-Help Center

This thoughtful discussion tackled the real obstacles that people face when navigating the courts, including confusing processes, lack of resources, and systemic barriers. The panelists emphasized that fairness is rooted in the simple but powerful principle of allowing people to be heard. From expanding self-help resources to embedding fairness and accountability into court systems, the panel offered solutions grounded in accessibility and dignity.

One of the most anticipated highlights of the summit is the **1-Minute Blitz**, where organizations take the stage to deliver a sixty-second elevator pitch in the most creative way they can dream up. The energy in the room was electric as participants pulled out all the stops with short skits, dances, sing-alongs, and heartfelt speeches that never fail to earn cheers and applause.

The stakes are high, with the audience voting for their favorites to receive \$1,000 grants. This year, two nonprofits earned grants by winning over the audience, and in a fun twist, one additional organization was awarded a grant through a random drawing from the nineteen participants, ensuring that the blitz not only brought laughter and connection but also direct support to the vital work of those serving Utah communities.

WINNERS:

- **1st Place – No More A Stranger Foundation**
- **2nd Place – Timpanogos Legal Center**
- **Random Drawing – Elevate Utah**

In the afternoon, participants engaged in three breakout sessions led by subject-matter experts:

AI & Tools for Expanding Access to Justice

With insights from **Ransom Wydner** (SixFifty Technologies), **Nick Hafen** (BYU Law), **Ian Christensen** and **Spencer Twede** (Utah State Bar IT), and **Teisha Bunn** (Utah Legal Services), this workshop demonstrated how technology can be leveraged to make legal services more efficient and user-friendly.

Exploring New Models for Legal Access

Experts like **Emmie Gardner** (Holy Cross Ministries), **Cody Egan** (Ogden-Weber Community Action Partnership), and **Devin Shakespear** (Kane County Attorney's Office) shared innovative approaches to community-based justice work, highlighting the growing role of non-lawyer advocates in expanding service capacity.

Expanding Access to Rural Communities

Judge Samuel Chiara (Utah District Court), **Abram Sherrod** (Office of Fairness and Accountability), and **Susan Griffith** (Timpanogos Legal Center) offered realistic models for reaching people outside urban centers, underscoring that equitable justice requires creative, place-based solutions.

Megan Connelly, Director of the Access to Justice Office, recognized the shared commitment of all attendees and honored the speakers for their leadership in pushing forward meaningful change. She was followed by summit planning members, **Brooke Robinson** and **Bonnie Rivera**, honoring **Susan Griffith** with the **Professional Legal Services Impact Award**. Griffith received recognition for her career advancing family law education and expand access to justice for vulnerable communities. With more than thirty years of experience addressing family law and domestic violence issues, she has served as managing attorney of the Provo Office of Utah Legal Services, an assistant attorney general in child protection, and currently as the executive director of **Timpanogos Legal**



Center, where she oversees three clinics that provide vital legal support to low-income clients.

The day-long summit concluded following the recognition and award presentation and served as a powerful reminder that the path to justice is built on collaboration, courage, and the simple but radical act of connecting people. As Sorenson put it: *“One person at a time. One connection at a time. That’s enough, and it’s how we move forward.”*

Special thanks to sponsors:

Snell & Wilmer – Presenting & Lunch

Coil Law – Presenting & Keynote

Kirkland & Ellis – Free Legal Clinic

Parr Brown Gee & Loveless – 1-Minute Blitz

Utah Bar Foundation – Headshots and travel stipends

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

Chris Ault
Alyssa Beard
Amanda Beers
Kacie Bitzenburg
Sarah Box
Marco Brown
Bradley Carr
Brent Chipman
Heather Comeau Rupp
Kent Cottam
Kristie Cowman
Hayli Dickey
Rebecca Dustin
Orion Foxx
Kaitlyn Gibbs
Ryan Gregerson
Laurel Hanks
Laura Hansen
Colby Harmon
Brittany Harris
Ashley Harrison
Chelsea Hoffman
Jim Hunnicutt
Jennifer Johnson
Keith Johnson
Gabrielle Jones
Karrie Ketchum
Robin Kirkham
John Kunkler
Mark LaRocco
Erica Lewis
Joanie Low
Rachel Low
Charidan Maltby
Christopher Martinez
Sydney Mateus
Bryant McConkie
Amber McFee
Susan Morandy
Laura Nelson
Mark Nelson
Cami Newey
Ally Paschal
Jordyn Price
Stewart Ralphs
Clay Randle
Kimberly Read
Rebecca Ross
Alison Satterlee
Nick Schwarz
Linda Smith

Emily Smoak
Leslie Staples
Chad Steur
Virginia Sudbury
Sheri Throop
Christopher Topham
Sade Turner

Family Justice Center

Elle Anderson
Jon Chalmers
Daimion Davis
Amberlee Dredge
Karissa Gillespie
Michael Harrison
Brynn Hiatt
Christopher Hill
Topher Hill
Megan Hofstetter
Brooklyn Jensen
Steve Johnson
Timothy Kelleher
Zoe Martinis
Matthew McNairy
Samuel McVey
Hilderlgarldis Minja
Victor Moxley
Mariah Nuttall
Madelyn Poston
Lois Salas Mora
Thomas Scribner
Lauren Warner
Susan Watts
Jo Young
Krista Zollinger

Private Guardian ad Litem

Amanda Bloxham
Jeffrey Ladd Johnson

Pro Bono Initiative

Alessandra Amato
Noah Barnes
Amanda Bloxham
Alexander Chang
Nick Conte
Lauren Cormany
Daniel Crook
McKaela Dangerfield
Rebecca Dustin
Elizabeth Farrell
Michael Farrell
Ana Flores

Lauren Harvey
Samantha Hawe
Ezzy Khaosanga
Kenneth McCabe
Andy Miller
John Morrison
Michael Packham
Anna Paseman
Abigail Philips
Cameron Platt
Clayton Preece
Kayla Quam
Stewart Ralphs
Lauren Scholnick
Ethan Smith
Jake Smith
J. Craig Smith
Richard Snow
Andrew Somers
Anthony Tenney
AJ Torres
Sade Turner
Nicholle Pitt White
Leilani Whitmer
Mark Williams
Oliver Wood

Talk to a Lawyer Legal Clinic

Rebekah-Anne Duncan
Adrienne Ence
Joshua Gasper
Chantelle Petersen
Lewis Reece
Greg Walker

Timpanogos Legal Center

Jenny Arganbright
Steven Averett
Amirali Barker
Bryan Baron
Lindsey K. Brandt
Nathan Buttars
Sophia Chima
Seth Christensen
Dave Duncan
Keil Meyers
Maureen Minson
Lois Salas Mora
Reed Rasband
Alisen Setoki

Utah Bar's Virtual Legal Clinic

Mike Black
Adam Clark
Kimberly Coleman
Yuchen Cook
Matthew Earl
Jonathan Ence
Tyson Horrocks
Gabrielle Jones
Travis Marker
Jacob Ong
Steven Park
Clifford Parkinson
Stanford Purser
Chris Sanders
Karthik Sonty
Christian Vanderhooff
Alex Vandiver
Kregg Wallace
Chad West

Utah Legal Services Pro Bono Case

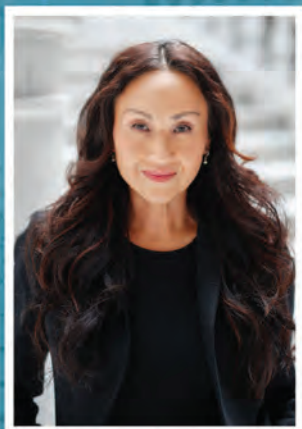
Jessika Allsop
Teisha Bun
Cleve Burns
Chris Burt
Izzy Carranza
Jeremy Eveland
Viviana Gonzalez
John Greenfield
Jasmine Harouny
Anna King
Rz Lai
James Lavelle
Joseph Lawrence
William Morrison
Ryan Simpson
Linda Smith
Ted Stokes
Stephen Surman
David Todd
Cristi Trusler
Annie Yi

Utah Dispute Resolution

Paul Waldron
Jesse West
Malisa Whiting
Amy Williamson



2025-2026 Utah State Board of Bar Commissioners



Kim Cordova
President

^{*}Ex-Officio (non-voting) member
^{**}Public Members are approved by the
Utah Supreme Court and voting members.



Tyler Young
*President-Elect &
4th Division*



Brett J. Chambers
1st Division



Yvette Donosso
2nd Division



Miriam Allred
3rd Division



Christian Clinger
3rd Division



Mark Morris
3rd Division



Chrystal Mancuso-Smith
3rd Division



Jess Couser
3rd Division



Esabelle Khaosanga
3rd Division



Olivia Shaughnessy
3rd Division



Tom Bayles
5th Division



Rick Hoffman
*Public Member***



Shawn Newell
*Public Member***



Cara Tangaro
*Immediate
Past-President**



Erik Christiansen
*ABA Delegate**



Tiffany Shimada
*ABA Delegate**



Nathan Alder
*ABA Member
Representative**



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Representative**



Jessica Ramirez
*Minority Bar
Representative**



Alex Vandiver
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Representative**



Nicole Johnston
*Young Lawyers Division
ABA Delegate**



Eli McCann
*LGBTQ & Allied Lawyers
Representative**



Holly Nelson
*Women Lawyers
Representative**



Katie Woods
*Judicial Council
Representative**



Nick Stiles
*Utah Courts
Representative**



Elizabeth Kronk Warner
*Dean S.J. Quinney
College of Law**



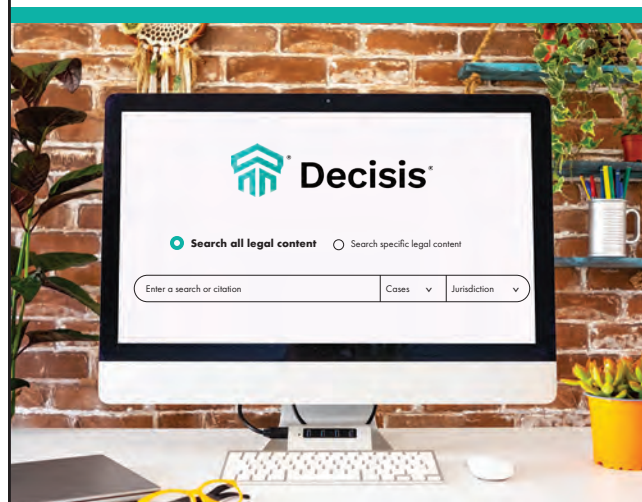
David Moore
*Dean J. Reuben Clark
College of Law**

Utah State Bar Board of Bar Commissioners Summary of Actions Taken

August 22, 2025

1. Voted to appoint Nicole Johnston to serve at the YLD ABA Delegate.
2. Voted to appoint 2025-2026 Bar committee chairs.
3. Voted to purchase a table for the October 3, 2025 Legal Aid Society Gala.
4. By consent approved the June 13, 2025 Commission meeting minutes.
5. By consent approved the 2025–2026 Bar committee charges.
6. By email vote conducted September 9, 2025, voted to appoint Yvette Donosso to replace Matt Hansen as the Second District Bar Commissioner.

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ATTORNEY**



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LOOKIN' FOR**

- 2+ YEARS OF FAMILY
LAW EXPERIENCE
- STRONG LITIGATOR
- GOOD WRITER
- SENSE OF HUMOR



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Lawyer Discipline and Disability

Visit opcutah.org for information about the Office of Professional Conduct, the disciplinary system, links to court rules governing attorneys and licensed paralegal practitioners in Utah, and the forms necessary for filing a complaint with the OPC, obtaining your discipline history records, or requesting an OPC attorney presenter at your next CLE event. **Contact us – Phone: 801-531-9110 | Email: opc@opcutah.org**

The disciplinary report summaries below are provided to fulfill the OPC's obligations to provide guidance concerning professional conduct and disseminate disciplinary results under Rule 11-521(a)(11) of the Supreme Court Rules of Professional Practice. The summaries are not intended as complete recitations of the facts or procedure in the cases, nor are the summaries intended for use in other proceedings.

ADMONITION

On August 18, 2025, the chair of the Utah Supreme Court's Ethics and Discipline Committee entered an Order of Admonition against a lawyer for violation of Rule 1.8(a) (Conflict of Interest: Current Clients) of the Utah Rules of Professional Conduct.

In summary:

A lawyer represented a long-time family friend in a variety of business matters over the course of five years. During this time, the lawyer entered into an agreement with the client whereby the lawyer would provide legal services in exchange for a percentage of the proceeds of the sale or other disposition of real property owned by the client, which was valued at several million dollars. At the time the lawyer and client entered into this agreement, the client's health and memory were declining. The agreement constituted a business transaction between the lawyer and the client; however, in violation of Rule 1.8(a), the lawyer did not advise the client in writing to seek independent legal counsel regarding the agreement or obtain informed written consent from the client to the terms of the transaction. The lawyer never received the compensation contemplated under the agreement.

Mitigating circumstances:

No prior record of discipline; lack of dishonest or selfish motive; the substantial amount of work required by the lawyer might have resulted in the fee being reasonable; timely rectification of the problem; and excellent reputation in the legal community.

ADMONITION

On September 27, 2025, the chair of the Utah Supreme Court's Ethics and Discipline Committee entered an Order of Admonition against a lawyer for violations of Rule 1.3 (Diligence) and Rule 1.4(a) (Communication) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between the lawyer and the Office of Professional Conduct (OPC).

In summary:

A client hired the lawyer in October 2022 to resolve a traffic infraction. On November 11, 2022, the client signed and the lawyer filed a Plea in Abeyance Agreement. The court declined to sign the order accepting the plea agreement, noting in the docket that "Number 12 needs a sub[paragraph] C [requiring] Defendant to return a current certified copy of driving record at end of probation." The lawyer then filed a Corrected Plea in Abeyance Agreement, which added the provision referenced by the court. However, the plea agreement and proposed order were for a different case involving a different client. On the following day, the lawyer filed another Corrected Plea in Abeyance Agreement, this time indicating the correct case and client, and including the provision required by the court. The lawyer, however, did not inform the client of the additional term in the agreement, nor did the lawyer obtain the client's permission to sign the corrected agreement.



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.

801-257-5518 | DisciplineInfo@UtahBar.org

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Because the client was unaware of the provision added to the plea agreement requiring the submission of a current driving record, the court deemed the client to be out of compliance with the terms of the agreement, which meant the infraction remained on the client's record. To correct this problem, the lawyer had to file a motion explaining the error and providing the client's current driving record.

PUBLIC REPRIMAND

On September 24, 2025, the Honorable Christine Johnson, Fourth Judicial District Court, entered an Order of Public Reprimand against Matthew C. Brimley for violations of Rule 3.3(a) (Candor Toward Tribunal), Rule 8.1(b) (Bar Admission and Disciplinary Matters) and Rule 8.4(d) (Misconduct) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Brimley and the Office of Professional Conduct.

In summary:

The facts underlying the violations of Rules 3.3(a) and 8.4(d) are as follows.

On February 2, 2023, Mr. Brimley filed a Plea in Abeyance Agreement on behalf of his client in a criminal case (Case I). Mr. Brimley affixed the signature of the prosecutor, indicating that the prosecutor, Mr. Wood, had approved the terms of the agreement. The prosecutor called Mr. Brimley and told him that he had not given Mr. Brimley permission to affix his signature and that the document did not accurately state the terms of the agreement. Mr. Brimley then filed a Corrected Plea in Abeyance Agreement, again affixing the prosecutor's electronic signature without his express approval.

On July 13, 2023, Mr. Brimley filed a Plea in Abeyance Agreement on behalf of a client in another case (Case II). Mr. Brimley affixed the prosecutor's electronic signature without receiving authorization to do so. The prosecutor in Case I sent Mr. Brimley an email regarding both Case I and Case II, stating that Mr. Brimley did not have permission to sign and file documents in the Washington City Justice Court without express approval.

In 2024, Mr. Brimley sent an email to a prosecutor regarding proposed plea agreements in two other cases involving two clients represented by Mr. Brimley. The prosecutor forwarded the email to the prosecutor in Case I. The first prosecutor emailed Mr. Brimley indicating that he could not agree with Mr. Brimley's plea proposal and made a counterproposal. Mr. Brimley stated that he understood and that he would get his clients' signatures and, "with your permission, I'll attach our

e-signatures to the revised plea agreements and file them with the court." On that same day, Mr. Brimley filed the plea agreements with electronic signatures, again without the prosecutor's permission.

Mr. Brimley's violation of Rule 8.1(b) was based on his failure to respond to the OPC's Notice of rule violations dated January 27, 2025, and his failure to appear at a hearing before a screening panel of the Ethics and Discipline Committee on June 5, 2025.

STAYED SUSPENSION/PROBATION

On July 16, 2025, the Honorable Linda Jones, Third Judicial District Court, entered an Order of Discipline: Stayed Suspension/Probation against Amy N. Fowler, issuing a stayed one-year suspension and placing her on probation for one year for violating Rule 8.4(b) (Misconduct) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between the lawyer and the Office of Professional Conduct (OPC).

In summary:

On the morning of May 3, 2023, Ms. Fowler was driving from Salt Lake County to appear at a court hearing in Sanpete County when a Utah Highway Patrol officer stopped her in Utah County. Because Ms. Fowler's blood-alcohol level tested above the statutory limit, the officer took her into custody and cited her for driving under the influence (DUI). Ms. Fowler was unable to attend the court hearing to which she was travelling. However, she mitigated the situation by informing her client and the judge of her inability to attend. The judge continued the hearing and gave the client the option to obtain new counsel, which option the client declined. Ms. Fowler's arrest and the resulting postponement of her client's hearing on May 3, 2023, did not negatively impact her client. Ms. Fowler later resolved her client's case.

On May 5, 2023, Ms. Fowler self-reported her DUI citation to the OPC, well before her obligation to do so under Rule 11-564 of the Utah Supreme Court Rules of Professional Practice. On May 6, 2023, Ms. Fowler was charged with a Class B misdemeanor, first offense in ten years, for DUI. On January 3, 2024, Ms. Fowler pleaded guilty to Impaired Driving, a Class B misdemeanor. The court sentenced her to 180 days in jail (suspended), twelve months' probation, and a fine of \$1,420.00.

Mitigating circumstances:

Absence of a prior record of discipline; absence of a dishonest or selfish motive; timely, good-faith effort to make restitution or rectify the consequences of her misconduct; free and full disclosure to her client and the court of her misconduct before it was

publicized; cooperation with the discipline proceedings; good character/reputation; the presence of substance abuse that causally contributed to her misconduct, and remorse.

STAYED SUSPENSION/PROBATION

On August 28, 2025, the Honorable Robert Faust, Third Judicial District Court, entered an Order of Discipline: Suspension Stayed with Probation placing Spencer D. Brown on a three-year probation with conditions in place of a three-year suspension for violating Rule 8.4(b) (Misconduct) of the Utah Rules of Professional Conduct. The order was based upon a Discipline by Consent and Settlement Agreement between Mr. Brown and the Office of Professional Conduct.

In summary:

On July 3, 2024, an Information was filed in the Third District Court in and for the County of Salt Lake, State of Utah, against Spencer Daniel Brown in the matter of *The State of Utah v. Spencer Daniel Brown*. In pertinent part, Mr. Brown was charged with two Third-Degree Felonies and a Class B Misdemeanor. On May 6, 2025, Mr. Brown accepted a plea in abeyance and pleaded guilty to Count 1: Aggravated Assault, a

Third-Degree Felony. The other two counts were dismissed. The plea was to be held in abeyance with probation for thirty-six months. As part of the probation terms, Mr. Brown is required to undergo domestic violence and substance abuse evaluations and comply with all terms associated with those evaluations.

DELICENSURE

On July 21, 2025, the Honorable Keith Kelly, Third Judicial District Court, entered an Order of Discipline: Delicensure/Disbarment against Aaron Tarin for violating Rule 8.4(b) (Misconduct) of the Utah Rules of Professional Conduct.

In summary:

Mr. Tarin's violation of Rule 8.4(b) was based upon his pleas of guilty or no contest to the following criminal offenses: Aggravated Assault, a Third-Degree Felony; Sexual Battery, a Class A Misdemeanor; Stalking (Domestic Violence), a Third-Degree Felony; and Criminal Mischief, a Class A Misdemeanor.

Aggravating circumstances:

Dishonest or selfish motive; pattern of misconduct and multiple offenses; vulnerability of victims; substantial experience in the



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practice of law; lack of good faith effort to make restitution or rectify the consequences of the misconduct; and engaging in illegal conduct.

Mitigating circumstances:

Lack of prior discipline.

DELICENSURE

On August 28, 2025, the Honorable Eric Gentry, Fifth Judicial District Court, entered an Order of Discipline: Delicensure/Disbarment against Nicholas I. Chamberlain for violating the terms of his previous order of suspension.

In summary:

On July 9, 2024, the district court entered an order suspending Mr. Chamberlain for one-year effective September 7, 2024. The suspension was based on Mr. Chamberlain's violations of the following Utah Rules of Professional Conduct: (1) Rules 1.3 and 1.4(a), by failing to fulfill the objective for which he was hired and delaying a client's case for over two years, causing the client harm; (2) Rule 8.4(c), by knowingly deceiving his client; and (3) Rule 8.4(d), by intentionally conditioning his payment of a refund to his client on her agreement not to report his conduct to the "Bar."

The suspension order required Mr. Chamberlain to comply with Rule 11-570 of the Supreme Court Rules of Professional Practice, which requires a suspended lawyer to notify clients of the suspension within twenty-one days of the entry of the order.

Following his suspension, eleven of Mr. Chamberlain's clients filed complaints with the Office of Professional Conduct (OPC). Because the complainants either did not know or had found out from the court that Mr. Chamberlain had been suspended, the complaints showed that Mr. Chamberlain had not complied with Rule 11-570. Some or all of the complainants had also paid Mr. Chamberlain for services he did not provide.

The OPC filed a motion to enforce the suspension order, asking the court to hold Mr. Chamberlain in contempt for his failure to comply. The court granted the motion and found that Mr. Chamberlain intentionally or knowingly violated the terms of a prior disciplinary order and that such violation caused injury to the profession, his clients, and the legal system. The court further concluded that Mr. Chamberlain's violation of his suspension order seriously reflected adversely on his fitness to practice law. The court found no mitigating circumstances and found that Mr. Chamberlain's lack of participation was an aggravating factor. Based on these findings, the court entered an order of delicensure against Mr. Chamberlain.

UMBA Introduces Executive Board and Announces the 2025 Scholarship & Awards Banquet

The Utah Minority Bar Association (UMBA) is pleased to introduce their Executive Board for 2025–2026.

Aline Longstaff, who will serve as UMBA President, is an attorney in the Litigation, Investigations, and Trials Practice Group at Snell & Wilmer. **Wayne Latu**, President-Elect, is a Litigation Associate at Quinn Emanuel. **Jessica Ramirez** is UMBA's Immediate Past President and is a Litigation Attorney at the Salt Lake City office of Kirkland & Ellis LLP. **Amaris Leiataua**, UMBA Secretary, is an attorney at Holland & Hart. **Nichole Briceño**, an attorney at Ray Quinney & Nebeker, will serve as Treasurer.



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