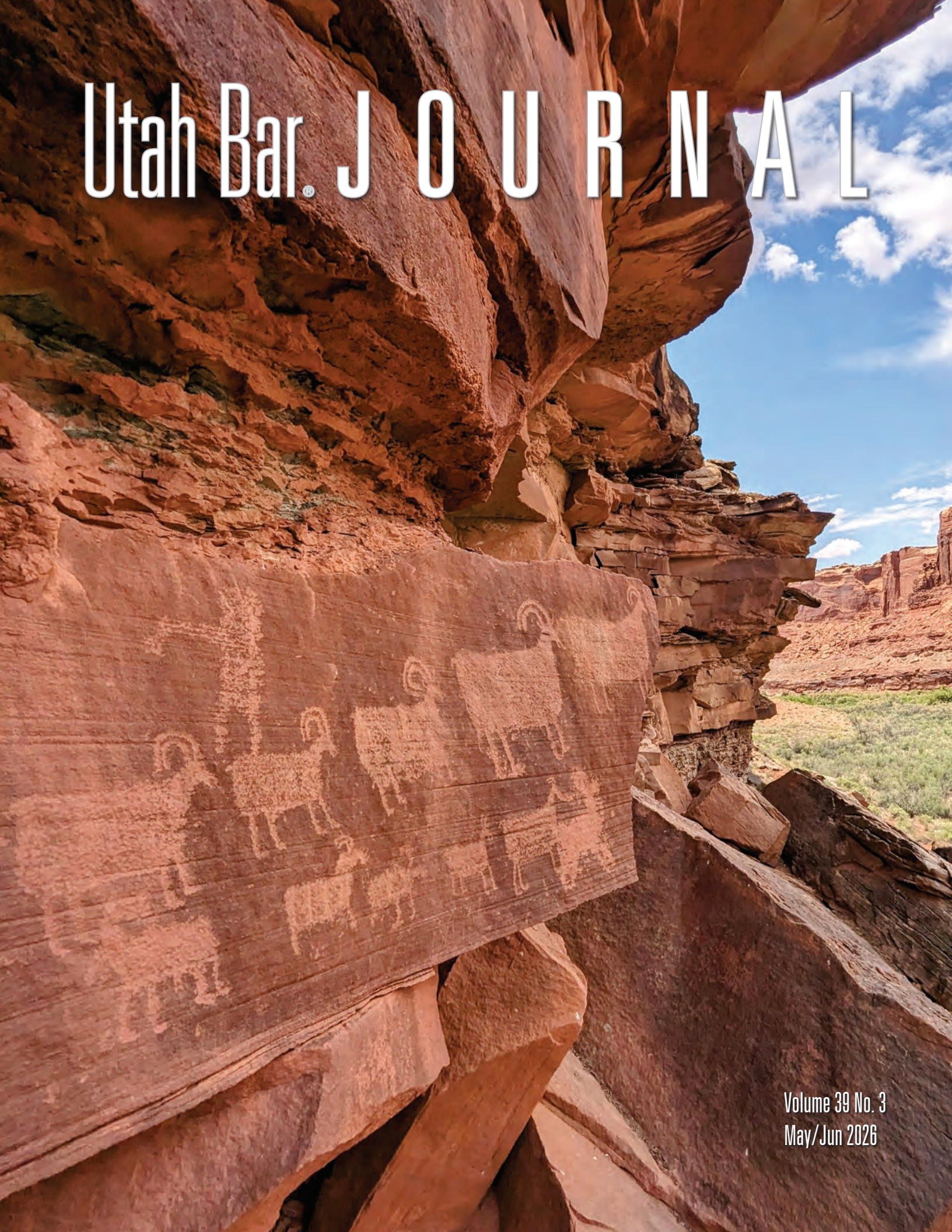


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May/June 2026



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*The lawyers of the Utah State Bar serve the public and legal profession with excellence, civility, and integrity.
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Cover Photo

Labyrinth Canyon Petroglyphs by Utah State Bar licensee Josiah Griffin.

JOSIAH GRIFFIN is a Lieutenant Colonel in the U.S. Army Judge Advocate General's Corps. He currently serves as the Executive Officer for the U.S. Army Europe and Africa Office of the Judge Advocate in Wiesbaden, Germany. Throughout his military career, Josiah has balanced his legal service with a passion for exploring Utah's rugged landscapes.

Asked how he came to take his cover photo, Josiah said, "Captured in the heart of Labyrinth Canyon during a family paddling trip down the Green River, this image highlights the intersection of Utah's ancient history and its wild river corridors. In June 2024, fueled by significant winter runoff, we navigated high-volume flows from Ruby Ranch to Mineral Bottom. During a break from the water, just south of the iconic Bowknot Bend, a short hike up a side canyon revealed these remarkably preserved bighorn sheep petroglyphs – a poignant reminder of those who traveled these canyons centuries before us. Note: When visiting rock art sites, please practice "Leave No Trace" principles to preserve these cultural treasures."



HOW TO SUBMIT A POTENTIAL COVER PHOTO

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

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

GUIDELINES FOR SUBMITTING ARTICLES TO THE UTAH BAR JOURNAL

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

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

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

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

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

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

NEUTRAL LANGUAGE: Modern legal writing has embraced neutral

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

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

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

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

LETTER SUBMISSION GUIDELINES

1. Letters should pertain to recent articles, columns, or another published letter.
2. 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.
3. Letters shall not exceed 500 words in length.
4. No one person shall have more than one letter to the editor published every six months.
5. 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.
6. 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.
7. 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.
8. 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.
9. If and when a letter is rejected, the author will be promptly notified.

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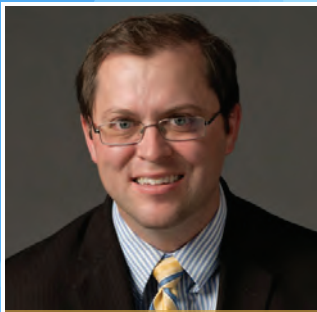
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\$5M: Birth Injury

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Taking Care of Ourselves So We Can Take Care of Everyone Else

by Kim Cordova

“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.”

— Utah R. Pro. Conduct 1.1 cmt. 9 (effective May 17, 2023).

There is a question I have been asking myself throughout this year of service as your Bar President, and I suspect many of you ask it too, though perhaps not often enough: Am I okay? Not in the reflexive, brushing-it-off sense that we have been conditioned to respond with “I am good, thanks, busy as ever” but in the honest, searching way that the question deserves. Am I truly well? Am I caring for myself the way I care for my clients, my colleagues, my family?

The practice of law is a calling as much as a profession. We entered this work because we believed in something: in justice, in advocacy, in the power of the rule of law to protect and empower people. That conviction still animates so many of us. But somewhere along the way, for a great many Utah lawyers, that calling has become indistinguishable from a grinding, relentless weight. The demands are real. The stakes are high. The culture of our profession has long prized endurance, stoicism, and productivity above nearly everything else. And that culture, however unintentionally, can cost us dearly.

I am writing this message because I believe we should always be mindful of some realities. As your Bar President, I want to speak plainly about where we are, what our rules now require of us in terms of professional self-awareness, and what the Utah State Bar is doing to support each of you on the path toward genuine and lasting well-being.

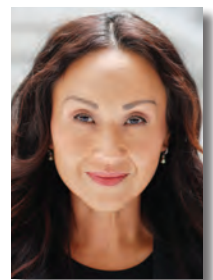
The data about lawyer well-being is alarming. Studies consistently show that lawyers experience depression, anxiety, and substance use disorders at rates significantly higher than the general population and higher than most other professions. A landmark study by the Hazelden Betty Ford Foundation and the American Bar Association

(ABA) found that nearly 29% of practicing lawyers in their first ten years of practice qualify as problem drinkers and that rates of anxiety, depression, and other mental health conditions are substantially elevated compared to the public at large. Law students enter their training already showing elevated distress, and the problem often compounds over the course of a career rather than resolving. Patrick Krill, Ryan Johnson, & Linda Albert, *The Prevalance of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. OF ADDICTION MED. 46–52, (2016).

Utah is not immune to these trends. Our Bar’s own Lawyers Helping Lawyers peer-to-peer support program sees firsthand the toll that unchecked stress, isolation, burnout, and mental health struggles take on members of our profession. Our colleagues are suffering, and far too often they suffer in silence, afraid that asking for help will signal weakness, invite professional consequences, or somehow diminish them in the eyes of clients and peers. The silence must end. And importantly, our rules now formally recognize that.

On May 17, 2023, the Utah Supreme Court took a significant and precedent-setting step by amending Utah Rule of Professional Conduct 1.1, which governs the foundational duty of competence. The court added comment 9, which directly and explicitly connects lawyer well-being to the standard of professional competence for the first time in our state’s rules.

Rule 1.1 itself has always required that a lawyer provide competent representation, which means “the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Utah R. Pro. Conduct 1.1. What comment 9 now adds is something critically important: the explicit recognition that a lawyer’s mental, emotional, and physical health are not separate from professional competence – they are **integral to it**. The comment states that lawyers should be aware their 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.” *Id.* cmt. 9.



This amendment is not punitive. It does not create new grounds for discipline against a lawyer who is struggling personally. Its purpose, as stated plainly in the rule-making record, is educational and supportive. It is intended to send a clear message to every Utah lawyer: your health matters, your well-being is not a luxury or a personal indulgence, and the rules of your profession formally recognize that taking care of yourself is part of taking care of your clients.

Utah was ahead of the national curve on this point. At the time of our amendment, the ABA had proposed but not yet adopted a similar comment. Our state took the bold step of moving forward, making well-being resources available through the Utah State Bar and planting a flag in our professional rules that says: we see you, and we take this seriously.

This amendment matters beyond its immediate text. It signals a cultural shift. When our rules of professionalism explicitly acknowledge the connection between personal well-being and client service, it gives permission, professional, formal permission, to talk about these issues openly. It tells the young associate grinding through a seventieth consecutive hour of document review that her exhaustion is not irrelevant to her professional obligations. It tells the sole practitioner in a rural Utah county who hasn't taken a day off in months that his depletion is not invisible to the profession. It tells all of us that the law is finally catching up to what many of us have quietly known for years.

When we talk about lawyer well-being, it is tempting to focus exclusively on mental health, and the mental health crisis in our profession is indeed urgent and deserving of focused attention. But the well-being conversation is actually broader and more holistic than that, and I want to take a moment to name its full

dimensions, because each of them matters.

Physical health is foundational. Many Utah lawyers work in conditions that are deeply hostile to physical health: sedentary hours at a desk, irregular meals, disrupted sleep, minimal exercise, and chronic physical tension from stress. The body keeps the score of our professional lives, and the score has been hard on many of us. Caring for our physical selves is not a vanity project; it is a professional obligation that directly affects the quality of our thinking, our judgment, and our endurance.

Emotional health is equally central. Lawyers routinely absorb the crises of others dealing with divorces, bankruptcies, criminal charges, injuries, grief, and conflict, and we are not trained adequately to process what we absorb. The phenomenon of secondary trauma is real and underrecognized in our profession. We develop calluses in the name of professionalism, and those calluses can calcify into cynicism, disconnection, and emotional numbness that harms our relationships both inside and outside the office.

Intellectual engagement is part of well-being too. Lawyers are, by and large, intellectually ambitious people who entered this work because they love ideas, problems, and the challenge of advocacy. When the practice of law becomes purely transactional, when we lose touch with what drew us to this work in the first place, something important dies. Cultivating intellectual engagement through pro bono work, continuing education, mentorship, Bar activities, or simply carving out time to think deeply about a case is not a luxury. It is part of thriving.

Relational and social well-being may be the most underappreciated dimension of all. Lawyers frequently report profound isolation, even those who work in large firms surrounded by colleagues. The competitive culture of law, the confidentiality constraints of our work, and the grinding pressure of billable hours all conspire to create walls between us. Many lawyers count very few true friends in the profession. And yet the research on human well-being is unambiguous: connection, belonging, and meaningful relationships are among the most powerful predictors of life satisfaction and resilience. We cannot afford to treat our professional relationships as purely transactional.

Finally, there is a spiritual or values-based dimension to well-being that deserves acknowledgment. Many of us entered this profession motivated by deep values such as justice, service, truth, and protection of the vulnerable. When our daily work feels misaligned with those values, the result is what researchers call "moral injury": a particular kind of suffering that comes not from acute trauma but from the chronic experience of acting in ways that feel inconsistent with who we believe ourselves to be. Reconnecting



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with purpose, with the why behind our work, is one of the most powerful antidotes to burnout.

The Utah State Bar has made significant investments in lawyer well-being, and I want to make sure every member knows what is available to you. These resources exist because you deserve support, not as a last resort when crisis strikes, but as ongoing tools for living and working well.

The Bar's Lawyers Helping Lawyers provides confidential assistance to lawyers and judges dealing with substance use issues, mental health challenges, stress, and other personal difficulties that can affect professional performance. Volunteers are lawyers who have themselves navigated these challenges and are trained to provide peer support, referrals, and guidance. The confidentiality protections surrounding this program are robust. Reaching out is not a disciplinary risk; it is an act of courage and wisdom.

Through the Bar's Thriving Practice initiative, members have access to well-being tools with Tava Health, which offer mental health support, coaching, and resources accessible from your phone or computer. These tools are available to Bar members and represent a genuine investment in making mental health support convenient and stigma-free. There is no reason not to explore it.

The Bar's Well-Being Committee for the Legal Profession has produced the "Living Well in Law" guide, created in collaboration with the Utah Community Builders. This is a practical, thoughtful resource designed for lawyers at every career stage, and I encourage you to download it from the Bar's website and spend time with it. Share it with colleagues. Use it as a starting point for conversations in your firm or workplace about what a culture of well-being might look like for your team.

The Bar also offers continuing legal education programming on well-being topics, and we are working to expand those offerings. Our annual convention and other Bar events increasingly incorporate well-being programming alongside traditional CLE content. And through mentorship programs and specialty bar organizations, there are meaningful opportunities for connection and community within the profession. Other resources include an ethics hotline, new lawyer training, and professional development.

Rules and resources matter, but culture is ultimately changed by people, by individual lawyers making different choices and setting different expectations. I want to close with a direct appeal to each of you, in whatever role you occupy in this profession.

If you are a managing partner or firm leader: the well-being of the lawyers in your organization is a leadership responsibility.



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The culture your firm models, whether it glorifies overwork or values sustainable practice, whether it treats associates as expendable or as whole human beings will determine whether talented lawyers stay or leave, whether they thrive or erode. The business case for well-being is strong. But more fundamentally, it is simply the right way to treat people. I invite you to audit your culture honestly and ask what needs to change.

If you are a supervising attorney or mentor: the lawyers you supervise and guide are watching how you handle stress, how you talk about your own needs, and whether you treat well-being as a serious professional matter or as a weakness. You have extraordinary influence. Use it to model healthy behavior, to check in genuinely with the people you supervise, and to create space for honest conversations about how people are doing.

If you are a solo practitioner or a lawyer in a smaller setting: isolation can be particularly acute for you, and the pressure to do everything yourself is relentless. I want to say directly to you: the Bar is here for you. Lawyers Helping Lawyers is here for you. And your fellow Bar members, in specialty bars, in mentorship programs, and in local and statewide Bar activities, are colleagues who understand what you are going through. Please do not go it entirely alone.

If you are a law student or early-career lawyer: you are entering a profession that has historically demanded enormous sacrifice and offered insufficient support. Things are genuinely changing, and you have the power to accelerate that change. Build sustainable habits now. Seek out mentors who model well-being, not just professional achievement. Use the resources available to you before crisis strikes. And know that admitting you are struggling is not a character flaw, it is a sign that you are paying attention.

For all of us, whatever our role: I ask you to take the question seriously that I posed at the beginning of this message. Am I okay? Not the reflexive answer, but the honest one. And if the honest answer is no, or “not really,” or “I’m not sure,” I want you to know that that answer is the beginning of something important, not the end of something shameful. The profession needs you at your best. Your clients need you at your best. The people who love you need you at your best. And you deserve to be at your best, not just professionally, but as a human being.

The amendment to Rule 1.1 that took effect on May 17, 2023 was a meaningful step. But it was just a step. The full journey – toward a legal profession in Utah that genuinely supports the well-being of its members, that treats mental health as a professional matter rather than a private embarrassment, and that measures success not just by billable hours and case outcomes but by the sustained flourishing of the people who practice law – that journey is one we are taking together, day by day.

I am honored to serve as your Bar President during this moment. I am committed to advancing the culture of well-being within our profession, and I am personally committed to practicing what I am preaching by asking myself honestly how I am doing, to using the resources available to me, and to modeling for others that leadership and vulnerability are not opposites.

Thank you for the privilege of serving you. Thank you for the extraordinary work you do, every day, on behalf of clients and communities across this state. And please: take care of yourselves. Your well-being is not separate from your professional excellence. It is the very foundation of it.

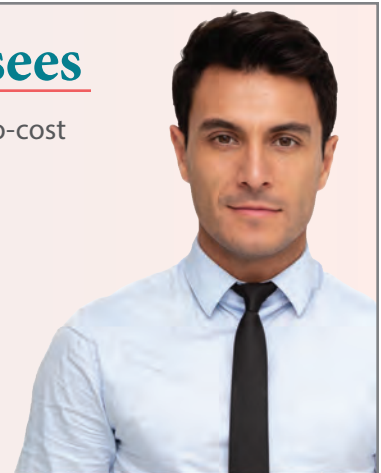
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Mentors Are All Around You

by Justice John J. Nielsen

Young lawyers are often preoccupied with finding good mentors – and no wonder. They understand that hard work and determination are not enough to be successful (however they define that); they need someone to show them the ropes, to encourage them, to open up opportunities for them. As a first-generation law student, I felt this need acutely, and spent more than my fair share of hours worrying and planning about how to find the most prominent and influential attorneys to help me.

[T]o those who feel unimportant, never underestimate the power of your example. People are watching your quiet dedication and learning from you every day.

I shouldn't have worried so much. Not because the need for mentorship was not real – it was – but because good mentors were not so scarce as I thought. I have been fortunate to have some wonderful mentors who also happened to be prominent attorneys, and they have certainly shaped me in important ways. But some of my most important mentors are people you seldom read about in the newspaper or see trending on LinkedIn. There are, of course, so many more than I write about here. But I want to talk about some of the most impactful. I use only first names where necessary to protect privacy.

My first-year writing professor was an adjunct professor named Lance Long. Every lecture from Lance had a generous helping of Simpsons quotes and jokes. I appreciated the more serious approach in my other classes too, but I always looked forward to legal writing because mixed in with all the humor were two

things that ended up changing the trajectory of my career. One, Lance gave me a solid foundation of advocacy principles. He helped me appreciate the power of a good fact statement, the nuances of which cases to cite, and how to answer tough hypothetical questions. His advice shaped my approach in ways that are still evident today. Second, his love of appeals was contagious; he couldn't talk about the appellate cases he'd done without getting excited – his eyes would widen a bit, the pitch and volume of his voice would go up, he would start talking faster, his hands started moving around for emphasis. Those principles and that passion convinced me to pursue an appellate career, without which I would not be where I am today.

When I was a law student clerk in a government office, my cubicle was next to a legal assistant named Michelle. Michelle worked in postconviction and habeas – the most complicated of criminal cases. We became friends, talking about basketball and movies. But as fun as Michelle was, I came to learn how amazing she was at her job as she successfully navigated the labyrinthine logistics of capital cases. She taught me how to be professional without taking myself or life too seriously. And when I left the office, she gave me some of the most important career advice I ever got. As I was getting ready to graduate and take my first real job in a county attorney's office as a prosecutor, Michelle took me aside for a minute. "John," she said, "you're a nice kid. As you go off and become some important attorney, please remember to be nice to your staff."

JUSTICE JOHN J. NIELSEN was appointed to the Utah Supreme Court in October 2025 by Governor Spencer J. Cox.



They do a lot and don't get thanked much. Don't be a jerk. Treat them respectfully and kindly and they will walk through fire for you." I took that advice to heart, and when I got assigned my first legal assistant, I made sure to learn her birthday, to thank her at every chance I got, and to ask about her life outside of work. Not only was it the right way to act as a person, but my assistant became my greatest help and advocate in that office. To the extent that I have followed Michelle's advice throughout my career, it has made my life more pleasant and my professional relationships more deep and satisfying.

As a young prosecutor, I was assigned to two judges' calendars along with a more senior attorney named Jason. Jason had a very different personality than I did – he was a surfer dude from California, an easygoing man of few words. He never seemed to get worked up about anything. At first I wondered a little whether he even cared about his cases. But after a few weeks I realized that I probably cared too much. Just being around him brought my blood pressure down. He taught me to let things go, to focus on the bigger picture, and to not take myself too seriously. His presence calmed me so much that when I was

getting ready to do my first felony jury trial against an attorney that aggravated me, I asked Jason to sit second chair. I told him that his job was to help me focus on what was really important and make sure that I didn't kill opposing counsel. He ably performed those duties. But more than that, he helped me find calm and peace in what is often a chaotic and stressful job.

Years later as a district court judge, I was assigned a legal assistant named Sadie. Sadie and I actually started on the same day. I had been an attorney for many years and had dealt with difficult clients, opposing counsel, and opposing parties before, but the sheer volume of those interactions increased exponentially as a judge. It can be tiring to not only deal with such people, but to keep your emotions in check. And I learned that I wasn't the only one with that issue, or even primarily the one with that issue – Sadie was on the front lines, taking phone calls and emails from all manner of difficult people, particularly angry pro se litigants. I would often hear one side (or maybe one and a half, depending on how worked up the caller was) of those conversations, and I was amazed at how Sadie calmly and respectfully made sure that all those people – who were often upset, sometimes entitled, and always emotional – felt heard and got what they really needed (which is not always the same as what they were asking for). Though sometimes frustrated, Sadie was unfailingly courteous. I was, and still am, a better judge to the extent I follow Sadie's example to me.

Again, this is a small sampling of my many mentors. But I hope that it gives you all a sense of how plentiful good mentors are. To the young attorneys and law students out there, it's fine to look for prominent attorneys and judges to help you. In my experience, they are almost universally willing to share their time, give you advice, and point you to others who can help. But in all your searching, don't overlook the mentors all around you – classmates, legal assistants, paralegals, co-workers – who will help you orient and navigate your career in ways you don't expect, but will find in hindsight you couldn't do without.

And to those who feel unimportant, never underestimate the power of your example. People are watching your quiet dedication and learning from you every day. My career would not have been nearly as fulfilling or successful without these often-overlooked people. And as I take on this new position with new challenges, I feel ready in large part because of them.



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Founded in 2005, Claggett & Sykes Trial Lawyers is a nationally recognized law firm representing personal injury victims harmed by negligence, medical malpractice, defective products, and abuse in group homes and residential treatment facilities, with offices in Las Vegas, Reno, New York City, and a Salt Lake City office opening this spring. The firm also specializes in appeals, mass torts, and class actions.

Claggett & Sykes Trial Lawyers recently achieved a landmark result in *Madsen v. Allied Building Products, et al* securing justice for its client through a record-breaking \$81 million jury award in Utah.

In addition to Sean Claggett, founding partner and lead trial

being honored with the 2017 Nevada Justice Association Trial Lawyer of the Year award, the attorneys at Claggett & Sykes have achieved the highest rating by their peers with a Martindale-Hubbell AV rating. Claggett has also received the Alumni Legacy award from the UNLV Boyd School of Law, where he serves as an adjunct professor, Vegas, INC. and Top Lawyer for two years in a row.

Over the last decade, Claggett & Sykes has proven time and time again its dedication to both clients and the community through the Claggett & Sykes Charitable Foundation, focusing on organizations such as the Legal Aid Center of Southern Nevada and The Just One Project. As a result of their efforts, Claggett & Sykes was also named one of the top Philanthropic Businesses of the Year.

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Hostage Negotiation Techniques to Facilitate Settlements: Adapting the FBI's Behavioral Change Stairway Model to Civil Litigation & Mediation

by Michael Monson

Civil litigators and mediators frequently work with parties in high-conflict, high stakes disputes such as divorces, bet-the-company lawsuits, and complex commercial litigation. While settlement is often the most efficient and cost-effective outcome, negotiations can stall for reasons other than the legal merits of the case.

Lessons developed by the Federal Bureau of Investigation (FBI) in the context of crisis and hostage negotiations offer a practical, evidence-based framework for addressing negotiation impasses. *See* Gregory M. Vecchi, Vincent B. Van Hasselt & Stephen J. Romano, *Crisis (Hostage) Negotiation: Current Strategies and Issues in High Risk Conflict Resolution*, 10 *AGGRESSION & VIOLENT BEHAVIOR* 533–51 (2005). This article examines how the FBI's Behavioral Change Stairway Model can be adapted to civil litigation and mediation to reduce emotional barriers, improve communication, and increase the likelihood of reaching settlements.

The Behavioral Change Stairway Model

To help agents resolve volatile hostage situations peacefully, the Federal Bureau of Investigation's Crisis Negotiation Unit developed the Behavioral Change Stairway Model (BCSM). *See* Vecchi at 541. The BCSM is a structured, sequential process consisting of five stages: active listening, empathy, rapport, influence, and behavioral change. *See id.* The FBI found that this order is critical. *See id.* Their negotiators were most effective when the stages of the BCSM were followed sequentially, with each stage building on the last. When their negotiators tried to influence behavior before listening, establishing empathy, and developing rapport, the chances of a successful resolution went down significantly. *See id.*; Gary Noesner, *STALLING FOR TIME: MY LIFE AS AN FBI HOSTAGE NEGOTIATOR* 87–102 (2010).

While the BCSM originated in a law enforcement context, its principles can be applied in mediator and advocacy roles. Mediators can use these techniques to build trust and engagement with each party, while attorneys can apply the same skills when counseling clients, engaging opposing counsel, or participating in settlement discussions. The techniques described below are process-oriented rather than outcome-determinative and can be

adapted to fit a variety of professional roles without compromising ethical obligations or advocacy positions.

The techniques discussed here are also not substitutes for legal analysis or leverage. They are tools to increase the chances that legal analysis and leverage are actually heard and evaluated by parties.

Stage 1: Active Listening

The foundation of the BCSM is active listening. The FBI recognized that individuals in crisis have a powerful need to be heard and understood, and until that need is met, progress toward resolution often stalls. *See* Vecchi at 541. Accordingly, the FBI incorporated applied listening techniques drawn from behavioral science into its negotiation framework. *See id.* at 542. The FBI categorized these listening skills into two groups: (1) the core skills of mirroring, paraphrasing, emotional labeling, and summarizing, and (2) supplemental skills such as effective pauses, minimal encouragers, open ended questions, and "I" statements. *See id.* at 542–43.

The active listening stage receives significant attention in this article because it is the foundation upon which all the other stages are built. In practice, negotiation breakdowns do not always occur because parties lack information about the law or facts. Sometimes it's because they feel unheard, misunderstood, or pressured before they are emotionally ready to evaluate options. The BCSM recognizes that efficiency in negotiation is not achieved by moving quickly to solutions, but by removing the emotional barriers that prevent parties from engaging in rational problem solving.

MICHAEL MONSON is the chief legal officer at Blendtec, provides select mediation services, and is a member of the Utah Supreme Court Professionalism and Civility Counseling Board.



Mirroring

Mirroring involves repeating part of what a party has said to demonstrate attention and encourage elaboration. When used skillfully, mirroring can reduce defensiveness and signal understanding. Simply repeating words verbatim, however, can feel mechanical. Psychologists William R. Miller and Stephen Rollnick, the developers of a therapeutic style called Motivational Interviewing, recommend “complex reflections” rather than simple repetition when mirroring. *See* William R. Miller & Stephen Rollnick, *MOTIVATIONAL INTERVIEWING: HELPING PEOPLE CHANGE* 59–60 (3d ed. 2013).

Complex reflections involve a reasonable inference about the meaning behind what someone says or stating a guess as to what a person’s next thought might be. *See id.* The following example illustrates the difference. Simple mirroring:

Party: We can’t keep spending this kind of money on attorneys.

Negotiator: Attorney fees are adding up.

This signals to a person that they have been heard, but it doesn’t advance the discussion the way complex mirroring can.

The following is an example of complex mirroring:

Party: We can’t keep spending this kind of money on attorneys.

Negotiator: It sounds like the cost itself is becoming as much of a problem as the dispute, and you may be starting to wonder whether continuing down this path is actually protecting the business or putting it at greater risk.

In the second example, the negotiator is inferring that the process is now part of the problem (“It sounds like the cost itself is becoming as much of a problem as the dispute...”), and offers a tentative guess about the party’s next thought (“you may be starting to wonder whether continuing down this path is actually protecting the business”).

Former FBI hostage negotiator Christopher Voss recognized that you’ll know your guess about a party’s meaning is correct if a party says, “*That’s* right.” *See* Christopher Voss & Tahl Raz, *NEVER SPLIT THE DIFFERENCE* 96–112 (2016). By saying “*That’s* right” or “exactly” instead of “*You’re* right,” a party signals they agree with what you’ve said and aren’t just agreeing to be agreeable.

Even if you guess about a party’s meaning and you’re wrong, it usually isn’t a problem. People generally volunteer a correction, which still advances the conversation and clarifies core issues.

Paraphrasing and Summarizing

Paraphrasing and summarizing restate a party’s concerns in the negotiator’s own words. Unlike mirroring, however, summarizing pulls together multiple points into a coherent picture. Two types of summaries can be particularly powerful.

Miller and Rollnick recommend what they refer to as a “collecting” summary to clarify issues and ensure nothing important has been overlooked. *See* Miller at 69. This is done by concisely restating everything that has been said and then saying, “What else,” which invites a party to continue adding to the summary until all issues are out in the open. *See id.*

Another type of summary is what Miller and Rollnick call a “summary of ambivalence.” *See id.* at 70–71. Nearly all settlements require compromise, and ambivalence (simultaneously wanting competing outcomes or recognizing the strengths and weaknesses of a position) is common. The goal with a summary of ambivalence is not to force a party into a decision, rather it is to (1) demonstrate understanding, (2) show the big picture, and (3) promote logical reasoning.

The following is an example of a summary of ambivalence:

Negotiator: On the one hand, you see this as a strong case. You believe the facts and the law are on your side, and the potential upside is significant. On the other hand, you’re also aware there are no guarantees with a jury, that ongoing legal fees could substantially reduce any recovery, and that even a favorable judgment may be difficult to collect.

By summarizing both the perceived strengths of a position and the risks or costs of continued litigation, a negotiator helps a party evaluate decisions more holistically without pressuring a particular choice.

Emotional Labeling

Another core active listening skill is emotional labeling or explicitly naming the emotion a party appears to be experiencing. When emotions go up in a negotiation, logical thinking goes down. The ability to reduce emotional intensity is therefore critical when negotiating a settlement.

Neuroscience research by UCLA professor Matthew Lieberman has shown that saying something as simple as, “You seem really upset right now,” can reduce the intensity of negative emotional responses. *See* Matthew D. Lieberman et al., *Putting Feelings into Words: Affect Labeling Disrupts Amygdala Activity*, 18 *PSYCH. SCI.* 421, 421–22 (2007). This is because naming an

emotion reduces activity in the amygdala, the brain's threat processing center, while increasing activation of the prefrontal cortex, which governs emotional regulation and reflective thinking. *See id.* at 427.

Former FBI hostage negotiator Christopher Voss recommends labeling emotions tentatively. *See Voss* at 56–58. For example, if a negotiator says, “You seem really frustrated right now,” and the party responds by saying, “I’m not frustrated, I’m angry,” the negotiator can say, “I didn’t say you were frustrated, just that it seemed like you were.” *See id.*

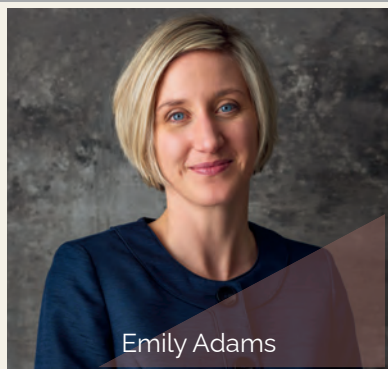
Emotional labeling can be combined with paraphrasing to demonstrate both factual and emotional understanding. For example, an attorney or mediator may say, “So, your business partner took more than he was entitled to from the business

(paraphrase) and you’re angry (emotional label).”

Miller and Rollnick additionally observe that intentional over-labeling by exaggerating an emotion often prompts the speaker to self-moderate, thereby defusing intensity. *See Miller* at 61. For example, instead of saying, “Your employee was late and you felt *upset*,” a negotiator could say, “Your employee was late and that made you *furious*.” Using the word “furious” instead of “upset” could prompt a party to correct the statement with a more reasonable response such as, “Well, I wasn’t that mad, it was just annoying,” which can be useful to moderate emotions.

Supplemental Listening Techniques

The BCSM recommends reinforcing core listening skills with deliberate pauses, minimal encouragers (such as “uh huh” or “go on”), open ended questions, and “I” statements. *See Vecchi* at 543.



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Pauses allow reflection. The BCSM gives this example: “You sound angry about the loss of your father . . . (pause) . . . Tell me more about that.” *See Vecchi* at 543. The pause helps focus attention and encourages the other party to reflect on an answer before giving it.

Minimal encouragers such as “uh-huh,” “yes,” “right,” “go on,” and “okay,” show the negotiator is attentive and making an effort to understand. This fosters empathy and encourages a party to keep talking.

Open ended questions encourage a party to provide more information and help the party feel heard, particularly questions beginning with “what” or “how,” which invite elaboration without sounding accusatory. *See Voss* at 152–55.

According to the BCSM, making statements that start with “I” can help develop rapport and deal with a personal confrontation. *See Vecchi* at 543. For example, a negotiator could build rapport using an “I” statement by saying, “I’m a mother too, and I can only imagine what it must be like not to see your kids every day.” *See id.* Or if attacked by a party, an “I” statement could be used to diffuse the situation. For example, a negotiator might say, “When you say I don’t care, I’m confused because I’m really trying to understand your situation.”

Practical Application

While active listening should not be rushed, an attorney or mediator should be as efficient as possible. Parties come to attorneys for legal solutions, not therapy, and some may become frustrated if too many billable hours are spent exploring emotions or other

issues that aren’t directly related to the legal merits of a case.

Fortunately, not all the steps of the BCSM must occur in one sitting or even in person. For example, mediators can do some “active listening” through a careful review of a mediation brief. By studying the brief ahead of time, a mediator may not need to ask as many open-ended questions before moving to paraphrasing and summarizing.

Similarly, attorneys can use active listening skills during initial intake meetings so that later when settlement talks begin, they’ve already laid the groundwork for the following stages of the BCSM model.

Stage 2: Empathy

In the BCSM, empathy follows after and flows from active listening. Empathy involves understanding another person’s reasoning and emotional experience without necessarily agreeing with their actions or demands. *See Vecchi* at 543. FBI materials emphasize that empathy is conveyed not only through words but also through tone, pace, and genuineness. *See id.* at 543–44.

A negotiator should strive to fully understand a party’s situation, including underlying feelings and motives, even if they at first appear irrational. This helps parties feel understood and enables the mediator or advocate to identify underlying interests and motivations that must be addressed for settlement to occur.

The goal of empathy is understanding, not necessarily agreement. For example, it’s possible for FBI agents to understand why a person would be angry (i.e., feeling trapped, unheard, or out of options) and not agree with how the person is handling the situation (i.e., taking hostages).

One of the biggest challenges to developing empathy is the negotiator’s own emotional experience. Empathy is the ability to think about and understand the cause of emotions. When a negotiator’s emotions become intense, the negotiator’s ability to understand a party’s emotions is diminished and may even shut down completely. Therefore, if a negotiator feels frustrated, discouraged, or angry with a negotiation, the best option is to take a break to regroup and then return with a more logical rather than emotional state of mind.

For mediators, empathy must be balanced with neutrality. Demonstrating that you understand a party’s emotions does not mean endorsing their factual assumptions or legal positions. A mediator’s role is to validate the person’s experience while remaining impartial about the merits.

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Stage 3: Rapport

Active listening and empathy culminate in rapport, which the BCSM describes as increased trust and mutual affinity. *See Vecchi at 544.* It is during the rapport stage that a negotiator begins to turn understanding into connection and trust, and parties become more receptive to suggestions and possible solutions.

In hostage negotiations, rapport building involves face saving rationales, minimization of negative behavior, and finding common ground. *See id. at 544–45.* In civil disputes, rapport can be developed by acknowledging needs and values, showing reliability and consistency, using self-disclosure (carefully), offering small choices, validating, and maintaining a calm, steady presence.

Acknowledging Needs and Values

People open up to those who validate their priorities or fears. To build rapport, a negotiator should seek to connect with what matters personally to a party. For example, a negotiator could say, “I understand your need to maintain control of your company. That matters.”

Show Reliability and Consistency

Trust builds faster when a negotiator is viewed as predictable and dependable. To develop these characteristics, a negotiator should keep promises, follow through on small commitments, and remain consistent. For example, a negotiator could say, “I’ll check on that for you and get back in five minutes.” Rapport is built when the negotiator follows through by returning within the promised five minutes.

Use Self-Disclosure (Carefully)

Sharing something relatable can create reciprocity. When a negotiator shares small appropriate personal details or experiences, the negotiator is humanized, which helps a party feel more comfortable opening up. However, a negotiator should be careful not to over share or distract from the party’s issues. A small comment such as, “I’ve been in a situation where I felt cornered like that. It’s tough,” can help a negotiator feel more relatable and a party more comfortable. Any self-disclosure should be brief, relevant, and used solely to humanize the interaction not to shift focus away from the party’s concerns.

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In Loving Memory of Michael G. Humphries

With the heaviest hearts, we at Clyde Snow & Sessions share the passing of our Firm Administrator, Michael G. Humphries.

Michael Humphries was a seasoned professional in Utah’s legal community. In 1987, he obtained his CPA from Utah University and began his career at Deloitte. He spent a few years working as an auditor and controller before joining Ray Quinney & Nebecker, where he served as their controller for nearly 13 years. Later, he became Firm Administrator at Prince Yeates & Geldzhaler, a position he held for twelve years until the firm ultimately closed its practice.

Mr. Humphries joined Clyde Snow in 2022 as Controller and Firm Administrator. His time at our firm, though short, brought immense joy, laughter, and positive camaraderie. He shared his love of sports, stamps, and vast knowledge with our internal community. If you found yourself in conversation with Michael, you were sure to learn something new. He contributed his time, experience, and insight, and was widely respected for his kindness, integrity, and willingness to support others. Michael’s knowledge and mentorship will be deeply missed.

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Feeling in control reduces defensiveness and strengthens connection. See Edward L. Deci & Richard M. Ryan, *The “What” and “Why” of Goal Pursuits: Human Needs and the Self-Determination of Behavior*, 11 PSYCH. INQUIRY 227, 229, 233–34 (2000). A negotiator can help a party by giving control over small matters early on. For example, a negotiator can offer control over pacing by saying, “Would it help to take ten minutes and regroup, or do you want to keep moving while we’ve got momentum?” A negotiator can also give a party options regarding in what order to proceed, for example by saying, “What should we tackle first?” Giving parties some say in how information is presented to the other side is also an effective way to give control and build rapport. For example, a negotiator could say, “What would you like me to emphasize when I talk with them?” A statement like this can turn the negotiator into a trusted resource not just a conduit of information.

Validate, Don’t Agree

Validation is one of the most powerful ways to build rapport. However, validation does not require agreement. In fact, you shouldn’t agree with something you don’t believe. You can validate feelings without agreeing with underlying facts. For example, instead of saying “You’re right,” a negotiator can validate without necessarily agreeing by saying, “I get why you’d feel that way in this situation.” Validating helps people feel seen and understood, which can help deepen rapport.

The Goal of Building Rapport

In the rapport building stage, the focus remains on relationship building rather than solution generation. Rapport is not agreement, rather it is a working trust that allows the negotiator to engage candidly with the party and, later, facilitate a realistic evaluation of options.

To be clear, in the mediation context, rapport does not require alignment with a party’s legal position or desired outcome. Rather, rapport reflects a party’s perception that the mediator is attentive, respectful, and trustworthy. A mediator can build rapport independently with each party while remaining neutral as to the merits of the dispute or the appropriate resolution.

Stage 4: Influence

Only after rapport is established does the BCSM contemplate influence. See Vecchi at 545. At this stage, the negotiator has “earned the right” to suggest courses of action through collaborative problem solving. *Id.* The BCSM does not rely on coercion or manipulation nor should civil litigators or mediators.

Instead, the focus should be on consent, credibility, and timing as prerequisites to influence.

The form that influence takes will vary depending on the negotiator’s role. For mediators, influence typically involves facilitating reality testing, reframing positions, and assisting parties in evaluating options. This form of influence should invite parties to reflect rather than push for a particular settlement position. For attorneys advising clients in the settlement context, influence may involve counseling regarding risk, cost, and strategic considerations. In both contexts, the BCSM emphasizes that influence is most effective only after trust and rapport have been firmly established.

Stage 5: Behavioral Change

Behavioral change is the final step in the BCSM. In civil disputes this means a willingness to compromise and commit to settlement. The BCSM cautions that attempts to force change without successfully completing prior stages reduce the likelihood that a party will be willing to explore and accept recommendations for compromise and ultimately settlement. See Vecchi at 545. If the proper foundation of trust hasn’t been established, settlement suggestions risk being perceived as directives, which often trigger resistance and defensiveness. With a foundation of empathy and rapport, however, an attorney or mediator can establish a collaborative problem-solving tone in which a party is more likely to take ownership of the resolution. Ideally, the attorney or mediator should be perceived as a knowledgeable guide who empowers parties to find their own solutions.

In practice, behavioral change often appears subtle at first. For example, a party shifting from statements such as “I’m not paying them anything” to “I still don’t like their numbers, but if they moved on X, I’d consider Y.” These incremental movements indicate that rapport and influence have reduced emotional resistance and allowed more rational evaluation of options.

Conclusion

Although civil litigation rarely presents life or death stakes, it can feel emotionally overwhelming to those involved. The FBI’s Behavioral Change Stairway Model offers attorneys and mediators a practical roadmap for reducing emotion, building trust, and guiding parties toward settlement. Viewed through this lens, effective negotiation is less about persuading others to accept a particular outcome and more about creating the conditions under which parties can logically evaluate risk, compromise, and resolution.

By listening first, demonstrating empathy, building rapport, and only then attempting influence, legal professionals can improve the likelihood of resolution in even the most contentious disputes.

In Memoriam



W. Waldan Lloyd

1946 - 2026

Our colleague and friend, W. Waldan Lloyd, passed away peacefully on March 18, 2026.

Wally was a gifted and skillful lawyer who enjoyed a distinguished 51-year legal career as a nationally recognized expert in the complicated field of ERISA compliance, design and operation of retirement plans, deferred compensation programs, and welfare plans - serving everyone from individuals and small businesses to large, publicly traded companies with tens of thousands of employees.

Known for his sharp mind and steady approach, Wally had a remarkable ability to navigate complex legal issues and find practical solutions. He also represented clients in Department of Labor investigations, IRS examinations and before the United States Tax Court.

One of the most satisfying highlights of Wally's legal career was a Tax Court victory in *Love v. Commissioner*. This complicated 2012 case involved Employee Stock Ownership Plans, non-qualified deferred compensation plans and several million in potential income tax liabilities and penalties for Wally's client. Wally's advocacy resulted in a complete win for the taxpayers, summarized in this holding from the case: "Petitioners were entitled to arrange their affairs so as to minimize their tax liability by means which the law permits." The holding also benefited hundreds of other ESOP companies located throughout the United States.

A believer in giving back, Wally served the local and national employee benefits communities. He chaired the ABA Section of Taxation's Employee Benefits Committee as well as the ESOP Subcommittee, the Fiduciary Responsibility and Litigation Subcommittee, and the Joint Committee on Employee Benefits Technical Sessions Subcommittee. He was also a director and president of the Western Pension and Benefits Conference. In recognition of his accomplishments as an employee benefits lawyer, he was honored as a Charter Fellow of the American College of Employee Benefits Counsel, one of the inaugural, distinguished members inducted in 2000.

Wally loved the professional relationships he built throughout his career and the opportunity to solve meaningful problems for the businesses and people he served.

Wally was a caring and supportive husband to his wife, Colette Wilson, and an engaged and doting father and grandfather to his six children and twelve grandchildren. Wally cherished time with his family and had a passion for travel and heli-skiing. He will be greatly missed by the Bar, his colleagues at Dentons, friends and family members.

Trial Theories

by Andrew M. Morse

A simple and persuasive trial theory is critical to your trial success. This note explains the features of a good trial theory, why it is needed, and the fatal mistake in trying a case without one.

Elements of a Good Theory

A trial theory ties as much of the law and evidence as possible into a coherent and credible whole. *See* James W. McElhaney, *MCELHANEY'S TRIAL NOTEBOOK* 47–54 (2d ed. 1987). A trial theory is a basic concept around which everything else revolves. It must be simple and explain as many of the big case facts as possible. A trial theory must align with the basic probabilities of the case. Done right, it provides a comfortable viewpoint from which the jury can look at all the evidence. A persuasive theory allows jurors to look at things your way which is, of course, your goal.

A trial theory must align with community values. For example, taking responsibility for your mistakes is a highly held value. If your opponent has not taken responsibility for his or her conduct, then that is a compelling theme. If your client is taking responsibility for his or her conduct, then that is a compelling theme. Another example of aligning your theory with core values is acknowledging the difference between an obligation owed and a handout. Most people value paying their bills, but not everyone thinks rich people owe poor people anything. If the defendant owes something that it has not paid, that is a compelling theme. But asking a jury to feel sorry for a plaintiff and to charitably award money that is not owed is a very poor theory.

The best theories can be distilled into a memorable theme. For example, in the workers compensation context where a terminally ill claimant blames his fatal cancer on a dangerous workplace, a compelling defense theme would be: “Work didn’t make him sick, he just got too sick to work.”

Avoid Alternate Theories

Many lawyers make the mistake of having alternate theories. For example, in a car accident case, Theory One would be: “Not my fault;” Theory Two is: “If I was at fault, so were you.” Inconsistent theories erode a trial lawyer’s credibility, which is the last thing

you want. Create a theory you can get behind and sell it. As is noted before in these pages, if a trial lawyer does not believe in his case, neither will the jury. After all, you cannot sell what you would not buy. A good theme gives you conviction. If all you have are implausible or not very persuasive theories, then settle.

Develop potential trial theories from the inception of the case. Identify witnesses and design discovery to support your best theories on liability and damages. Always ask, “How will this sound to the jury?”

Lay out your theory in the first five minutes of your opening statement, when the jury will be most attentive and receptive. Do not waste time with preliminaries, rather jump in and sell your theory with conviction, without argument. You really can get jurors on your side in five minutes with a good theory.

A persuasive theory governs how you try the case. Limit your evidence to that which supports your theory or erodes your opponent’s theory.

Risk of a Poor Theory

Poor and implausible theories do not work. Moreover, they anger jurors because they will conclude that you think they are gullible enough to believe in a bad theory. They also will conclude that you are wasting their precious time on a case you should have settled. These circumstances may anger a jury, and it may punish the transgressor. Many inflated verdicts, after all, are due to bad defense theories, just as many defense verdicts are due to poor liability or damage theories by the plaintiff.

ANDREW M. MORSE is a retired trial lawyer and a current mediator and arbitrator.



Poor theories include those that are simply implausible. For example, in a medical malpractice case where a patient codes during surgery due to a mistake by the anesthesiologist, it is not a plausible theme to say, “Well he always had low blood pressure, and he just happened to stroke out at that point. It was his time.” This theory is implausible because it does not account for the doctor’s mistake.

An offensive theory will not only fail – it will backfire. I tried a case where my client had rolled a loaded semi over onto the plaintiff’s car, killing a mother and her six-year-old while severely injuring an eight-year-old boy’s brain. Before the accident, the surviving child had been diagnosed with severe ADHD and other maladies, probably due to his mother’s drinking during pregnancy. I was asked to develop a theory that the eight-year-old never

would have amounted to much anyway given his ADHD. I advised the client that I could not present that theory because it was offensive, immoral, and would blow up in our faces. Instead, I admitted fault and sought a verdict for damages that would pay for more than adequate lifelong care for the boy.

Not having a cogent persuasive theory leaves you throwing evidence and arguments against a wall to see what sticks. This method will fail. It also offends jurors because you are asking them to do your work, giving them all the evidence you can think of and not telling them how it is relevant and what to do with it. You are letting them sort it out, and they are not equipped. They will turn on you. At bottom, if you cannot come up with a decent theory, settle or don’t take the case in the first place.

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Examples of Winning Theories

The following three examples are cases I either tried or settled armed with a compelling theme. In *Smith v. Jones Trucking*, my forty-five-year-old trucking terminal manager was driving to work on a winter morning on I-15 and encountered a fog bank. He drove into it and rear-ended a stopped vehicle. No one was hurt, but his right front wheel was bent, and he could not move his pick-up. He was stuck crossways across a travel lane. Just then, a fully-loaded semi barreled into the fog bank and t-boned Mr. Smith at fifty miles per hour. This severely injured his brain. He required 24/7 care for life. Mr. Smith had a twenty-five-year marriage and two kids in their early twenties. Defendant's theme was that Smith was at least 50% at fault.

Our theme was: "He was going to work and made a small mistake but did not have to pay with his body and brain; he hit another car in the fog bank, but he did not need to pay with his ability to talk and his vibrancy, personality and life as a leader, husband, and father."

As noted, defendant tried it on a comparative fault theme because there was nothing he could do with damages. The jury did exactly as we asked. It ascribed some fault to the plaintiff but made up for it with a substantial general damages and special damages award such that after reduction for plaintiff's fault, the family had enough to support Mr. Jones for the rest of his life.

In the rollover case mentioned above, our theory was: "We hurt this child for no good reason and killed his mother and brother. We are here to pay. We will show how much it will cost to care for, keep him safe, and help him live his best life." After a hard-fought battle, we obtained a fair verdict.

Finally, in *Doe v. Ajax Gas Company*, an eighteen-year-old female college freshman on a soccer scholarship was blown up in a food truck. A gas line had gone uncapped and when the line's valve was accidentally opened, the gas exploded. Plaintiff suffered third-degree burns on 40% of her body. She survived after eight weeks in the burn unit, but her life was forever different. She had only enough unburned skin to graft her face, neck, and arms, but not her legs which were permanently disfigured.

The owner of the food truck was judgment proof. The propane gas company, however, breached its duty to inspect the food truck for leaks when the food truck had run out of gas the week before the explosion. The propane code requires a system inspection when a food truck runs out of gas, because given a food truck's mobility, it is possible that a gas system in a trailer could have a leak. Under these circumstances, the supplier must inspect all lines and appliances to be sure that there is no leak. In this case, the gas company did not do any sort of inspection when it filled the empty tanks. Our theory was:


All the gas company had to do was its job in handling explosive gas, which was easy because it is written down in the code. All they had to do was inspect the gas system to see if it was empty due to a leak or normal use. The uncapped line was there to be seen. Plaintiff paid for the gas company's mistake with her skin, athletic ability, mental stability, and health. She carries on despite her disfigurement.

The case settled for limits.

These are compelling winning theories because they account for the big facts and square with our values. They are built with ideas and purposes that you and the jury can get behind.


Conclusion

In my experience as a trial lawyer and now as a mediator and arbitrator, I encounter parties who have not developed a good theory. They enter trial or mediation without a decent analysis of what a jury is going to do with their theory or lack thereof. It is an avoidable mistake that should not be made. If you cannot come up with a plausible theory, then refuse the case, or settle if possible.



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The Rule of Law

by Annette Wanlass Jarvis

AUTHOR'S NOTE: *This was originally given as a speech at the investiture of Judge Michael Thomson as a United States Bankruptcy Judge for the District of Utah and has been modified somewhat for publication.*

In this country, we grow up understanding that we live in a society governed by the Rule of Law. But do we really contemplate what that concept fully entails? It is a critical topic for supporting the independence of our judiciary and in maintaining our democracy.

In delving into the meaning of this topic, I studied Lord Tom Bingham's "The Rule of Law." TOM BINGHAM, *RULE OF LAW* (2010). Lord Bingham held office successively as Master of the Rolls, Lord Chief Justice of England and Wales, and Senior Law Lord of the United Kingdom. He also founded The Bingham Centre for the Rule of Law in 2010 as part of the British Institute of International and Comparative Law. In his treatise, he lays out the history and development of the Rule of Law and articulates the three cornerstones of this important topic that I would like to discuss today. He states:

The Rule of Law concept, in essence, embodies a number of important interrelated ideas. First, there should be clear limits to the power of the state. A government exercises its authority through publicly disclosed laws that are adopted and enforced by an independent judiciary in accordance with established and accepted procedures. Secondly, no one is above the law; there is equality before the law. Thirdly, there must be protection of the rights of the individual.

Id. at 172.

These three principles of the Rule of Law discuss how openly made and publicly disclosed laws are enforced through due process. And how our system is one where no one is above the law. Our founders established these protections through the adoption of a Bills of Rights and ultimately set the foundations of our government.

Lord Bingham also addresses the critical role of judicial independence in the Rule of Law:

There is little advantage in the promulgation of laws, however benign, unless there are judges who are able and willing to enforce them. Otherwise, the powers that be can disregard the laws with impunity. But if the judges are to enforce the laws against the highest authority in the state they must be protected against intimidation and victimization.

Id. at 24.

Interestingly, Lord Bingham makes the point that the United States' system is built on the Rule of Law developed in England. The United States however, took the English system and designed a unique constitutional system that carried out the three principles of the Rule of Law in a new way:

But the Constitution was groundbreaking in its enlightened attempt to create a strong and effective central government while at the same time preserving the autonomy of the individual states and (in the first ten amendments) preserving the fundamental rights of the individual against what one contemporary commentator called "the form of elective despotism" . . . "So, for the first time, I think, the law as expressed in the Constitution was to be supreme, binding not only the executive and the judges, but also the Legislature itself; Tom Paine was therefore right to say that in America THE LAW IS KING. This was indeed an advance for the rule of law, giving the

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law of the Constitution, as interpreted by the Supreme Court of the United States, an authority it had never before enjoyed anywhere.

Id. at 16–17.

This perspective gave me pause – that a respected English jurist commended our Constitution for balancing, binding, and curbing the power of all three branches of government and advanced the Rule of Law as never before – something we should remember and respect.

As I contemplated these three foundational principles, I couldn't help but reflect on my own growing up years. I am a first generational lawyer. But I realize that the Rule of Law is so ingrained in our society that we understand it and we live it, even before we study the law.

In 1943, my father joined the Navy as a seventeen-year-old high school graduate from El Monte, California. His best friend in his graduating class was a Japanese-American boy, whose family was stripped of their business and deported to the Topaz, Utah War Relocation Center. My father became a radar operator on a destroyer and fought in the Battle of Okinawa. It was a heroic, but very difficult experience that caused him suffering, both physically and emotionally, for the rest of his life. His Japanese-American friend also volunteered to fight in the war and died in service to his country. I was raised in Orange County, California, where my father taught us to patronize Japanese-American businesses. As I grew up, I realized that what he was teaching me was his belief

that we as a country had denied due process to these Japanese Americans citizens and that he felt it was up to us to do what we could to remedy past wrongs. As an adult, what so amazed me about my father was that he suffered atrocities fighting the Japanese, but he knew we were all Americans in Orange County, whether we came from Scottish and Danish heritage like our family, or from Japanese heritage like our good friends the Okamotos. This is something of value that he taught me that I have tried always to remember, particularly in today's world.

I learned this first pillar of the Rule of Law from my non-lawyer father. But this principle is something we as lawyers can effectively help others to understand. Every day, we watch this first principle being taught to us by the courts. Their decisions remind us that every person in our country, citizen or not, is entitled to due process under the law – that we believe in publicly made and disclosed laws enforced by due process of law by an independent judiciary. Of judges, Lord Bingham says:

They exercise a constitutional power which the rule of law requires that they should exercise. This does not of course endear them to those whose decisions are successfully challenged. Least of all does it endear them when the decision is a high-profile decision of moment to the government of the day, whatever its political colour. Governments have no more appetite for losing cases than anyone else, perhaps even less, since they believe themselves to be acting in the public interest and, in addition to the expense and disappointment of losing, they may be exposed

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to the taunts of their political opponents (who might, if in office, have done just the same). This is the inescapable consequence of living in a state governed by the rule of law.

Id. at 65.

We in the bankruptcy world watched this consequence of constitutional review when the Supreme Court held the jurisdictional provisions of the 1978 Bankruptcy Code unconstitutional in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). I am sure there were some frustrated by this ruling after the ten years of study that went in to the 1978 Bankruptcy Code, but Congress did what our system requires under the Rule of Law. It redesigned the system in a new law passed two years later: the Bankruptcy Amendments and Federal Judgeship Act of 1984. Yes, these legal constitutional issues are difficult, but they are part of the price we pay to live under the Rule of Law.

My introduction to the second principle of the Rule of Law came when I was a junior in college. I was home for the summer working when my father invited me to come with him to a court hearing. As an electrical engineer, he held close to forty patents from the developments he had made in the aerospace, computer, and energy industries. Initially, he worked for a large company who, when his patented discoveries were challenged, stepped in to defend them. But when he started his own company, he was left to defend himself. So that summer, my father and the small company he owned were up against a very large national company challenging his patent. As I watched the court give equal treatment to my father and his individual lawyer as he argued against the legions of lawyers on the other side of the courtroom, I was unknowingly learning the second pillar of the Rule of Law – that all are equal before the law.

In bankruptcy, we see this second principle at work in the various kinds of cases that come before the courts, from the many individual chapter 7 cases to large multi-national chapter 11 cases. In the many years I have practiced law, I have learned that the most important things are for litigants to feel that they have been fully heard and understood by judges, that judges make timely rulings, and that judges treat all litigants that come before them, whether poor or rich, and their counsel, with equal respect. I admire retired Judge Wedoff, who has on a pro bono basis, taken consumer issues on appeal because he realized that for this second principle to work, the issue of access to justice also needs to be addressed. Indeed, pro bono work for all of us as attorneys is an important part of this second pillar of the Rule of Law.

As to the third principle of the Rule of Law, I learned about this while studying on a semester abroad in Salzburg, Austria. It was there I encountered research on a young German boy named Helmut Huebner. Huebner, a teenager in Nazi Germany, was disturbed with the government's brutal treatment of the Jews. As a sixteen-year-old, he began listening illegally to the BBC radio and realized that his government was lying to its people. He felt that if the German people were told the truth, they would not allow this tyranny to continue. For exercising his freedom of speech, he was executed at seventeen years old after a sham trial – the youngest person of the German resistance executed by the Nazis. In response to his death sentence, he is reported to have said: "Now I must die, even though I have committed no crime. So now it's my turn, but your turn will come." I realized that, growing up in a country governed by the Rule of Law, I had, until then, taken this third pillar for granted.

This third principle protecting individual rights is closely tied to judicial independence. My partner in New York, Henry Greenberg, vice president of New York County Lawyers Association and past president of the New York State Bar Association, authored an article wherein he pointed out that "[m]any of our most cherished rights were secured in courtrooms, because courageous judges applied the law without fear or favor, even when subject to intense criticism and outright hostility." Henry Greenberg, *The Birth of Judicial Independence in New York*, LAW.COM, (Jan. 23, 2026, 9:00AM), <https://www.law.com/newyorklawjournal/2026/01/23/the-birth-of-judicial-independence-in-new-york/?slreturn=20260224115955>. The will of the majority is expressed in our elections, but the rights of the minority, as so clearly set forth in our Bill of Rights, are protected and enforced by our courts. Without independent courts, this third pillar of the Rule of Law would not stand.

In reinforcing the importance of judicial independence, Chief Justice Roberts, in his 2025 Year End report, reminded us that one of the twenty-seven grievances against King George in the Declaration of Independence was that he "obstructed the Administration of Justice . . . [and] made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries." John Roberts, Jr, 2025 YEAR END REPORT ON THE FEDERAL JUDICIARY, UNITED STATES COURTS, 5 (Dec. 31, 2025), <https://www.supremecourt.gov/publicinfo/year-end/2025year-endreport.pdf>. He exhorted judges to "continue to decide the cases before [them] according to [their] oath, doing equal right to the poor and to the rich, and performing all of [their] duties faithfully and impartially under the Constitution and the laws of the United States." *Id.* at 7. The Chief Justice of our State Supreme Court, Justice Durrant, also reinforced the

importance of judicial independence in his recent report on the Judiciary in our State. Judicial independence and impartiality is critical so that litigants will have confidence in the courts, will know that they will be heard, and will know, whether they win or lose, that their cases will be fairly decided.

My partner ends his article with a comment on our role as lawyers. He says:

attacks on the judiciary cannot be left unanswered. They threaten the fair and orderly process of resolving legal disputes. But it is not judges who can provide the necessary defense, given the restrictions of judicial ethics codes. That duty lies heavily upon the legal profession. Indeed, whenever the independence of the judiciary is threatened, lawyers must be the first to rise in protest and display the greatest courage. The traditions of the profession, the exclusive franchise on the practice of law, and the examples of past great leaders, demand nothing less. Lawyers cannot stand mute and allow the justice system to be subjugated to the political process or influenced by the passions and prejudices of the moment. Just as eternal vigilance is the price of liberty, the bar's defense of an independent judiciary is the price of the rule of law.

Greenberg at 6.

Lord Bingham ends his treatise on the Rule of Law as follows:

What makes the difference between Good and Bad Government?

I would answer, no doubt, predictably: the rule of law. The concept of the rule of law is not fixed for all time. Some countries do not subscribe to it fully, and some subscribe to it only in name, if that. Even those who do subscribe to it find it difficult to apply all its precepts quite all the time. But in a world divided by differences of nationality, race, color, religions and wealth, it is one of the greatest unifying factors, perhaps the greatest, the nearest we are likely to approach to a universal secular religion. It remains an ideal, but an ideal worth striving for, in the interests of good government and peace, at home, and in the world at large.

Bingham at 174.

We are fortunate to live in a country that strives to the ideals of living up to the Rule of Law, but we cannot take it for granted. As lawyers, we are bound to fight to protect it. We need judges willing to serve who exhibit the independence, impartiality, competence, preparedness, timeliness, and ethics that instill confidence in our judiciary which is so critical to the Rule of Law. And, as my partner says, the Bar's defense of this independent judiciary is the price we as lawyers must personally be willing to pay for the Rule of Law.

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Highlights from the 2026 Utah Legislative General Session

by Jacqueline Carlton and Kami Orton

AUTHOR'S NOTE: *The following summaries of selected passed bills from the 2026 Utah Legislative General Session may be of interest to practicing attorneys and other legal professionals. As employees of a nonpartisan legislative office, the authors take no position on the policies or relative importance of these bills to the practice of law. These bill summaries are provided for educational purposes only and are not a substitute for reading the language of the bills. Full bill language, the applicable code sections, and other legislation not included here may be found at le.utah.gov. Unless otherwise noted, bills take effect on May 6, 2026.*

Business & Labor Law

H.B. 130, Employment Medical Examination Expense Amendments, prohibits an employer from requiring an individual to pay for a medical examination, even if the employer reimburses the individual. Sponsors: Representative Matthew Gwynn and Senator Derrin Owens. <https://le.utah.gov/Session/2026/bills/static/HB0130.html>

H.B. 382, Uniform Assignment for Benefit of Creditor Amendments, repeals statutes on the assignment for the benefit of creditors and enacts the Uniform Assignment for Benefit of Creditor Act from the Uniform Law Commission. Sponsors: Representative Jordan Teuscher and Senator Mike McKell. <https://le.utah.gov/Session/2026/bills/static/HB0382.html>

S.B. 40, Business Entity Amendments, reorganizes statutes governing business organizations. S.B. 40 enacts Title 16, Chapter 1a,

which is broadly applicable to all business entities, and moves the provisions of Title 48, Unincorporated Business Entity Act, to Title 16, Business Entities. Effective Date: October 1, 2026. Sponsors: Senator Evan Vickers and Representative David Shallenberger. <https://le.utah.gov/Session/2026/bills/static/SB0040.html>

S.B. 45, Kratom Adjustments, only allows kratom products to be sold in the state if the product is in leaf form and is sold through a business that is licensed as a retail tobacco specialty business. Sponsors: Senator Michael McKell and Representative Katy Hall. <https://le.utah.gov/Session/2026/bills/static/SB0045.html>

S.B. 111, Veterinary Post-employment Amendments, voids a noncompete agreement for a veterinarian entered after May 6, 2026. Sponsors: Senator Jen Plumb and Representative Katy Hall. <https://le.utah.gov/Session/2026/bills/static/SB0111.html>

Civil Litigation Law

H.B. 307, Attorney Fees Amendments, amends the bad faith attorney fee statute to clarify when a court is required to award reasonable attorney fees to a prevailing party in a civil case. Sponsors: Representative Anthony Loubet and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0307.html>

H.B. 330, Liability Limitation Amendments, creates an affirmative defense in a civil action regarding conduct, an omission, or a condition that is authorized by law or by a government entity. Sponsors: Representative Colin Jack and Senator Ronald Winterton. <https://le.utah.gov/Session/2026/bills/static/HB0330.html>

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H.B. 591, Nuisance Amendments, abrogates the common law civil actions for public and private nuisances with an exception for the Attorney General. H.B. 591 recodifies and amends the statutory requirements for a civil action for a private nuisance and creates a new statutory civil action for a public nuisance. Sponsors: Representative Colin Jack and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0591.html>

S.B. 74, Motor Vehicle Civil Action Amendments, creates requirements for policy-limit demand letters pertaining to motor vehicle liability and transparency requirements for communication between a claimant, or the claimant's attorney, and the insured. Sponsors: Senator Calvin Musselman and Representative Anthony Loubet. <https://le.utah.gov/Session/2026/bills/static/SB0074.html>

S.B. 292, Autonomous System Amendments, creates new tort-related provisions for autonomous vehicles. S.B. 292 provides avenues for recovery for an individual harmed by a driverless vehicle but also provides affirmative defenses and liability caps. Sponsors: Senator Kirk Cullimore and Representative Jordan Teuscher. <https://le.utah.gov/Session/2026/bills/static/SB0292.html>

S.B. 310, Uniform Intimate Images Amendments, creates a right of action for the unauthorized disclosure of an intimate image. Sponsors: Senator Michael McKell and Representative Jordan Teuscher. <https://le.utah.gov/Session/2026/bills/static/SB0310.html>

Court Operations & Structure

H.B. 205, Substance Use Intervention Amendments, authorizes the creation of a new type of drug court in justice courts and allows courts to enter an "off-limits" order to enjoin an individual charged or convicted of certain drug offenses from entering a particular geographic area. Sponsors: Representative Tyler Clancy and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0205.html>

H.B. 260, Unauthorized Practice of Law Amendments, establishes civil and criminal penalties for the unauthorized practice of law, including a civil action for a client that has been harmed by the unauthorized practice of law. Effective Date: March 23, 2026. Sponsors: Representative Anthony Loubet and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0260.html>

H.B. 366, Judicial Modifications, makes changes to the district court panel created by H.B. 392, District Court Amendments, to allow any party in a civil action to convene a panel if the action is challenging the constitutionality of certain laws, is seeking declaratory or injunctive relief, and is brought against the state or a state official. H.B. 366 provides that a new court (Constitutional Court) with a three-judge panel will be created if the district court panel statute is enjoined or invalidated. H.B. 366 requires the presiding district court judge in each judicial district to assign one judge to hear a city's criminal cases, not to exceed 500 cases, and each case must be heard in the closest possible



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location to the city. Effective Date: March 13, 2026. Sponsors: Representative Jordan Teuscher and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0366.html>

H.B. 392, District Court Amendments, creates a process by which the state may convene a three-judge panel in the district court (the district court panel). H.B. 392 provides the Attorney General with an unconditional right to intervene in a civil case in which a party is challenging the constitutionality of state law. Effective Date: February 13, 2026. Sponsors: Representative Matt MacPherson and Senator Michael McKell. <https://le.utah.gov/Session/2026/bills/static/HB0392.html>

H.B. 540, Judicial Transparency and Information Access Amendments, requires an audio recording to be made for a public court proceeding and to be provided to a party without charge when a party requests the audio recording. H.B. 540 requires the Judicial Council to create a single website that allows the public to search and access all public court records. H.B. 540 also requires the Judicial Council to establish a rule regarding judicial financial disclosures. Effective Date: January 1, 2027, except that the rule requirement for judicial financial disclosures takes effect on May 6, 2026. Sponsors: Representative Logan Monson and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0540.html>

S.B. 134, Court Amendments, increases the number of Utah Supreme Court justices to seven, the number of Utah Court of Appeals judges to nine, and the number of Utah district court judges in the Third, Fourth, and Fifth Judicial Districts. Effective Date: January 31, 2026. Sponsors: Senator Chris Wilson and Representative Casey Snider. <https://le.utah.gov/Session/2026/bills/static/SB0134.html>

S.B. 233, Judicial Performance Evaluation Amendments, modifies the requirements for the judicial performance survey conducted by the Judicial Performance Evaluation Committee and modifies the certification standards for an appellate court judge. Sponsors: Senator Brady Brammer and Representative Karianne Lisonbee. <https://le.utah.gov/Session/2026/bills/static/SB0233.html>

Amendments to Court Rules

H.J.R. 26, Joint Resolution Amending Rules of Evidence to Address Machine-Generated Evidence, amends the Utah Rules of Evidence by adding Rule 707 to address the admissibility of information or material that is generated by an artificial

intelligence system. Effective Date: March 6, 2026. Sponsors: Representative Melissa Ballard and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HJR026.html>

H.J.R. 28, Joint Resolution Amending Rules Related to Capital Felony Cases, amends Rule 23B of the Utah Rules of Appellate Procedure to prohibit the remand of death penalty cases to the trial court for findings on the ineffective assistance of counsel. H.J.R. 28 also amends Rule 27 of the Utah Rules of Criminal Procedure to modify the requirements for entering a stay of a sentence in a death penalty case. Effective Date: March 6, 2026. Sponsors: Representative Candice Pierucci and Senator Daniel McCay. <https://le.utah.gov/Session/2026/bills/static/HJR028.html>

S.J.R. 1, Joint Resolution Amending Rules of Evidence Concerning Crimes or Other Acts, amends Rule 404 of the Utah Rules of Evidence to allow the prosecution to admit evidence of prior acts of sexual assault by a defendant in a criminal case in which the defendant is charged with sexual assault. S.J.R. 1 also amends Rule 404 to allow the prosecution to admit prior acts of child sexual exploitation by a defendant in a criminal case in which the defendant is charged with child molestation. Effective Date: February 26, 2026. Sponsors: Senator Brady Brammer and Representative Tyler Clancy. <https://le.utah.gov/Session/2026/bills/static/SJR001.html>

S.J.R. 5, Joint Resolution Amending Rules of Civil Procedure, amends Rule 42 of the Utah Rules of Civil Procedure to address the transfer of an action from a district court to the Business and Chancery Court. S.J.R. 5 also amends various rules of the Utah Rules of Civil Procedure to provide the procedural requirements for the three-judge panel created by H.B. 392, District Court Amendments. Effective Date: February 13, 2026. Sponsors: Senator Brady Brammer and Representative Jordan Teuscher. <https://le.utah.gov/Session/2026/bills/static/SJR005.html>

S.J.R. 6, Joint Resolution Amending Court Rules, amends Rule 42 of the Utah Rules of Civil Procedure to address separate trials in medical malpractice due to statutory changes from the 2025 Legislative General Session. S.J.R. 6 also amends Rule 42 to modify the transfer requirements for a three-judge panel due to the changes in H.B. 366, Judicial Modifications, which allows a party to convene a three-judge panel in the district court in certain civil actions. Effective Date: March 6, 2026. Sponsors: Senator Scott Sandall and Representative Katy Hall. <https://le.utah.gov/Session/2026/bills/static/SJR006.html>

Criminal and Juvenile Justice Law

H.B. 84, Dangerous Weapons Amendments, allows individuals 21 years old or older to conceal carry a dangerous weapon without a concealed carry permit at a public college or university. H.B. 84 prohibits the open carry of a dangerous weapon by anyone, even those with a concealed carry permit, on a higher education campus or on the grounds of a K-12 school. Sponsors: Representative Walt Brooks and Senator Don Ipson. <https://le.utah.gov/~2026/bills/static/HB0084.html>

H.B. 207, Competency Amendments, addresses competency evaluations and portability of involuntary medication orders. Sponsors: Representative Nelson Abbott and Senator Todd Weiler. <https://le.utah.gov/Session/2026/bills/static/HB0207.html>

H.B. 243, Gambling Revisions, provides that a proposition bet (defined as a bet on an action, statistic, occurrence, or non-occurrence) is gambling. Sponsors: Representative Joseph Elison and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0243.html>

H.B. 274, Sentencing Amendments, modifies the requirements for the adult sentencing and supervision length guidelines and requires a court to consider certain information and factors when imposing a sentence for an individual convicted of a crime. H.B. 274 modifies the membership of the Utah Sentencing Commission. Sponsors: Representative Mike Schultz and Senator Michael McKell. <https://le.utah.gov/Session/2026/bills/static/HB0274.html>

H.B. 301, Drug Recodification, technically reorganizes, revises, and clarifies provisions concerning controlled substances and other drugs. H.B. 301 moves certain criminal offenses concerning drugs from Utah Code, Title 58, Occupations and Professions, into Utah Code, Title 76, Utah Criminal Code. Helpful information about the recodification can be found at <https://le.utah.gov/irgc/recodification.htm>. Sponsors: Representative Matthew Gwynn and Senator Michael McKell. <https://le.utah.gov/Session/2026/bills/static/HB0301.html>

H.B. 423, Hit and Run and DUI Offense Amendments, increases the penalties for leaving the scene of an accident, especially for an individual who has prior convictions for leaving the scene of an accident or DUI-related offenses. Effective Date: July 1, 2026.



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Sponsors: Representative Steve Eliason and Senator Todd Weiler. <https://le.utah.gov/Session/2026/bills/static/HB0423.html>

H.B. 495, Capital Felony Case Amendments, modifies the requirements for a capital felony case, including appeals for a capital felony case where the defendant received the death penalty. H.B. 495 creates a prescreening process to determine whether a defendant has an intellectual disability and would be ineligible for the death penalty and modifies the requirements for a petition on competency to be executed. H.B. 495 modifies the jurisdiction of Utah courts regarding ineffective assistance of counsel claims in a capital felony case where the defendant received the death penalty. Sponsors: Representative Candice Pierucci and Senator Daniel McCay. <https://le.utah.gov/Session/2026/bills/static/HB0495.html>

H.B. 547, Transnational Repression Amendments, creates a criminal penalty enhancement for someone who: (1) commits a criminal offense as an agent of a foreign government or terrorist organization or at the direction of a foreign government or terrorist organization; and (2) acts with the intent to cause the victim of the criminal offense to act on behalf of a foreign government or terrorist organization, leave the United States, or do any act, or refrain from doing any act, against the victim's will. H.B. 547 requires higher education institutions to provide information to foreign students on what transnational repression is and how to report it. Sponsors: Representative Tyler Clancy and Senator Michael McKell. <https://le.utah.gov/Session/2026/bills/static/HB0547.html>

S.B. 290, Victim and Witness Privacy Amendments, enacts requirements for a defendant's access to electronic data or information from a victim or witness in a criminal case that is not evidence and for which the victim or witness has a reasonable expectation of privacy. Sponsors: Senator Heidi Balderree and Representative Ariel Defay. <https://le.utah.gov/Session/2026/bills/static/SB0290.html>

Cyber & Technology Law

H.B. 276, Artificial Intelligence Modifications, creates civil liability for artificial intelligence (AI) services that generate and distribute counterfeit intimate images without consent, with a safe harbor for platforms that implement policies and takedown procedures compliant with the statute. H.B. 276 requires large online platforms, AI content providers, and camera manufacturers to preserve or embed data about the origin and authenticity of digital content. Effective Date: January 1, 2027. Sponsors: Representative Ariel Defay and Senator Kirk Cullimore. <https://le.utah.gov/~2026/bills/static/HB0276.html>

S.B. 256, Identity Protection Modifications, clarifies that defamation law applies to content created through AI or other technological means, requires notice to the publisher before filing a defamation action based on digitally created content, addresses damages for a defamation action based on digitally created content, and addresses the right to consent to the use of an individual's personal identity. Sponsors: Senator Kirk Cullimore and Representative Jordan Teuscher. <https://le.utah.gov/Session/2026/bills/static/SB0256.html>

S.B. 275, State-Endorsed Digital Identity Program Amendments, creates a digital ID program run by the state. S.B. 275 makes changes to existing statutes to allow the new digital ID as a valid form of proof of age. Sponsors: Senator Kirk Cullimore and Representative Paul Cutler. <https://le.utah.gov/~2026/bills/static/SB0275.html>

Education Law

H.B. 204, Higher Education Student Belief Accommodation, broadens the scope of a reasonable accommodation to address a student's objection to a required examination or assignment due to the student's religious or conscience belief. Sponsors: Representative Michael Petersen and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0204.html>

H.B. 273, Classroom Technology Amendments, requires the Utah State Board of Education to create model policies regarding classroom technology and AI, including limits on technology use in K-6. H.B. 273 requires local education agencies to adopt policies on technology and AI use and addresses new student accommodation obligations for technology-related learning difficulties. Effective Date: July 1, 2026. Sponsors: Representative Ariel Defay and Senator Chris Wilson. <https://le.utah.gov/~2026/bills/static/HB0273.html>

H.B. 352, Higher Education Alignment, requires the Utah Board of Higher Education to organize Utah's public colleges and universities into geographic regions and to facilitate vertical and horizontal integration among those colleges and universities within a geographic region. Sponsors: Representative Karen Peterson and Senator Evan Vickers. <https://le.utah.gov/Session/2026/bills/static/HB0352.html>

S.B. 69, School Device Revisions, prohibits the use of a device by a student at a public school during school hours. Effective Date: July 1, 2026. Sponsors: Senator Lincoln Fillmore and Representative Doug Welton. <https://le.utah.gov/Session/2026/bills/static/SB0069.html>

S.B. 295, Intellectual Diversity in Education and Government, provides that a prohibited discriminatory practice at a public college or university does not restrict a presentation or instruction by a guest lecturer or a speaker invited to speak at the public college or university. S.B. 295 requires a public university to organize public policy events with representation of differing perspectives. Effective Date: July 1, 2026. Sponsors: Senator John Johnson and Representative Katy Hall. <https://le.utah.gov/Session/2026/bills/static/SB0295.html>

S.B. 296, Student Consent Amendments, enacts certain rights regarding student data and addresses disclosure of student data and a student's informed consent. Effective Date: July 1, 2026. Sponsors: Senator Kirk Cullimore and Representative Stephanie Gricius. <https://le.utah.gov/Session/2026/bills/static/SB0296.html>

S.J.R. 8, Joint Resolution to Initiate a Law School at Utah Valley University, directs Utah Valley University to conduct a comprehensive feasibility study for establishing a law school. Sponsors: Senator Brady Brammer and Representative David Shallenberger. <https://le.utah.gov/Session/2026/bills/static/SJR008.html>

Energy Law

H.B. 78, Nuclear Regulatory Amendments, creates the Nuclear Energy Regulatory Office to oversee nuclear fuel cycle activities. H.B. 78 directs the state to pursue expanded Agreement State status with the Nuclear Regulatory Commission, which would give Utah regulatory authority over activities that have been historically federally regulated. Sponsors: Representative Carl Albrecht and Senator Derrin Owens. <https://le.utah.gov/~2026/bills/static/HB0078.html>

S.B. 135, Nuclear Reprocessing Amendments, authorizes the Office of Energy Development to coordinate with private companies and the Department of Energy on nuclear fuel recycling development, to allow Utah to compete for a proposed federal Nuclear Lifecycle Innovation Campus. S.B. 135 directs a review of state laws that could be barriers to nuclear fuel cycle development and the campus. Sponsors: Senator Derrin Owens and Representative Carl Albrecht. <https://le.utah.gov/~2026/bills/static/SB0135.html>



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Alan Hurst joins Kirton McConkie after serving as Idaho's solicitor general, now focusing on appellate advocacy, dispositive motions, and complex civil and constitutional disputes.



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Environmental & Natural Resources Law

H.B. 60, Water Rights Amendments, allows the state engineer, when determining if a water rights application is detrimental to public welfare, to consider only issues directly related to the beneficial use of water, the quantity, quality, or availability of water in the state, or other factors specifically stated in statute. H.B. 60 modifies the extent to which the state engineer may consider a protest and clarifies who is an aggrieved person for purposes of seeking judicial review. Sponsors: Representative David Shallenberger and Senator Keven Stratton. <https://le.utah.gov/~2026/bills/static/HB0060.html>

H.B. 410, Water Leasing Amendments, creates the Great Salt Lake Preservation Program to lease agricultural water from willing water users to help increase flows to the Great Salt Lake. H.B. 410 streamlines water leasing processes. Sponsors: Representative Jill Koford and Senator Scott Sandall. <https://le.utah.gov/~2026/bills/static/HB0410.html>

H.B. 437, Environmental Permitting Amendments, allows the Department of Environmental Quality and Division of Oil, Gas, and Mining to certify licensed professionals to perform preliminary, expedited reviews of certain environmental permits. Sponsors: Representative David Shallenberger and Senator Ann Millner. <https://le.utah.gov/~2026/bills/static/HB0437.html>

S.B. 254, Extracted Natural Resources Amendments, establishes a program for the development of extraction and processing of critical minerals, including creating a coordinating council, critical mineral zones, a clearinghouse of data, and the Minerals for Industrial, National, and Economic Security Center. Effective Date: May 1, 2026, except that certain sections take effect on July 1, 2026. Sponsors: Senator Ann Millner and Representative David Shallenberger. <https://le.utah.gov/~2026/bills/static/SB0254.html>

Election Law

H.B. 209, Voting Amendments, requires a voter to provide proof of citizenship to vote in a state or local election and makes other statutory changes related to the proof of citizenship requirement. Effective Date: March 25, 2026. Sponsors: Representative Cory Maloy and Senator Ronald Winterton. <https://le.utah.gov/Session/2026/bills/static/HB0209.html>

H.B. 242, Initiative and Referendum Signature Gathering and Removal Amendments, modifies requirements governing the collection and submission of statements requesting removal

of a voter's signature from an initiative or referendum petition. H.B. 242 requires a person who gathers removal statements to be at least eighteen years old and, if paid, to wear a badge identifying the individual as a paid gatherer. H.B. 242 also prohibits a voter from submitting a removal statement by mail using prepaid postage to the county clerk unless the statement is postmarked on or before March 7, 2026. Effective Date: March 7, 2026. Sponsors: Representative Karen Peterson and Senator Calvin Musselman. <https://le.utah.gov/Session/2026/bills/static/HB0242.html>

Estate Planning & Guardianship Law

H.B. 181, Uniform Estate Planning Amendments, enacts the Uniform Electronic Estate Planning Documents Act from the Uniform Law Commission. The act authorizes the use of electronic documents and electronic signatures for non-testamentary documents. Sponsors: Representative Nelson Abbott and Senator Michael McKell. <https://le.utah.gov/Session/2026/bills/static/HB0181.html>

S.B. 161, Evaluations in Guardianship Amendments, clarifies that an individual's rights under the Health Insurance Portability and Accountability Act (HIPAA) are not affected by provisions relating to the rights of an individual who is alleged to be incapacitated. S.B. 161 also amends the scope of assessment of a court-appointed health care provider that is assessing an individual alleged to be incapacitated. S.B. 161 addresses certain reports that are required to be filed with the court in guardianship proceedings. Sponsors: Senator Todd Weiler and Representative Melissa Ballard. <https://le.utah.gov/Session/2026/bills/static/SB0161.html>

Family Law

H.B. 51, Adoption Amendments, makes several changes for child-placing adoption agencies, including limits on payments to birth parents and transporting birth parents to Utah. H.B. 51 modifies requirements regarding advertising for adoption services, disclosures during adoption, and information that must be filed with the court during an adoption proceeding. H.B. 51 allows a birth parent to revoke consent or relinquishment for any reason within seventy-two hours after consenting or relinquishing and provides an additional window for revocation due to duress, fraud, or undue influence. Sponsors: Representative Katy Hall and Senator Chris Wilson. <https://le.utah.gov/Session/2026/bills/static/HB0051.html>

H.B. 303, Family Court Amendments, allows a court to consider evidence of coercive control by a parent in a custody case and defines the meaning of coercive control. H.B. 303 puts in place requirements for a custody evaluation in family law cases. Effective Date: May 6, 2026, except that the coercive control provisions of the bill took effect on March 23, 2026. Sponsors: Representative Paul Cutler and Senator Michael McKell. <https://le.utah.gov/Session/2026/bills/static/HB0303.html>

H.B. 372, Child Welfare Changes, changes the responsibilities and obligations of an attorney guardian ad litem, including requiring the guardian ad litem to inform the court of certain information at each hearing. H.B. 372 also codifies the membership and responsibilities of the Guardian ad Litem Oversight Committee. Sponsors: Representative Karianne Lisonbee and Senator Wayne Harper. <https://le.utah.gov/~2026/bills/static/HB0372.html>

S.B. 59, Alimony Amendments, requires a court, when determining alimony, to consider the tax consequences of alimony for each party and addresses alimony when the parties were previously married to each other, divorced, and then remarried each other. S.B. 59 provides that a party's retirement is only a substantial material change in circumstances for purposes of modifying alimony for a divorce decree entered on or after May 12, 2020, and changes the requirements for terminating alimony due to cohabitation. Effective Date: March 23, 2026. Sponsors: Senator Lincoln Fillmore and Representative Paul Cutler. <https://le.utah.gov/Session/2026/bills/static/SB0059.html>

S.B. 109, Alienation of Affections Amendments, abolishes the right of action for alienation of affections. Effective Date: May 5, 2027. Sponsors: Senator Todd Weiler and Representative Anthony Loubet. <https://le.utah.gov/Session/2026/bills/static/SB0109.html>

S.B. 110, Marriage Amendments, requires that a common law marriage is valid only if the party files a petition for the court to recognize the marriage before May 5, 2027. Sponsors: Senator Todd Weiler and Representative Karianne Lisonbee. <https://le.utah.gov/Session/2026/bills/static/SB0110.html>

S.B. 257, Domestic Relations Amendments, makes changes to marriage, custody, parent-time, child support, and family law statutes, including: (1) amending the requirements as to when a court can deny a motion for genetic testing or disregard genetic testing results in a parentage proceeding for a possible father; (2) putting in place requirements for a minimum amount of child care expenses that a parent is required to pay in a child

support order modified or entered on or after January 1, 2027; (3) modifying parent-time schedules; and (4) allowing for the modification of custody and parent-time when a child turns five years old. Sponsors: Senator Todd Weiler and Representative Stephanie Gricius. <https://le.utah.gov/Session/2026/bills/static/SB0257.html>

Government & Administrative Law

H.B. 79, Governmental Immunity Amendments, provides immunity for a governmental entity and employees when responding to a disaster or potential disaster and for a first responder providing emergency medical services. H.B. 79 has retrospective operation to March 18, 1985. Effective Date: February 27, 2026. Sponsors: Representative Matthew Gwynn and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0079.html>

H.B. 147, Government Form Submission Amendments, requires state and local governments to provide an electronic option for filling out and submitting forms, records, and other information. H.B. 147 provides exceptions to the electronic form requirements. Effective Date: July 1, 2027. Sponsors: Representative Jordan Teuscher and Senator Evan Vickers. <https://le.utah.gov/Session/2026/bills/static/HB0147.html>

H.B. 309, Juneteenth Observance Amendments, provides that Juneteenth National Freedom Day will be recognized on the same day as the federal holiday. Effective Date: January 1, 2027. Sponsors: Representative Sandra Hollins and Senator Kirk Cullimore. <https://le.utah.gov/Session/2026/bills/static/HB0309.html>

H.B. 325, Government Records Classification Amendments, makes private any portion of a record that reveals whether a taxpayer receives a property tax exemption, abatement, or deferral. H.B. 325 only allows disclosure if the head of the governmental entity determines that: (1) there is no interest in restricting access to the record, or (2) the interests favoring access are greater than or equal to the interest favoring restriction of access. H.B. 325 makes a change to the definition of "initial contact report" and consolidates and broadens existing language that states a record that documents a governmental entity's receipt or expenditure of funds is public. Sponsors: Representative Lisa Shepherd and Senator Keven Stratton. <https://le.utah.gov/Session/2026/bills/static/HB0325.html>

H.B. 425, Local Government Fees Amendments, creates a process for municipalities and counties to establish transportation utility fees. H.B. 425 is a response to *Larson v. Pleasant Grove*

City, 2023 UT 2, 523 P.3d 1269. Sponsors: Representative Karen Peterson and Senator Brady Brammer. <https://le.utah.gov/~2026/bills/static/HB0425.html>

H.B. 535, Disposition of Public Property, creates a uniform process for local government entities to follow before disposing of public property through sale, lease, or joint venture.

Sponsors: Representative R. Neil Walter and Senator Daniel McCay. <https://le.utah.gov/~2026/bills/static/HB0535.html>

S.B. 108, Online Marketplace Amendments, prohibits local governments from regulating digital platforms that facilitate communication or commerce between users. Sponsors: Senator Lincoln Fillmore and Representative Doug Fiefla. <https://le.utah.gov/Session/2026/bills/static/SB0108.html>

S.B. 193, State Legal Holiday Amendments, makes Good Friday a legal holiday in Utah with state employees receiving a half-day of paid time off for the holiday. S.B. 193 also requires a school district, a charter school, and a higher education institution to prioritize scheduling school breaks to coincide with a state holy day and a government entity to place a high priority on approving an employee's request for personal leave on a state holy day. Sponsors: Senator Keven Stratton and Representative Walt Brooks. <https://le.utah.gov/Session/2026/bills/static/SB0193.html>

S.B. 218, Constable Modifications, requires constables to be licensed by the Division of Professional Licensing beginning January 1, 2027. S.B. 218 requires a constable working for a governmental entity to have a contract outlining the scope of the constable's services for the government entity. Sponsors: Senator Kirk Cullimore and Representative Jordan Teuscher. <https://le.utah.gov/~2026/bills/static/SB0218.html>

S.B. 232, Regulatory Impacts on Families, requires a state agency engaged in rulemaking to consider the impact a proposed rule may have on family health, stability, and formation and requires the agency to consider reasonable alternatives if the agency expects a measurable negative impact. S.B. 232 requires a county or municipal legislative body to consider an ordinance's impact on family health, stability, and formation before enacting the ordinance. Sponsors: Senator Lincoln Fillmore and Representative Melissa Ballard. <https://le.utah.gov/Session/2026/bills/static/SB0232.html>

S.B. 284, Local Land and Water Modifications, amends local land use and water planning processes and requirements and requires public water suppliers to adopt a written plan by

January 1, 2028, which will be the basis for future water-related exactions. S.B. 284 requires certain municipalities to permit detached accessory dwelling units under certain circumstances. Effective Date: May 6, 2026, except that the changes to detached accessory dwelling units take effect on October 1, 2026. Sponsors: Senator Lincoln Fillmore and Representative Jill Koford. <https://le.utah.gov/Session/2026/bills/static/SB0284.html>

Health Law

H.B. 259, Parental Access to Children's Medical Records Amendments, provides that a parent has the right to access their child's medical record. H.B. 259 puts exceptions, requirements, and penalties into place regarding parental access. Sponsors: Representative Michael Petersen and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0259.html>

H.B. 270, Healthcare Worker Post-Employment Amendments, voids a noncompete agreement for a healthcare worker entered after May 6, 2026. Sponsors: Representative Katy Hall and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0270.html>

H.B. 572, Behavioral Health, Mental Health, and Social Services Amendments, addresses mental health and substance use disorder treatment for justice-involved individuals. H.B. 572 amends provisions related to involuntary commitment and court ordered assisted outpatient treatment for mental illness and requires the Department of Health and Human Services to maintain a database of involuntary commitments. H.B. 572 also addresses local government tax revenue distributions for homeless shelters. Effective Date: May 6, 2026, except that the changes to local government tax revenue distributions take effect on January 1, 2027. Sponsors: Representative Steve Eliason and Senator Evan Vickers. <https://le.utah.gov/Session/2026/bills/static/HB0572.html>

S.B. 174, Exercise of Religious Beliefs and Conscience Amendments, provides that a health care provider has a right to refuse to participate in or provide health care that violates the health care provider's religious beliefs and conscience and cannot be held civilly, administratively, or criminally liable for exercising that right. S.B. 174 addresses discrimination or retaliation against a health care provider for exercising the right of religious belief or conscience. Sponsors: Senator Keven Stratton and Representative Karianne Lisonbee. <https://le.utah.gov/Session/2026/bills/static/SB0174.html>

Property Law

H.B. 404, Sex-Designated Housing Amendments, allows a specific subset of landlords to restrict occupancy in single-sex housing to individuals of the designated biological sex. H.B. 404 provides that this restriction is not unlawful discrimination under the Utah Fair Housing Act (the act) and does not provide any exception to the act. Sponsors: Representative David Shallenberger and Senator Brady Brammer. <https://le.utah.gov/Session/2026/bills/static/HB0404.html>

S.B. 122, HOA Amendments, makes changes regarding homeowners' associations (HOAs), including changes to advisory opinions from the Office of the Homeowners' Association Ombudsman (the office) and information that the office is required to provide to individuals impacted by an HOA. Sponsors: Senator Wayne Harper and Representative Cory Maloy. <https://le.utah.gov/Session/2026/bills/static/SB0122.html>

Tax Law

S.B. 206, Tax Amendments, modifies administration of the property tax valuation and appeals systems. S.B. 206 enacts a comprehensive tax increment financing (TIF) reporting framework, requiring entities that receive TIF to follow public disclosure and annual reporting procedures. S.B. 206 modifies the definition of new growth for purposes of calculating the property tax rate. Effective Date: May 6, 2026, except that the new growth change takes effect on January 1, 2027. Sponsors: Senator Wayne Harper and Representative R. Neil Walter. <https://le.utah.gov/Session/2026/bills/static/SB0206.html>

S.B. 238, Property Tax Adjustments, removes a county's discretion to require a property owner to apply for a residential exemption in some circumstances and instead requires a property owner to apply to the county. S.B. 238 makes changes to the truth-in-taxation requirements. S.B. 238 has retrospective operation to January 1, 2026, except that the provisions related to the residential exemption take effect on January 1, 2027. Sponsors: Senator Chris Wilson and Representative Steve Eliason. <https://le.utah.gov/Session/2026/bills/static/SB0238.html>

S.B. 287, Targeted Advertising Tax, defines a targeted advertising entity and imposes an annual tax on a targeted advertising entity's gross receipts from targeted advertising in the state beginning January 1, 2027. S.B. 287 provides that the revenue from the tax is deposited into a new account to fund several different children's programs. Sponsors: Senator Michael McKell and Representative Jordan Teuscher. <https://le.utah.gov/Session/2026/bills/static/SB0287.html>

Transportation Law

H.B. 381, Electric Mobility Device Amendments, clarifies the definitions of personal electric vehicles, distinguishing between an electric assisted bicycle and an electric motorcycle. H.B. 381 creates a personal electric vehicle safety course for minors and allows law enforcement to hold a minor's personal electric vehicle upon a violation. Effective Date: May 6, 2026, except that the provisions regarding minors take effect on May 5, 2027. Sponsors: Representative Paul Cutler and Senator Todd Weiler. <https://le.utah.gov/Session/2026/bills/static/HB0381.html>

S.B. 242, Transportation Amendments, is a transportation omnibus bill, which requires Salt Lake City and UDOT to collaborate in evaluating traffic calming and highway reduction strategies within portions of Salt Lake City. S.B. 242 also requires high-weight commercial electric vehicles to pay a higher amount in road usage charge and makes changes relating to towing, including by local governments. Effective Date: May 6, 2026, except that certain provisions take effect on July 1, 2026. Sponsors: Senator Wayne Harper and Representative Kay Christofferson. <https://le.utah.gov/Session/2026/bills/static/SB0242.html>

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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

Van Dusen v. Wasatch County **2026 UT 1 (Feb. 5, 2026)**

Neighbors of a site purchased by the Church of Jesus Christ of Latter-day Saints sued the local zoning authority, Wasatch County, seeking to stop construction of a temple on the site. After the Church intervened and obtained summary judgment, the neighbors obtained an injunction halting construction pending an appeal. The Church appealed the injunction order and filed a motion under Utah R. App. P. 8, asking the Utah Supreme Court to suspend the injunction. Rather than address the injunction order head-on, the appellate court elected to address the Rule 8 motion and clarified that such a motion is not decided under any particular standard of review. Instead, **a court deciding a Rule 8 motion must exercise its “own discretion in the first instance” and decide “whether [it] agree[s] in substance with the district court’s assessment” of the parties’ evidence and arguments.** In this case, the supreme court determined that the neighbors had “not identified any specific harm that may occur absent an injunction pending appeal” and, consequently, suspended the injunction.

Auto Owners Insurance v. Labor Commission **2026 UT 3 (Feb. 26, 2026)**

After a serious injury on the job, an employee settled with third parties for \$5 million, while his employer and its insurer began paying workers’ compensation benefits to cover medical care and lost wages. By statute, the settlement proceeds needed to be shared with the employer and insurer to offset already paid and

future workers’ compensation benefits. But, also under statute, the employer and insurer were required to contribute to the legal expenses which secured the settlement. The dispute, then, was how to calculate the proportionate share of these legal expenses. The supreme court held that **if an employer or its insurer seeks to offset its payment of future benefits, “the statute’s reference to the parties’ interests as they ‘may appear’ requires the Commission to account for future anticipated benefits when determining an employer’s proportionate share of expenses of a third-party action.”** The court further held that if an employee pays those expenses, “an employer or insurance carrier must bear its proportionate share of those expenses before offsetting future benefits against that recovery.”

Welcome to Spencer Fane!

Spencer Fane is pleased to welcome **Bryan Farris**, **David Rudd**, and **Hailey Winn** to the Salt Lake City office.

Bryan Farris joins as Partner and brings extensive experience advising businesses on corporate and commercial transactions, including entity formation, mergers and acquisitions, and complex real estate and energy related deals. David joins as Of Counsel with deep experience in corporate transactions and related financings, including mergers and acquisitions, private equity and venture capital investments, and intra-company mergers and reorganizations. Hailey, an Associate, focuses on assisting clients with business transactions and commercial litigation, as well as white-collar criminal defense.



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Utah Court of Appeals

Al-Imari v. UDOT 2026 UT App 15 (Feb. 5, 2026)

Plaintiffs were injured when their car hit an oily patch of road and slid off into the Logan River. They sued UDOT, which had been working on the road. When expert designations were due, they designated an expert but the designation was rather general as to the expert's opinions and therefore deficient. The court of appeals reversed the trial court's exclusion of the expert, holding that **even if a designation is technically deficient, it is harmless if the other party knows enough to understand the role of the expert.** The case also holds that the harmless inquiry occurs at the time of hearing, not at the time of the designation, thus taking into account things that happened after the designation (in the case, production of a full expert report and an offer to permit the expert's deposition).

Rosser v. Elite Craft Homes 2026 UT App 16 (Feb. 5, 2026)

Adjoining property owners sued when an under-construction building caught fire and burned, destroying their home. The evidence showed that the contractor had not secured the site from trespassers and was aware that homeless people were

using the property for shelter at night. One of them appears to have caused the fire. The court of appeals held that **"landowners owe a duty to adjoining landowners and inhabitants to exercise reasonable care when they engage in construction activities on their property."**

Tenth Circuit Court of Appeals

Mukantagara v. Noem 164 F.4th 765 (Jan. 12, 2026)

The Immigration and Nationality Act strips federal courts of jurisdiction to review certain discretionary determinations made by the United States Citizenship and Immigration Services (USCIS) regarding refugee status. When Mukantagara sued USCIS challenging termination of her refugee status, the district court relied on the Act's jurisdiction-stripping provisions to dismiss her claims for lack of subject-matter jurisdiction. On appeal, the Tenth Circuit reversed and remanded, holding as a matter of apparent first impression that **the Act did not eliminate federal courts' jurisdiction to address nondiscretionary threshold determinations of eligibility under the Act, only their jurisdiction to review any discretionary determinations flowing from those eligibility determinations.**

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Without Consent: A Landmark Trial and the Decades-Long Struggle to Make Spousal Rape a Crime

by Sarah Weinman

Reviewed by Taylor Kordsiemon

It is often convenient to view past prejudices and injustices as products of a bygone era, disconnected from contemporary life. Some works, however, dispel that illusion by demonstrating how the repercussions of our past national sins continue to plague public life. Sarah Weinman's *Without Consent: A Landmark Trial and the Decades-Long Struggle to Make Spousal Rape a Crime* does precisely that.

Without Consent recounts the story of *Oregon v. Rideout*, No. 108,866 (Marion Cnty. Cir. Ct. 1978), a 1978 criminal prosecution in which a woman, Greta Rideout, accused her husband, John Rideout, of raping her. But this was no ordinary case. In fact, Greta became the first woman in United States history to testify against her husband in a criminal trial in which he was charged with raping his wife. Although John was ultimately acquitted, the trial drew national attention and forced the country to confront deeply embedded assumptions about marriage, consent, and bodily autonomy.

Weinman uses the *Rideout* case as both a narrative anchor and lens through which to examine the broader legal and cultural history of spousal rape. Although most people today understand “rape” to refer to nonconsensual sex accomplished through force or threat – regardless of whether the individuals involved are married – that has not always been the case.

At common law, rape was defined as “unlawful sexual intercourse committed by a man with a woman *not his wife* through force and against her will.” *Rape*, BLACK’S LAW DICTIONARY (12th ed. 2024) (emphasis added). As the old-time jurist Sir Matthew Hale explained, “The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.” See Matthew Hale, PLEAS OF THE CROWN 629 (1847). Because married women existed in a perpetual state of irrevocable consent, the notion of a man raping his wife was a legal impossibility.

Such antiquated beliefs about spousal rape persisted for centuries and ultimately found a home in the American legal system. From the early nineteenth century until the mid-1970s, all fifty states recognized a version of the “marital rape exception,” under which a man could not be held criminally liable for raping his wife.

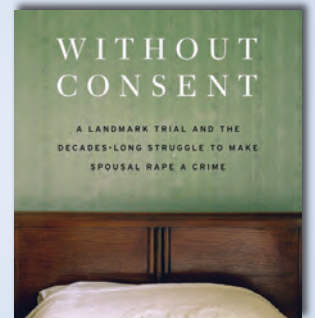
**WITHOUT CONSENT:
A Landmark Trial and the Decades-Long
Struggle to Make Spousal Rape a Crime**

Author: Sarah Weinman

Publisher: Ecco (2025)

Pages: 320

**Available in hardcover, paperback,
and e-book formats.**



Feminist legal reformers worked to dismantle the marital rape exception state by state, and they finally began to see success in the 1970s (including in Oregon, which had eliminated its marital rape exception just one year before the *Rideout* trial). But progress did not come easily. Opponents of reform expressed concerns about “injecting the criminal justice system into the marital bedroom.” *Without Consent*, p. 137. One California lawmaker worried that rape accusations would be “used as a weapon by separating spouses.” *Id.* Although bills to eliminate the marital rape exception were voted down, vetoed, or ignored, the tide eventually turned. By the mid-1990s, every state treated spousal rape as a crime, albeit to varying degrees.

Taylor Kordsiemon is an associate at Manning Curtis Bradshaw Bednar, where his practice focuses on government defense, commercial litigation, insurance coverage, and appeals.



In tracing these developments, Weinman portrays the struggle to criminalize spousal rape as neither swift nor inevitable. Instead, she shows how the *Rideout* case exposed the tension between statutory reform and entrenched cultural beliefs about marriage. Even where the law had changed, juries, lawyers, and the media often lagged behind. By situating Greta Rideout’s search for justice within a decades-long legal transformation, *Without Consent* illustrates just how recently – and unevenly – the legal system began to recognize that marriage does not extinguish a person’s right to refuse.

Even as someone who has written and published on the subject of spousal rape in American law, I was blown away by the depth of research on display. See Taylor Kordsiemon, *A Right to Marital Rape? The Immorality of the Dobbs Approach to Unenumerated Rights*, 12 HOUSTON L. REV. ONLINE 90 (2022). Weinman is a journalist, not a lawyer, but she describes court transcripts, judicial decisions, legislative debates, and other archival materials with precision. It is no secret that laypeople often struggle to understand the nuances of legal writing, but Weinman clearly invested the time necessary to understand the legal landscape in which the *Rideout* case unfolded.

How Weinman tells Greta Rideout’s story is just as impressive as the information she imparts. It would not be entirely inaccurate to

describe the book as “true crime,” but it resists the voyeurism and sensationalism that often define that genre, especially when dealing with crimes of a sexual nature. Intimate and painful events are told with restraint, treating the events and people involved with the discretion and respect warranted by the subject matter. The result is a narrative that is gripping without being exploitative.

Ultimately, Weinman demonstrates that the *Rideout* case should not merely be remembered as a footnote in a closed chapter, but as part of an ongoing story. *Without Consent* invites readers to confront the lingering assumptions that made the marital rape exception possible in the first place and to consider the ways in which law and culture still struggle to align with basic notions of morality and equality.

Particularly for members of the Bar, *Without Consent* serves as a timely reminder that legal reform is rarely self-executing. We are often asked to explain what the law is, but we must also consider what the law should be and then work toward that reality. And even when the text of a statute changes in a positive way, cultural assumptions are not so easily amended.

AUTHOR’S NOTE: *Weinman interviewed me in connection with her work on Without Consent, and the book’s epilogue briefly cites to and discusses my law review article.*

2026 ANNUAL FAMILY LAW SEMINAR

Friday, June 5th | 8:00 am—6:30 pm | NEW LOCATION: Grand America Hotel, 555 S. Main St., SLC, UT

Southern Utah Watch Party! The event will be live streamed for attendance in-person, hosted at the law office of Snow, Caldwell, Beckstrom & Wilbanks, located at 253 West St. George Blvd., Suite 100, St. George, Utah. Attendees will receive “e-verified (live)” CLE credit for attendance.	
8:00–8:30 am	Registration & Continental Breakfast (Salt Lake and St. George.)
8:30–11:45 am	Welcome & Keynote Presentation: “Practitioner’s Guide: Advanced Financial Issues in Family Law Cases” James M. Godbout, ASA/CVA/C DFA/CFP/CFP, Lead Managing Director, CBIZ Forensic Consulting Group, LLC
10:00–10:15 am	Morning Break
11:15 am–12:15 pm	Professionalism & Civility Michelle Oldroyd, CLE Director, Utah State Bar; Nate Alder, Esq.; Bryant McConkie, Esq.
12:15–1:15 pm	Lunch (Salt Lake and St. George) Family Law Section of the Utah State Bar Annual Meeting Presentation of awards for Family Law Attorney of the Year, Family Law Judge of the Year and Lifetime Service Award
1:15–2:15 pm	Legislative Update Senator Todd Weiler, Esq.; Brent Salazar-Hall, Esq.
2:15–3:15 pm	Case Law Update Julie J. Nelson, Esq.
3:15–3:30 pm	Afternoon Break
3:30–4:30 pm	Ethics Stuart Schultz, Esq.; Mike Skolnick, Esq.; Keith Call, Esq.
4:30–5:30 pm	Judicial Panel Judges: Hon. Angela Foncesbeck (1st District); Hon. Catherine Conklin (2nd District); Commissioner Brandon Richards (2nd District); Commissioner Renee Blocher (3rd District)
5:30 pm	Social (Salt Lake venue only) Light appetizers, cocktails and non-alcoholic beverages


COST: Family Law Section Members – \$350 | Non-Section Members & Non-Lawyer Professionals – \$395 | Paralegals, LLPs & Non-Lawyer Staff – \$275 | Legal Aid & Non-Profit – \$175 | Judges & Commissioners – Free

7.5 CLE CREDITS

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Contact sectionsupport@utahbar.org with questions.



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The discount is available for up to 3 days before and 3 days after the event (June 2nd–June 8th).

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Inform the reservations agent of attendance at the “Family Law Day.” Reservation may be made on the hotel’s website, however, please call the reservation line for the hotel first in order to obtain a confirmation number for the discount.

Let's Talk, Let's Listen: Judicial Perspectives on Independence, Constitutional Structure, and the Role of the Courts

by Chloe J. Call and Keith A. Call

On March 17, 2026, the Utah State Bar hosted the second installment of its Let's Talk, Let's Listen series, a continuing legal education program designed to foster real, civil discussion on difficult public issues. Moderated by Keith Call (one of the co-authors of this article), the program featured Utah Supreme Court Justice Paige Petersen and Utah Court Administrator Ron Gordon in a wide-ranging discussion addressing judicial independence, the role of the courts within Utah's constitutional framework, and recent public discourse surrounding the judiciary.

The program drew strong participation from members of the Bar and the broader legal community. Building on themes introduced in the series' first installment with Utah Senate President J. Stuart Adams and Utah House Speaker Mike Schultz, the discussion provided an opportunity to hear directly from members of the judiciary regarding their institutional role, the nature of judicial decision-making, and the ongoing debate concerning the balance of power among Utah's three branches of government. You can view the entire proceeding at <https://www.youtube.com/watch?v=LPfjOPVV08>.

Judicial Review and the Role of the Courts

A central theme of the discussion was the role of judicial review as a defining feature of the judiciary's constitutional function. Justice Peterson emphasized that judicial review – the authority to interpret the law and assess the constitutionality of legislative

and executive action – is fundamental to the courts' role. She noted that criticism of judicial decisions is both expected and appropriate, particularly when it engages directly with the legal reasoning underlying a decision.

Addressing recent public debate surrounding *League of Women Voters v. Utah State Legislature*, 2024 UT 21, 554 P.3d 872 (the Proposition 4 case), Justice Peterson clarified that the judiciary does not create ballot initiatives or policy frameworks but instead evaluates legal challenges arising under the Utah Constitution. She explained that while some critics characterize certain rulings as promoting direct democracy over representative government (see Let's Talk, Let's Listen Part I), the Utah Constitution itself expressly provides for the initiative process. Where litigants raise claims involving enforceable constitutional rights, courts have both the authority and the obligation to adjudicate those claims.

Justice Peterson further emphasized that recognizing constitutional rights in this context does not elevate initiatives to the status of "super laws," but it does mean that legislative action, like all government action, remains subject to constitutional limitations.

Judicial Independence and Institutional Constraints

The discussion also addressed the concept of judicial independence and the practical realities that shape the judiciary's role. Justice Peterson described the courts as uniquely constrained compared to the legislative and executive branches. Unlike those branches,

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



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the judiciary lacks control over funding and enforcement mechanisms and must rely on its authority to interpret and apply the law.

She noted that the courts depend on legislative appropriations, cannot independently determine certain aspects of their internal governance, and are limited to resolving actual cases and controversies rather than engaging in public advocacy. These structural features, she suggested, underscore the importance of maintaining an independent judiciary capable of deciding cases based solely on the law.

Referencing longstanding constitutional principles in the federalist papers, Justice Peterson observed that the judiciary has often been described as the “least dangerous” branch because it lacks control over the “sword or the purse.” At the same time, she emphasized that judicial review serves as a critical check on the exercise of power by the other branches, helping to ensure that government action remains consistent with constitutional requirements.

Mr. Gordon echoed these themes, noting that the judiciary operates under multiple layers of governance, including both the Utah Supreme Court and the Judicial Council. He emphasized that, despite institutional constraints, the judiciary remains committed to fulfilling its constitutional responsibilities without encroaching on the functions of other branches.

Court Structure, Caseload, and Decision-Making

Justice Peterson also addressed questions regarding the operation of the Utah Supreme Court, including its caseload and decision-making processes. She explained that fluctuations in the number of opinions issued in recent years were influenced by factors such as the COVID-19 pandemic and changes in court membership. In a typical year, the court reviews dozens of petitions but selects a smaller number of cases that present significant legal questions requiring clarification for lower courts and the public.

She emphasized that the court prioritizes careful, deliberate decision-making over speed, noting that rushed opinions can create confusion and unintended consequences for future cases. The justices, she explained, engage in extensive internal deliberation

and feedback when drafting opinions, often working collaboratively to reach agreement or narrow points of disagreement.

With respect to dissenting opinions, Justice Peterson noted that the court seeks consensus where possible, though structural changes like the recent expansion of the court may influence the frequency of separate opinions in the future.

Mr. Gordon also addressed the broader topic of court resources, observing that the legislature's recent decisions to expand the number of judges on the court of appeals and in certain district courts will help address critical needs. He noted these new judicial positions are a direct response to requests made by Chief Justice Matthew Durrant during his 2026 State of the Judiciary address.

Judicial Selection, Leadership, and Separation of Powers

Another significant portion of the discussion focused on recent changes and proposals affecting judicial selection and court governance. Justice Peterson expressed concern about potential shifts away from a merit-based selection process, emphasizing that the Utah Constitution envisions judicial appointments grounded in qualifications rather than political considerations. She noted that prior reliance on nominating commissions with bipartisan representation served as an important safeguard against politicization.

Justice Peterson also discussed the role of the Chief Justice, describing the position as analogous to a chief executive officer responsible for overseeing the administration of the courts. She raised concerns over the legislature altering how the Chief Justice is selected, suggesting that this change has important implications on judicial independence and the internal functioning of the courts.

Throughout the discussion, she emphasized that while the legislature plays a significant role in shaping the structure and funding of the courts, maintaining appropriate institutional boundaries remains essential to preserving the balance of power.

Public Discourse and the State of Judicial Independence

The panel addressed the current climate surrounding the judiciary, with Justice Peterson describing the present moment as a

“rocky time” for judicial independence. She noted that judges have faced increased public criticism, including calls for impeachment, and emphasized the importance of ensuring that such criticism remains focused on legal issues rather than personal attacks.

At the same time, she observed that the judiciary does not operate in isolation from democratic processes. Because the Utah Constitution can be amended by the people, the courts do not have the final word on constitutional meaning in the same way as some other institutions. This dynamic, she suggested, reflects the broader system of checks and balances within the state.

Justice Peterson also reflected on the personal dimension of serving on the court, noting that justices are limited in their ability to respond publicly to criticism. She emphasized the importance of remaining impartial and deciding cases based solely on the law, regardless of external pressures or political considerations.

The Role of Dialogue and Civic Engagement

In their closing remarks, both panelists emphasized the importance of continued dialogue and public understanding of the judiciary’s role. Mr. Gordon highlighted the judiciary’s commitment to making difficult decisions grounded in the rule of law, while respecting the distinct roles of the legislative and executive branches.

Justice Peterson suggested that public perceptions of conflict between the branches may at times be overstated, noting that

members of the judiciary and legislature frequently engage in constructive discussions about their respective roles. She encouraged attendees to engage directly with foundational constitutional documents, including the Declaration of Independence, as a means of understanding the historical importance of an independent judiciary.

Moderator Keith Call concluded by encouraging attorneys to remain civically engaged, including participation in local political processes, and expressed appreciation for the thoughtful exchange of ideas fostered by the series.

Conclusion

The second installment of the Let’s Talk, Let’s Listen series offered Utah Bar members a valuable opportunity to hear directly from members of the judiciary about their role in interpreting the law, maintaining judicial independence, and navigating contemporary constitutional debates. It gave two of our judicial leaders an opportunity to offer different perspectives on the balance of power among Utah’s branches of government. The discussion also underscored shared commitments to the rule of law, constitutional governance, and respectful dialogue. For members of the legal profession, the program highlighted the continuing importance of informed engagement in discussions that shape the state’s legal and institutional landscape.

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.

Utah Law & Justice Center: Exclusive Facilities for Legal Professionals

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

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

Room rates include setup, tables, chairs, AV equipment, free parking, and Wi-Fi. We can also assist with catering orders and delivery, adding the food cost to your invoice with no extra surcharge.



Contact: travis@utahbar.org or visit: utahbar.org/uljc-rental-info/

President-Elect & Bar Commission Election Results

The Utah State Bar is pleased to announce the results of the elections for President-Elect and Bar Commission seats for the upcoming fiscal year. **Tom Bayles** was successful in his retention election as President-Elect of the Utah State Bar. He will serve as President-Elect for the 2026–2027 year and then become President for the 2027–2028 year.

Congratulations to **R. Christian Hansen**, **Yvette Donosso**, and **Jeremy Reutzel** who ran unopposed in the First, Second, and Fourth Divisions, respectively; and to **Ashley Biehl**, **Ezzy Khaosanga**, and **Walter A. Romney** who were elected in the Third Division.



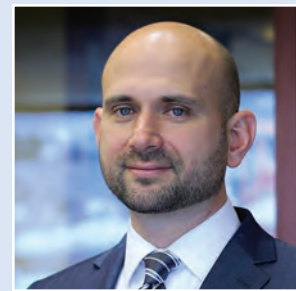
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Ashley Biehl
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Ezzy Khaosanga
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Third Division



Walter A. Romney
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Third Division

NEW: Elective CLE Credit Opportunity!

Effective May 1, 2026, an amendment to Rule 1-613 will allow attorneys and licensed paralegal practitioners (LPPs) to earn one hour of elective CLE (self-study) credit for each 1,000 words that are written and published in a recognized legal periodical. This type of CLE credit falls within the six hours of elective CLE (self-study) credit allowed per annual compliance cycle through qualified audio and video presentations, webcasts, computer interactive programs, writing, lecturing, teaching, public service, and verified attendance (three total hours for LPPs). Two or more authors may share credit obtained in proportion to their contribution to an article. For a copy of the MCLE requirements, please see the Supreme Court Rules of Professional Practice Rule 1-613(b).

Securing Relationships and Skills in a Changing Profession

Attorneys, judges, and legal professionals gathered March 12–13 in St. George for the Utah State Bar’s 2026 Spring Convention, themed “*Securing Our Relationships and Our Skills: Practicing Law in Ever-Changing Times.*” The event combined continuing legal education, awards recognition, and discussions on emerging challenges in the legal field.

The convention also marked the Bar’s 95th anniversary, reflecting on its history while emphasizing the future of legal practice and public service.

Looking Back and Moving Forward

A panel of past and current Bar leaders highlighted key developments, including mentorship programs, expanded virtual education, and ongoing efforts to improve access to justice. Speakers emphasized the Bar’s evolution alongside the profession while maintaining its commitment to service and professionalism.

Judicial Insight and Professional Development

Attendees heard directly from state and federal judges on effective advocacy and court developments. Breakout sessions addressed topics such as artificial intelligence in legal work, data security, litigation strategy, and professionalism.



Safety in the Legal Profession

A widely discussed presentation reported that 703 Utah attorneys surveyed had experienced threats or violence, including fifty-eight physical assaults. The findings highlighted higher risk in emotionally charged practice areas and differences in how threats affect men and women. Bar leadership announced plans for expanded safety training.



Community Service Efforts

The Young Lawyers Division hosted a Wills for Heroes clinic, providing estate planning services to nearly forty first responders, veterans, and teachers while offering hands-on experience for newer attorneys.



Strengthening the Profession

Bar leaders emphasized the importance of collaboration, ongoing education, and access to resources across the state. The convention reinforced that the legal profession’s strength depends on relationships, adaptability, and a continued commitment to public trust.

Honoring Excellence

During the convention, the Bar recognized the following attorneys for their contributions:



ANNUAL MCLE COMPLIANCE

MCLE Reporting Period is July 1, 2025 – June 30, 2026



All active status lawyers and licensed paralegal practitioners admitted to practice in Utah are required to comply annually with the Mandatory CLE requirements.

The annual CLE requirement for lawyers is 12 hours of accredited CLE. The 12 hours of CLE must include a minimum of one hour of Ethics CLE and one hour of Professionalism and Civility CLE to be completed by June 30. Filing and payment must be done by July 31. At least six hours of the CLE must be Verified CLE (live), which may include any combination of In-person CLE or Verified E-CLE. The remaining six hours of CLE may include Elective CLE (self-study) or Verified CLE (live).

The annual CLE requirement for licensed paralegal practitioners, is six hours of accredited CLE. The six hours of CLE must include a minimum of one hour of Ethics CLE and one hour of Professionalism and Civility CLE to be completed by June 30. Filing and payment must be done by July 31. At least three hours of the CLE must be Verified CLE (live), which may include any combination of In-person CLE or Verified E-CLE. The remaining three hours of CLE may include Elective CLE (self-study) or Verified CLE (live).

Each lawyer or licensed paralegal practitioner shall pay a filing fee in the amount of \$10 at the time of filing the Certificate of Compliance or completing the minimum required CLE.

For more information, please visit <https://www.mcleutah.org>. For questions, please contact the Utah Supreme Court Board of Continuing Legal Education office at staff@mcleutah.org or by phone at (801) 746-5230.



Thank you to the members of the Bar Examiner Committee that participated in grading the February 2026 Bar Examination.

We appreciate all of the time and support you dedicate to the Utah State Bar.

Notice of Legislative Positions Taken by Bar and Availability of Rebate

Positions taken by the Bar during the 2026 Utah Legislative Session and funds expended on public policy issues related to the regulation of the practice of law and the administration of justice are available at www.utahbar.org/legislative. The Bar is authorized by the Utah Supreme Court to engage in legislative and public policy activities related to the regulation of the practice of law and the administration of justice by Supreme Court Rule 14-106, which may be found at <https://www.utcourts.gov/rules/view.php?type=UCJA&rule=14-106>. Lawyers and LPPs may receive a rebate of the proportion of their annual Bar license fee expended for such activities during April 1, 2025, through March 31, 2026, by notifying Director of Finance, Nathan Severin at NSeverin@utahbar.org.

The proportional amount of fees provided in the rebate include funds spent for lobbyists, staff time spent on legislative matters, and expenses for Bar delegates to travel to the American Bar Association House of Delegates. Prior year rebates have averaged approximately \$7. The rebate amount will be calculated April 1, 2026, and we expect the amount to be consistent with prior years.

Seeking Nominations for 2026 Annual Awards

The Board of Bar Commissioners is seeking nominations for the 2026 Annual Awards. These awards have a long history of publicly honoring those whose professionalism, public service, and personal dedication have significantly enhanced the administration of justice, the delivery of legal services and the building up of the profession.

Please submit your nomination for a 2026 Annual Award no later than Monday, June 1, 2026.

Visit <https://www.utahbar.org/awards/> to view a list of past award recipients and use the form to submit your nomination in the following Annual Award categories:

1. Judge of the Year
2. Lawyer of the Year
3. Section of the Year
4. Committee of the Year



Notice of Petition for Reinstatement to the Utah State Bar

Pursuant to Rule 1-591(d), Utah Supreme Court Rules of Professional Practice, the Office of Professional Conduct hereby publishes notice that William B. Anderson has filed a Verified Petition for Reinstatement in *In re the Discipline of Anderson*, Third Judicial District Court, Civil No. 230908923. Any individuals wishing to oppose or concur with the petition are requested to file a notice with the district court within twenty-eight days from the date of this publication.

Tax Notice

Pursuant to Internal Revenue Code 6033(e)(1), no income tax deduction shall be allowed for that portion of the annual license fees allocable to lobbying or legislative-related expenditures. For the tax year 2025, that amount is 2.32% of the mandatory license fee.

Mandatory Online Licensing

The Bar's license renewal period begins on Monday, June 1. Please take a moment to verify that the preferred email address on file is current and accurate. Important notices, confirmations, and renewal-related communications are sent via email. You may want to consider providing a secondary email address which allows for backup communication in case you lose access to your preferred email. You may update your email address by logging into your online practice portal.

License renewal and fees are due July 1 and will be late August 1. If renewal is not complete and payment is not received by September 1, your license will be suspended.



Spring Convention in St. George

The Utah State Bar would like to thank and recognize the 2026 Spring Convention sponsors!
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Jean Hackett
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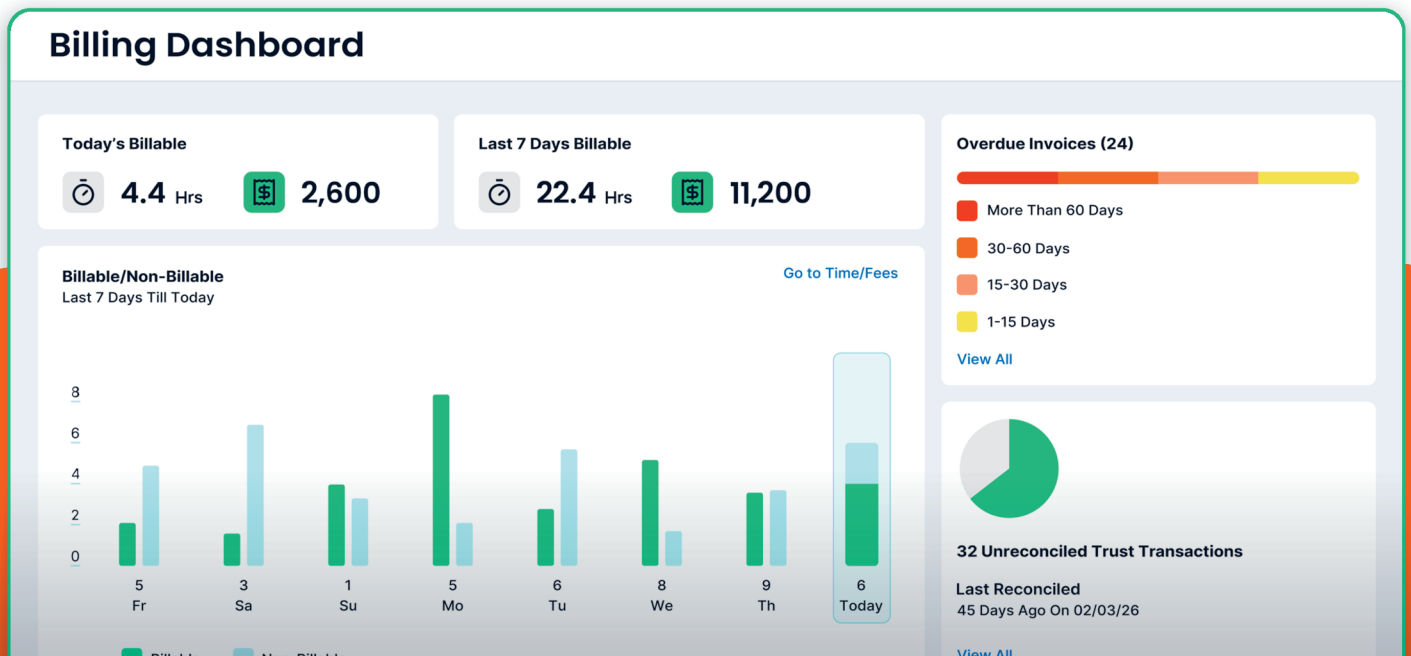
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The disciplinary report summaries below are provided to fulfill the OPC's obligations to provide guidance concerning professional conduct and disseminate disciplinary results under Rule 11-521(a)(11) of the Supreme Court Rules of Professional Practice. 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.

RESIGNATION WITH DISCIPLINE PENDING

On January 22, 2026, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Darren Fafai for violating the following Utah Rules of Professional Conduct: seven counts of Rule 1.3 (Diligence); eight counts of Rule 1.4(a) (Communication); seven counts of Rule 1.5(a) (Fees); four counts of Rule 1.15(a) (Safekeeping Property); four counts of Rule 1.15(c) (Safekeeping Property); seven counts of Rule 1.16(d) (Declining or Terminating Representation); one count of Rule 5.3(b) (Responsibilities Regarding Nonlawyer Assistance); four counts of 5.5(a) (Unauthorized Practice of Law); eight counts of Rule 8.1(b) (Bar Admission and Disciplinary Matters); and four counts of Rule 8.4(c) (Misconduct).

In summary:

In one matter, a client paid Mr. Fafai \$2,500 to represent him in immigration proceedings. Mr. Fafai filed a motion to reopen and other applications on behalf of the client and his family. The motion was denied. Mr. Fafai did not timely notify the client of the denial. Over time, Mr. Fafai stopped communicating with the client and did not provide the client with his file when the client requested it.

In a second matter, a client paid Mr. Fafai \$2,500 to represent him in filing an application for asylum. Mr. Fafai did not file any documents on the client's behalf and stopped communicating with the client. Neither Mr. Fafai nor the client appeared at a hearing, which resulted in the client being ordered removed. Mr. Fafai later refunded the \$2,500 to the client.

In a third matter, a family paid Mr. Fafai \$4,060 to represent them in asylum proceedings. Mr. Fafai filed asylum applications for the parents but did not file any applications for their children or seek to consolidate the children's cases into the parents' case. Mr. Fafai did not notify the family that a hearing

had been set on the children's cases. Because no one appeared at the hearing, the court ordered the children removed. Mr. Fafai stopped communicating with the family and did not provide their file when they requested it.

In a fourth matter, a client paid \$3,000 to Mr. Fafai to assist her in moving her immigration case to Utah and applying for asylum along with other applications. Mr. Fafai submitted applications for asylum and a change of venue. At the hearing on the application for asylum, the judge deemed the application insufficient and permitted Mr. Fafai to submit a corrected application. Though Mr. Fafai prepared and the client signed the corrected application, Mr. Fafai never filed it. The court closed the client's asylum case. Mr. Fafai stopped communicating with the client and did not provide the client with her file when she requested it.

In a fifth matter, a married couple paid Mr. Fafai \$1,500 to submit an application for residency and a work permit for the husband. Mr. Fafai did not deposit these funds into his IOLTA. Mr. Fafai prepared and submitted both applications for the husband. However, USCIS issued a request for additional evidence. The couple repeatedly tried to contact Mr. Fafai regarding the request for evidence but Mr. Fafai did not respond. Mr. Fafai did not submit a response to the request for evidence,



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which resulted in USCIS denying the husband's applications. Mr. Fafai subsequently informed the couple that he was working on their case and had spoken to agents at USCIS when he had not. Mr. Fafai thereafter stopped communicating with the couple.

In a sixth matter, a married couple hired Mr. Fafai to renew the wife's green card. The couple repeatedly reached out to Mr. Fafai about filing the application, but he did not respond. Eventually, Mr. Fafai responded and the couple paid him the \$545 application filing fee. Mr. Fafai did not deposit this fee into his IOLTA, and he never submitted the application or paid the filing fee. He also stopped communicating with the couple.

In a seventh matter, a family paid Mr. Fafai at least \$1,500 to apply for asylum. Mr. Fafai did not deposit these funds into his IOLTA. Mr. Fafai prepared asylum applications for the family but never filed them. When a hearing was scheduled to address the family's immigration status, Mr. Fafai did not make it clear to the family that they needed to appear, and no one appeared at the hearing. As a result, the court ordered the family removed. When the family learned they had been ordered removed, they tried to contact Mr. Fafai. Eventually, Mr. Fafai responded and claimed he would remedy the situation by filing a motion to reopen. Mr. Fafai never filed a motion to reopen and stopped communicating with the family altogether.

In an eighth matter, a client paid Mr. Fafai \$2,500 to assist her in applying for asylum and a work permit. Mr. Fafai did not deposit these funds into his IOLTA. Mr. Fafai submitted an asylum application but waited months to submit the application for the work permit. The client later paid Mr. Fafai an additional \$600 to add her husband to the asylum case. Mr. Fafai never filed any paperwork on behalf of the husband, and he did not notify the client that her work permit had been approved until five months after he received the approval. Mr. Fafai stopped communicating with the client and did not provide her with a copy of her file when she requested it.

In all eight matters, Mr. Fafai did not respond to the OPC's repeated requests for information. In four of the matters, Mr. Fafai practiced law while he was administratively suspended due to his failure to comply with MCLE requirements.

PROBATION

On February 24, 2026, the Honorable Coral Sanchez, Third Judicial District Court, entered an Order of Discipline: Probation against John J. Diamond, placing him on probation for one year

for violating Rules 1.3 (Diligence), 1.4(a) (Communication), 3.2 (Expediting litigation), and 8.1(b) (Bar admission and disciplinary matters) of the Utah Rules of Professional Conduct. The order was based upon a Stipulation to Discipline and Settlement Agreement.

In summary:

In 2022, Mr. Diamond did not participate in communications from opposing counsel and court staff seeking to set hearings in his client's case. Opposing counsel and a judicial assistant made multiple attempts, through emails that included Mr. Diamond, to set a hearing in the case. The judicial assistant set a hearing date after Mr. Diamond failed to respond, and opposing counsel filed a Notice of Hearing. Mr. Diamond filed declarations from his client and a witness about six days before the hearing. The court struck the witness's declaration as untimely. Opposing counsel and a judicial assistant tried to set another hearing in the case through several email strings that included Mr. Diamond, but Mr. Diamond did not respond. Later, opposing counsel's staff reached Mr. Diamond's assistant and the assistant indicated they would put the hearing date on Mr. Diamond's calendar. Mr. Diamond and his client failed to appear at the hearing, and the court entered a default. Mr. Diamond's client emailed opposing counsel, stating the client wanted to settle. Mr. Diamond subsequently emailed opposing counsel, stating that he had not seen the moving papers for the hearing and that he had been out of town for a family emergency, but he looked forward to concluding the issue. A month later, Mr. Diamond's client sent another email to opposing counsel indicating the client agreed to a stipulation, but the client had been unable to reach Mr. Diamond. After opposing counsel forwarded the client's email to Mr. Diamond, Mr. Diamond responded, and the stipulation was finalized. Mr. Diamond failed to respond to the OPC's letters requesting a response to the complaint and to the OPC's Notice of rule violations.

Mitigating circumstances:

Absence of prior discipline; personal or emotional problems during the Covid Pandemic, with lingering effects for a number of years.

PRIVATE ADMONITION

On January 12, 2026, the Honorable Todd M. Shaughnessy, Third Judicial District Court, entered an Order of Discipline: Private Admonition against a lawyer for violating Rule 5.3(b) (Responsibilities Regarding Nonlawyer Assistance) 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.

In summary:

A lawyer represented a client where a former lawyer worked for the firm as a law clerk on the case. The unlicensed law clerk directly answered the client's questions about legal issues in the client's case. The law clerk's communications led the client to believe that the law clerk was a lawyer who was not currently practicing and the client did not understand the law clerk could not give legal advice. The lawyer and the firm did not have measures in place to ensure the timely review of the law clerk's communications with the client to correct any inaccurate information, ensure the law clerk did not give legal advice to the client, and/or to ensure the client knew that the law clerk should not be giving legal advice.

Mitigating circumstances:

Absence of a prior record of discipline; cooperative attitude toward proceedings; absence of dishonest or selfish motive.

PRIVATE ADMONITION

On July 23, 2025, the Honorable Thaddeus May, Third Judicial District Court, entered an Order of Discipline: Private Admonition

against a lawyer for violating Rule 5.3(a) (Responsibilities Regarding Nonlawyer Assistance) 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.

In summary:

The lawyer had partnership and managerial authority in a law firm that employed a former lawyer as a law clerk. The unlicensed law clerk communicated with a firm client and answered questions about legal issues in the client's case. The communications led the client to believe the law clerk was a lawyer who was not currently practicing, and the client did not understand the law clerk could not give legal advice. The firm did not have measures in place in the case to ensure the timely review of all of the non-lawyer's communications with the client to correct any inaccurate information, ensure that the non-lawyer did not give legal advice to the client, and/or to ensure the client knew that the law clerk should not be giving legal advice.

Mitigating circumstances:

Cooperative attitude toward proceedings; absence of dishonest or selfish motive.

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PRIVATE ADMONITION

On February 19, 2026, the Honorable Kara Pettit, Third Judicial District Court, entered an Order of Discipline: Private Admonition against a lawyer for violating Rule 1.4 (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.

In summary:

A client hired a lawyer to assist her and her minor son with a medical malpractice case. During the representation, the lawyer did not provide the client with copies of settlement letters the lawyer was exchanging with an insurer. The lawyer also did not provide the client with copies of the life care plan and economic report prepared by the client's expert until the day of mediation or sometime thereafter.

Utah Law Related Education Announces 2026 Mock Trial Champions

Each year, Utah students take on the roles of attorneys, witnesses, and court officials through the Mock Trial program, organized by Utah Law Related Education (ULRE) in partnership with the state's legal community. The program provides hands-on experience with the judicial system, building skills in critical thinking, public speaking, and civic engagement.

The program culminates in a statewide competition where students present a fictional case before volunteer judges and attorneys. Participants deliver opening and closing arguments, conduct examinations, and apply rules of evidence. Additional roles include courtroom artists and journalists who document the proceedings.



2026 High School Mock Trial Results

Team Integritas earned the 2026 State Championship, with Atticus placing second.

2026 Junior High Results

West High Junior team took first place, followed by Integritas.

Courtroom Artist Awards:

- First Place: Crystal Lind, NUAMES
- Second Place: Jessica Emmet, Tooele
- Third Place: Catalina Barrett, UCAS
- Honorable Mention: Mi Yun Grayson, Hillcrest
- Honorable Mention: Aida Simon, Hillcrest

Junior High Awards

- Courtroom Artist: Addison Hart (First), Hailey Cook (Second)
- Journalist: Elise Nash (First)

Volunteer Recognition

ULRE recognized attorneys, judges, and legal professionals who judged five or more trials, highlighting their essential role in providing realistic and educational experiences for students.



First Place: Crystal Lind, NUAMES

- Alexander Smart – Kaufman Nichols & Kaufman
- Kyle Kaiser – Utah Attorney General's Office
- Ryan Holdaway – Cache Defender's Office
- Alan Leidig – Koehler Law Offices, PLLC
- Judge Brian Bolinder – Seventh District Court
- Ally Paschal – Eric Swinyard & Associates
- Shehnoor Grewal – Sanpete County Attorney's Office
- Nicole Johnston – Utah Attorney General's Office
- Ryan Bolander – Christiansen Law, PLLC
- Nicole Maestas – Seattle University School of Law
- Everardo Reynoso – Utah Board of Pardons and Parole
- Taylor Bray – Filevine & Tycksend & Shattuck
- Frances Helsten – Wall & Wall Attorneys

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Jim Malpede
Private Investigator
(Retired FBI)



James Wood
CPA/CFF/CFE
(Former FBI FA)



Brian Kimball
CPA (inactive), PI
(Retired FBI)

Finding Balance in the Legal Profession

by Abby Cook and Alyssa Diel

AUTHOR’S NOTE: *This article contains discussion on substance abuse, self-harm, and suicidal ideation. If you or someone you know is struggling, please reach out to Lawyers Helping Lawyers at contact@lawyershelpinglawyers.org or 801-900-3834. Lawyers Helping Lawyers falls under Utah Rule of Professional Conduct 8.3 and is a confidential service. <https://www.utabar.org/lawyers-helping-lawyers/>.*

The sustainability and integrity of our legal profession increasingly depends on whether young lawyers can build long, healthy, and sustainable careers. Early attrition raises pressing questions not only for new attorneys, but also for senior lawyers and law firms that invest substantial time and financial resources training associates they hope will grow into successful partners. It is, therefore, not just the burden of the individual lawyer to manage their stress, but the professional responsibility of the entire legal community to understand and minimize the risk factors that drive young lawyers to leave the practice.

Our profession has commonly been identified as a high-stress occupation. A 2023 study on attorneys’ stress and mental health found that 66% of respondents said that their time in the legal profession had been detrimental to their mental health, and 46% reported that they were considering leaving the profession due to stress or burnout. Karen Sloan, *Stress and Overwork Linked to Lawyers’ Suicidal Thoughts, Study Says*, REUTERS (2023), <https://www.reuters.com/legal/litigation/stress-overwork-linked-lawyers-suicidal-thoughts-study-says-2023-02-13/>. The study found that almost 9% of attorneys had thoughts of self-harm or suicide several times a week. *Id.*

ABBY COOK is a Staff Attorney at the ACLU of Utah. Together with Alyssa, Abby oversees the Fit2Practice Committee of the Young Lawyers Division.



The stress of our profession has many causes, but incredibly, one of them is the assumption that our chosen career path is unavoidably stressful. A 2024 study out of the University of Tennessee at Chattanooga evaluated workplace stress in the legal profession and found that “the sheer amount of stress experienced by attorneys and attitudes around stress may prohibit successful recovery and lead to general expectations that being ‘stressed’ is just part of the job.” Luke Wiley, Kristen Jennings Black & David Ross, *Too Stressed to De-Stress? The Experience of Work Stress and Recovery Among Attorneys During the COVID-19 Pandemic*, 31 PSYCHIATRY, PSYCHOLOGY & LAW 440, 457 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11182056/?utm>.

This trend has been on the rise since the COVID-19 pandemic, and recent social science findings are identifying attorneys’ stress continues to trend in the wrong direction. A 2021 Bloomberg Law study revealed that 52% of attorneys reported experiencing burnout. Karen Miller-Kuwana & Linda Ouyang, *Analysis: Attorney Well-Being Declines, With Burnout on the Rise*, BLOOMBERG LAW, <https://news.bloomberglaw.com/business-and-practice/analysis-attorney-well-being-declines-with-burnout-on-the-rise/>.

The top four stressors reported by attorneys include (1) workload and deadlines, (2) unrealistic expectations (from others and from self), (3) general organization and management, and (4) billable hour requirements. Building on these challenges, researchers found that the COVID-19 pandemic drastically increased work-related stress and brought new challenges that remain with us today. Wiley, *supra* at 450. As one participant noted, “[a]ttorneys I deal with seemed far more likely to send an email or telephone (and expect a response) after normal business hours during the pandemic vs prior to the pandemic.” *Id.*

ALYSSA DIEL is an Associate at Holland and Hart. Together with Abby, Alyssa oversees the Fit2Practice Committee of the Young Lawyers Division.



These challenges have increased the strain on attorneys generally but especially those newer to the practice. Many new attorneys may have difficulty constructing strong boundaries or feel like they have less control over their work schedule. An alarming 23% of attorneys reported difficulty disconnecting from work. *Wiley, supra* at 447. Another 32% reported fatigue or a lack of sleep, which are commonly key signals of burnout. *Id.*

Despite these numbers, it is clear that attorneys care deeply about stress management. An overwhelming 91% of attorneys in the 2024 study reported that managing stress was important to them. *Id.* Where is the disconnect? Why are so many capable, accomplished practitioners struggling at such significant levels? And what can young lawyers start doing now to improve their chances of building not just a successful career, but a sustainable and healthy one? To better understand these issues, we posed these questions directly to four attorneys within the Utah State Bar.

Our four interviewees bring a wide range of perspectives from across the legal field. A short background is provided on each of the interviewees.

- **Judge Kent Holmberg** has served as a Third District Court Judge since December 2016 and transitioned to Senior Judge status effective May 1, 2025. Prior to serving as a District Court Judge, Judge Holmberg worked primarily as a civil law practitioner.
- **Jenifer (Jen) Tomchak** works in commercial litigation at her law firm, Tomchak Skolout. Prior to starting her own firm, Jen worked for thirteen years at Parr Brown Gee & Loveless in Salt Lake City.
- **Michelle Quist** is Senior Counsel within Buchalter’s Salt Lake City office. Over her legal career, Michelle’s practice has primarily focused on appellate and complex commercial litigation work.
- **Ben Miller** serves as Deputy Chief at the Utah Indigent Appellate Defense Division and Adjunct Professor at the University of Utah S.J. Quinney College of Law. Over his career, Ben has developed extensive experience in criminal defense.

As we interviewed each attorney about their advice for young lawyers, several common themes stood out for improving wellness in the law, including (1) addressing feelings of burnout, (2) managing stress and developing sustainable habits, (3) handling periods of high stress, (4) balancing parenthood with day-to-day legal practice, and (5) prioritizing passionate legal practice with a meaningful life outside of work. The interviewees’ advice for young attorneys on each of these themes are provided below.



BREAK THROUGH

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Addressing Feelings of Burnout

Concern regarding the sustainability of the legal profession is a common theme in the studies described above. Ben Miller provided his experience in tackling one of the most challenging aspects of sustaining a legal practice: burnout. Ben shared that one of the best ways he has combatted burnout was to choose a career he was passionate about. Working at his dream job as a public defender made the challenges and frustrations of his job worth it, even in the most stressful times.

Judge Kent Holmberg has also spent a long career warding off burnout and making work-life balance a constant and persistent goal. While recognizing that work will always need to take center stage at some point, Judge Holmberg has found it critical to rotate family and health into that spotlight at various parts of his life as well. He lives by the lyrics of *Turn, Turn, Turn* by Pete Seeger from Ecclesiastes 3: “There is a time for everything, and a season for every activity under the heavens . . .”

Beyond recommending thoughtful career selection, Ben also recommended that young attorneys ensure they are aware of the warning signs of burnout. Warning signs may include feeling like the job is a burden or feeling like you are simply “going through the motions.” Judge Holmberg described knowing he was at risk of burnout when he found that he was not laughing as often, was fatigued, and brought the stress of work home with him.

To manage these feelings, Judge Holmberg recommends going back to the basics: exercise, sleep, nutrition, and true breaks from *all* work. He encourages young lawyers to look to their friends and family as well as they often recognize our struggles before we do. In Ben’s experience, blocking out even just five minutes on his calendar for a break in the day has helped him prevent feelings of burnout – “[t]hat little gesture, of recognizing [feelings of burnout] and doing something to tell yourself how you are going to address it, I think will reduce the risk of actual [burnout] and allow you to keep doing the work.”

Managing Stress & Developing Sustainable Habits

As new attorneys notice feelings of burnout, promptly addressing symptoms and taking needed breaks are both important in managing the stress of the legal profession. In addition, new attorneys can reduce stress by developing long-term practices that shape a sustainable legal practice. Jen Tomchak told a powerful story about how her perspective on work-life balance changed dramatically after her first year in private practice. While Jen noted that she had a productive first billable year, she did so at the expense of putting her personal life on hold. Many new attorneys may relate to the difficulties of beginning a legal career while leaving personal priorities on the back burner.

To develop a more sustainable legal practice, Jen implemented a system where she proactively regained control of her schedule. This included taking ownership of cases by identifying the necessary next steps in the case and communicating those steps to her team. This approach not only allowed her to anticipate and plan for upcoming deadlines, but it also allowed her to gain valuable experience early in her career and become indispensable to her team. Beyond restructuring her approach to work tasks, Jen also noted the importance of prioritizing other elements of her personal life as part of her schedule, including blocking out time for exercise and scheduling vacations far in advance.

As described above, studies show that workload, deadlines, and organization are several primary stressors in the legal profession. As Jen’s story demonstrates, finding creative ways to manage schedules can help young attorneys create more sustainable habits and manage stress. Further, treating personal priorities as non-negotiable in one’s schedule can create meaningful space for life outside of the law.

Ben provided several organizational methods that have helped him manage his day-to-day schedule and prevent him from becoming overwhelmed. For example, he suggested writing daily to-do lists that outline what must be completed that day, providing a signal for when he is done with work for the day. Similarly, Ben suggested young lawyers maximize the use of a calendar to include final deadlines, steps required for project completion, and when to take breaks. According to Ben, “[s]eeing it written down [and] spread out has helped [me] not feel overwhelmed by deadlines the same way it might if all those deadlines were just swirling in my head.”

As evident from these interviews, organization and ownership of a schedule can help young attorneys prevent feeling overwhelmed, manage day-to-day workloads, and develop sustainable work practices.

Handling Periods of High Stress

Despite best efforts to manage stress through positive, long-standing practices, it is inevitable that high-stress periods will creep in for those in the legal profession. Whether it is an impending due date for a brief, or a time-sensitive closing for a transaction, new attorneys must learn to handle these particularly stressful times at work.

Judge Holmberg witnessed the stress of litigation very early in his career. He had two separate mentors suffer heart attacks while in the courtroom – one of them fatal. “These experiences,” Judge Holmberg explained in his interview, “caused me to reexamine my own personal habits and decide how I would

approach a career as a trial lawyer.” Now, from counsel table to the bench, Judge Holmberg emphasized that preparation alleviates stress. He encouraged young lawyers to find some routine, eat healthy meals, and know when to call it a night because you simply are not going to solve the problem tonight.

For navigating high-stress periods at work, Michelle Quist emphasized that she uses communication as her guide. Michelle noted that she directly communicates with her family when work may require her full focus and impact family time. Michelle also stated during the interview: “The best relationships are built through communication, both at home and with clients.” Developing a practice of honest, clear communication at home and at work not only helps nurture stronger relationships but also helps with managing times of heightened stress.

Although late nights or early mornings may be inevitable to meet work demands, Michelle further noted that advance scheduling and preparation are key to managing upcoming deadlines and mitigating potential stress.

Balancing Parenthood with Legal Practice

Balancing the demands of legal work and personal life can be particularly difficult when the demands of parenthood are added to the mix. Many of our interviewees noted that the transition to parenthood required an adjustment to their approach to work-life balance.

To effectively manage family life, Michelle ensures she remains fully present at work and at home. Michelle genuinely enjoys working in the office full time and values the collaboration that comes with it. However, she leaves work at work so that when she is at home, she remains present with her children. To maintain this balance, Michelle emphasized the importance of setting boundaries for her personal time. She communicates her availability clearly with her work colleagues, clients, and opposing counsel, which allows her to give her complete attention in the evenings to her kids. While this may not be possible in every legal environment, Michelle has mindfully chosen employment throughout her career that offers and values flexibility, allowing her to focus on her personal life as needed.

Similarly, Jen prioritizes spending quality time at home. Jen noted that building sustainable habits early in her career set her up well for the transition to parenthood, as those habits helped her effectively manage her workload alongside the demands of family life. One practical tip she recommended was outsourcing tasks that need to get done but take away from quality time with family. As financial resources allow outsourcing tasks (e.g., hiring a

housekeeper, scheduling meal-preparation services, or paying for laundry services) can free up time and mental energy for what matters most.

Judge Holmberg found that it was best for him to set clear expectations for his family on when he would be home and available. Rather than work until 7:00 pm or 8:00 pm every night of the week, he made an effort to be home by 6:00 pm to spend time with his family every night except Wednesday, when his family knew he would be working very late. Alleviating that uncertainty in the expectations between him and his family allowed Judge Holmberg to more readily be present for both work and family obligations.

Parenthood certainly creates challenges to managing work-life balance, and there is not a universal solution. However, several strategies such as setting boundaries, planning ahead, and being willing to ask for help can go a long way to help juggle these demands.

Prioritizing Passionate Legal Practice and Meaningful Life Outside of Work

Each of the interviewees noted the importance of finding work you enjoy while ensuring life outside of work remains a priority. Ben spoke to the value of being passionate about your legal work, particularly in public interest, but also noted that it is equally critical to find ways to ensure work does not consume your life. Jen repeated this, expressing her great enjoyment of her career, while cautioning new attorneys against tying their identity too tightly to their job. She also emphasized the importance of regularly reevaluating what is working and what needs to change.

Michelle similarly noted that legal work should be meaningful given that it takes so much of our time as attorneys but offered the reminder that personal health and relationships must also remain a priority. And Judge Holmberg found that he could combine his passion for his career and his hobbies. He spoke fondly of taking his running shoes or Nordic skis when he traveled to depositions or out-of-town court appearances, allowing his work to take him to new places to enjoy his hobbies.

There is no doubt that legal practice can be stressful. However, as evidenced by the interviews above, a fulfilling and sustainable legal career is attainable. While it is not possible to eliminate stress entirely, new attorneys can practice mindfulness, build sustainable habits, and prioritize open communication to improve overall wellness. As our interviewees remind us, developing a rewarding legal career is not only based on professional success, but is also shaped by passions and relationships outside of the office.



Paralegal Division Mentor/Mentee Program

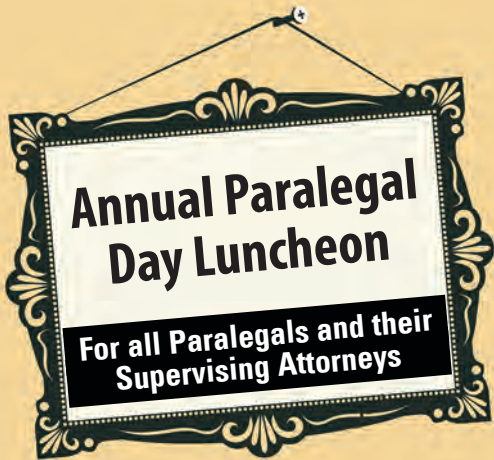
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Thursday, May 21, 2026 | Noon to 1:30 pm
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Speaker: Honorable Ryan Holtan

Topic: The Professional Role of Paralegals in Effective and Ethical Legal Practice

Credit: 1 hour of Ethics

Cost: \$85 for Paralegal Division Members,
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SAVE THE DATE

Paralegal Division Annual Meeting and All Day CLE

Friday, June 26, 2026 | 8:00 am – 5:00 pm
Utah State Bar | 645 South 200 East, Salt Lake City

Registration and Speaker Information to be Announced



On March 12, 2026 several members of the Board of Directors of the Paralegal Division attended the Utah Bar's Spring Convention and hosted a session on "Marking the 30th anniversary of the Division and building skills for lawyers and paralegals to work together effectively."

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