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Volume 39 No. 4
Jul/Aug 2026

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# The Utah Bar Journal

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4. No one person shall have more than one letter to the editor published every six months.
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*America250* by Utah State Bar licensee Eric Stephenson.

*ERIC STEPHENSON is a civil litigation attorney with over two decades of experience representing clients in complex consumer protection, credit reporting, and debt collection disputes in federal and state court. Asked about his cover photo, Eric told us he took the photo in Snow Canyon as they were they lowering the giant flag they put up in the canyon to celebrate the 4th of July. "I find it quite fitting for the 250th Anniversary of our country," Eric said.*

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Utah Bar® JOURNAL

Volume 39 No. 4
Jul/Aug 2026

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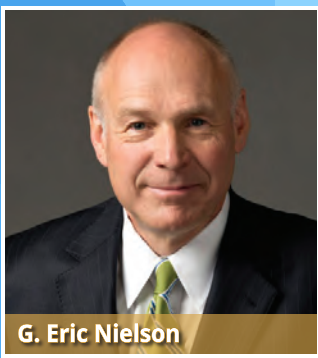




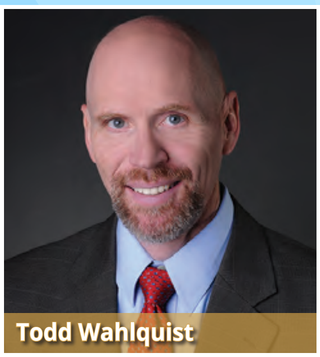



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# A Year of Purpose and Progress

by Kim Cordova

Throughout this year, I have been continually reminded that trust in the legal profession is not inherited; rather, it is earned through transparency, service, professionalism, and our willingness to engage thoughtfully with the public and each other. There is a particular weight that comes with the privilege of serving as the president, not the weight of burden, rather the weight of meaning. It is the gravity of standing at the intersection of history and possibility, of speaking to a profession that has shaped the contours of justice in this state for nearly a century, and of doing so during a moment that demands both honest reflection and determined forward motion.

This year was not simply about commemorating history, it was about strengthening the future credibility, accessibility, and relevance of the Utah State Bar. I am keenly aware that periods of challenge carry with them the seed of renewal. Our profession has faced challenges over the past few years: narratives about the declining public trust, evolving questions about access to justice, rapid technological considerations, and a polarized civic environment that at times can make civil discourse a lost art. Our response has been to treat adversity as information, an open invitation to listen more carefully, adapt more thoughtfully and intentionally, and to lead more courageously. I am profoundly grateful for this opportunity to serve.

This year marks the 95th anniversary of the Utah State Bar. In 1931, when the Bar was formally established, the legal landscape looked very different. The profession was smaller, less diverse, less connected to the broader social fabric in which it is embedded. The tools were different, the challenges were different, and the population of lawyers was a fraction of what it is today. Yet, the Bar's primary purpose – to bring lawyers together in common cause to advance the rule of law, defend the constitution, and serve the public – has not changed at all.

For the last ninety-five years, this Bar has adapted through the Depression, the Civil Rights Era, technological advances, a global pandemic, and every social and professional shift in between. This Bar has outlasted crisis, weathered controversies, and responded to the evolving needs of its members with remarkable consistency of purpose. That resilience is not accidental. It is the product of generations of lawyers who chose to invest in this institution.

As we celebrate this anniversary, I think of those who have served: past presidents, commissioners, committee chairs, section leaders, and non-lawyers who gave their time and counsel to build what we now inherit. Their contributions are woven into every program we operate, every relationship we hold, every standard we uphold. We stand on their shoulders, and we owe them the respect of continuing to build. As we honored nearly a century of service, we also asked important questions about what the next generation of leadership and public trust should look like.

One of the aspects of this role I cherish the most is the opportunity to uphold and support the profession. Bar conventions, regional gatherings, section events, pro bono clinics, Bar leadership events, swearing in ceremonies are all crucial components to supporting our profession. They are the connective tissue of our profession. They are where the Bar is first introduced to new lawyers, where relationships are built, where mentors and mentees find each other, where the isolation that many solo and small practitioners feel is dissolved, even briefly, in the warmth of shared belonging.

The admission ceremonies are particularly significant as we welcome the next generation of lawyers. This is the first time lawyers take their oath. It is not only symbolically and ethically significant, but it also distinguishes the profession from others: we promise to uphold the rule of law and to defend the constitution. These responsibilities are built into our rules governing our profession and ones that we uphold with pride and integrity. Here, public trust is built one lawyer at a time.

This past year, we worked to expand and deepen our programming across every region of the state. We continued new networking events designed specifically for new lawyers, recognizing that the newest members of our Bar are often the least connected and the most in need of community. We convened specialized CLEs for practitioners navigating the complexities of artificial intelligence and professional responsibility. And we hosted regional CLEs where members could speak directly with Bar leadership and the judiciary about their concerns, ideas, and experiences.

Practitioners want to know what the Bar is doing and saying. They want to feel seen and welcomed. They want programming that is practical, accessible, and responsive to their needs and challenges, not just to the circumstances of large firm practitioners. We plan to continue accessibility to all practitioners in all areas of the state. We continue to invest in the AI conversations with innovation and professionalism. We will continue to bring relevant and resonant CLE programming for professional development. We will continue to prioritize human connections with face-to-face gatherings where our shared identity as officers of the court will foster collegiality and collaboration. Bringing together lawyers from diverse practice areas and perspectives reinforces community during a rapidly changing legal environment. And we will continue to support attorney wellness through our accessibility to therapy as well as programming and events.

No institution can navigate the future well without an appreciation of where it has come from. Our history is not merely a collection of past events, it is a living resource, a record of what has been tried and what has worked, of what hasn't worked, of sacrifices made and standards defended and battles won on behalf of the profession and the public.

This year, we undertook a meaningful effort to document and commemorate that history more deliberately. We continue to capture an oral history and digitize historical archives. We continue to honor that legacy with the fifty-year service plaque luncheon where we celebrated attorneys with five decades of service. Institutional memory and continuity are prioritized and highlighted as we continue to collaborate and honor long-standing pillars in our legal community.

Among the most important roles any bar association plays is that of advocate. Not for any particular political party or ideology, but for the rule of law itself. We are the institutional voice of the legal profession in the public, and we have both the standing and the obligation to speak when the administration of justice is at stake.



Judicial independence is essential to our profession and to constitutional democracy. Across the country, that independence is under pressure. Courts are increasingly criticized for decisions that are politically unpopular. Too often, judges are attacked not for the legal merits of their rulings, but because of their identity, perceived values, or the objections of those in power.

Our Bar engaged thoughtfully, responsibly, and publicly on issues affecting the justice system. Our very narrow legislative involvement during the 2026 session related to the administration of justice in our courts. We advocated in multiple forums: legislative testimony, public statements, and engagement with elected officials across the political spectrum. We are committed to preserving judicial independence and public confidence in the courts. The Bar has an obligation to speak when the administration of justice may be impacted. Engagement strengthens the Bar's public credibility and visibility, and constructive advocacy demonstrated leadership and professionalism. We recognize that public policy advocacy must be conducted with humility, transparency, and commitment to constitutional principles. We take very narrow positions that align with the law that governs this area. However, we welcome disagreement, we invite engagement, and we are always willing to explain our reasoning and to listen to those who see things differently.

For too long, bar associations have been relatively invisible to the general public, known primarily to lawyers and the judicial system, but largely absent from the broader civic conversation. That invisibility carries a cost. When the public does not know what the Bar does, they cannot understand why it matters. And when they do not understand why it matters, the profession loses an important source of accountability and legitimacy. We have made a deliberate commitment to changing that. Our public engagement strategy for the coming year includes increasing media appearances on television, radio, podcasts, and print; increased public-facing communication from Bar leadership; and improving public understanding of the legal profession and judicial system.

Everything the Bar develops is well documented and accessible on the Bar's website. Information and press releases or statements or media appearances are linked on the website and are easily accessible to all who are interested.

A recurring theme in recent years has been the spread of misinformation or incomplete information in the media on topics such as judicial accountability. Clear public education about how these systems work can help address concerns held by both the general public and lawyers in our communities. The Bar has made efforts to communicate clearly during periods of public debate and to give further references for more information. It is of the utmost importance that accurate information is given to the public and the media so that the confidence in the courts continues to strengthen and grow. Further, engaging with the public through pro bono initiatives and other access to justice programs continues to build confidence in lawyers and the justice system.

As our commitment to civic education continues, we had two big events in May: Law Day and America250. Law Day reinforced the profession's responsibility to support democratic institutions and informed citizenship. Emphasis on presentations from our legal community included the protection of the rule of law as well as public service.

The America250 event was an almost full day of reflection on constitutional democracy, the legal profession's role in preserving institutions, and the history in the creation of the United States Constitution. As our nation approaches its 250th anniversary, lawyers remain central to preserving both liberty and the rule of law.

I am so proud of what we accomplished this year. Serving as president has brought meaningful relationships, valuable experiences, and lessons I will carry forward. The Bar is more visible, engaged, and responsive. Lawyers across the state continue to serve their communities in meaningful ways. Our profession remains essential to fairness and stability, and trust is earned though conduct, not rhetoric. At the heart of our profession is professionalism.

Professionalism is about the relationship between a lawyer and the obligations she has undertaken to her client, to the court, to opposing counsel, to the legal system, and to the broader public. It encompasses competence, the commitment to knowing the law well enough to apply it reliably in service of those who depend on you. It encompasses diligence, the follow-through that converts knowledge into results. And it encompasses integrity, the refusal to allow personal interest, external pressure, or the temptation of expedience to compromise the honesty on which the entire attorney-client relationship depends.

But professionalism also has a cultural dimension that formal rules and requirements do not fully capture. It is the tone in which a lawyer speaks to a client who is frightened and confused. It is the decision to return a call promptly, not because the rules require it, but because respect for the person on the other end of the line demands it. It is the willingness to tell a client something they do not want to hear, rather than offering comfortable reassurance that serves the lawyer's interests more than the client's.

We continue to focus on transparency and not merely a managerial virtue. For the Utah State Bar, transparency is an ethical obligation. What does transparency look like in practice? It means communicating clearly and consistently about what this Bar does, why it does it, and how decisions are made. It means publishing our financials in accessible formats and explaining how member dues are deployed. It means being honest about our limitations and candid about our mistakes. It means ensuring that the governance of this Bar is conducted in ways that members and not just insiders can understand, follow, and meaningfully participate in.

It also means being transparent about the harder questions. When we take a position on a matter of public policy, we will explain our reasoning fully and acknowledge the competing considerations we weighed. When we receive criticism from members, from the public, or from the judiciary, we will engage with it substantively rather than dismissing it or responding with institutional defensiveness. When our programs fall short of their goals, we will say so and describe what we are doing differently. We are a Bar that belongs to everyone. And we are committed to service.

Service to clients means more than technical competence. It means understanding that when someone comes to a lawyer, they are often at one of the most difficult and consequential moments of their lives. It means bringing not just legal knowledge but human attentiveness to that encounter. It means communicating in ways that the client can understand, involving the client in decisions about their own matter, and treating their time and resources with the same respect we would want shown to our own.

Service to community means taking seriously the obligation that comes with the privilege of licensure. Lawyers are granted a monopoly on the practice of law and with that monopoly comes a responsibility to ensure that the legal system is accessible, not just to those who can afford it, but to all who need it. Pro bono service is not charity. It is the fulfillment of a professional duty. And this association will continue to invest in expanding the infrastructure that makes meaningful pro bono service possible: better placement systems, better support for pro bono practitioners, better coordination with legal aid organizations, and better recognition of the lawyers who give generously of their time and expertise.



Service to the legal system means understanding that lawyers are its stewards as much as its participants. Every time a lawyer engages with the courts honestly and professionally, they strengthen confidence in the system. That is an enormous collective responsibility, and it calls for an enormous collective commitment.

That is the work we are committed to. It is long and humbling work, and it requires the participation of every lawyer in this state, not just bar leadership, not just committee members, but every practitioner who goes to work each day carrying the license and the responsibilities that come with it. We are asking for your partnership in this effort. We believe you are already giving it, in courtrooms, conference rooms, and community legal clinics across this state. And we are here to support, amplify, and honor that commitment with everything this Bar has to offer.

My vision for this Bar over the next five years is ambitious but grounded. I want us to be a Bar that every member in this state regardless of the size of their firm, their practice area, their geography, their background, or the length of their career feels genuinely connected to. I want us to be a Bar whose voice carries weight because it is earned through consistent, principled advocacy. I want us to be a Bar that the public trusts not because we say we deserve trust, but because we have demonstrated it through transparency, service, and accountability.

Our profession faces real challenges, but this year reaffirmed something important: when lawyers lead with integrity, service, and courage, we strengthen not only our profession, but the institutions that sustain a free society. I want us to be a bar that, when we reach our centennial, can say with confidence: we were here during a difficult and pivotal time, and we rose to meet it.

I want to close by saying, simply and sincerely, thank you.

Thank you to the Bar leaders across this state who give their time and expertise with no expectation of recognition. Thank you to the section chairs, committee members, and volunteers whose work makes everything else possible. Thank you to our dedicated staff, whose institutional knowledge and daily labor sustain this organization through every transition of leadership. Thank you to the judiciary, whose integrity and independence we are honored to support. And thank you to every member of this Bar who chooses, year after year, to invest not just in their own practice but in the shared institution that belongs to all of us.

We are, at our best, not merely a professional organization. We are a community diverse in background and practice, united by commitment to the law and to the people it serves. That community is a privilege to lead and a joy to be part of.

The 95th anniversary of this Bar is not a resting place. It is a launching point. The work ahead is meaningful, the company is extraordinary, and the cause is worthy of everything we have to give. Let us go forward together.

# Modern Trust and Estate Planning in Utah: Key Legal Shifts

by William J. Whitaker and Tyler J. Rice

## Introduction and Background

Several key legislative changes related to trust and estate planning occurred in 2025 and became effective in 2025 and 2026, both at the federal and state levels. This article discusses only a select few: federal legislation related to the federal estate, gift, and generation-skipping transfer (GST) taxes (sometimes collectively referred to as "transfer taxes"); Utah legislation related to Utah Domestic Asset Protection Trusts (DAPT); and Utah legislation related to decanting Utah irrevocable trusts.

The relevant federal legislation is found in the One Big Beautiful Bill Act (OBBBA), which was signed into law on July 4, 2025. One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (July 4, 2025).

The relevant Utah legislation is found in Senate Bill 206 (S.B. 206) from the 2025 general legislative session, which was signed into law on March 25, 2025. Estate Planning Amendments, S.B. 206, 2025 Leg., Gen. Sess. (Utah 2025), https://le.utah.gov/~2025/bills/static/SB0206.html.

This article also discusses the overlap between asset protection and transfer tax protection, attempting to weave the three legislative updates noted above to reflect the current landscape of related options for the wealthy, wary client.

To help illustrate the updates and options, this article will utilize a hypothetical client named Marge and her spouse named Morris.

As of January 1, 2026, Marge and Morris reside in Utah. Marge has a net worth of $20,000,000, and Morris has a net worth of $10,000,000. They are each in their mid-fifties, and neither has any debt. All their assets are owned separately, in Utah. Marge has a small business worth $15,000,000; a home worth $2,000,000; and separate cash, brokerage accounts, and personal property worth $3,000,000. Morris has a retirement plan worth $6,000,000 and additional cash, brokerage accounts, and personal property worth $4,000,000. Their current estate plan provides that all their respective assets will be allocated or distributed to the surviving spouse at the first death and split equally among their three shared children at the surviving spouse's death. A table summarizing their assets and values is shown below:

| **Marge's Assets:** | **Value as of January 1, 2026:** |
|---|---|
| Small Business | $15,000,000 |
| Home | $2,000,000 |
| Cash/Brokerage | $3,000,000 |
| **TOTAL MARGE:** | **$20,000,000** |
| **Morris's Assets:** | **Value:** |
| Retirement Plan | $6,000,000 |
| Cash/Brokerage | $4,000,000 |
| **TOTAL MORRIS:** | **$10,000,000** |
| **GRAND TOTAL:** | **$30,000,000** |

Although Marge and Morris are wealthy enough to have the transfer taxes on their radar, which helps illustrate a few of the updates and options noted in this article, much of this article will also apply to clients who will not need to worry about transfer taxes (i.e., less wealthy clients) under current law.

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*TYLER J. RICE is a partner at Ahrens DeAngeli Law Group where he focuses on trust and estate planning and administration, business succession, and related tax issues.*

However, because we cannot predict the dates our clients will die, their remaining transfer tax exemption amounts and other relevant law at their deaths, or the values of their estates at their deaths, they should monitor future changes in tax law, their wealth, and their health if they wish to minimize their transfer tax exposure.

In addition to transfer tax issues, the wealthy client should be aware of asset protection strategies, both for themselves and for their desired beneficiaries. Additional considerations, such as income tax planning, supplemental needs trust planning, Medicaid planning, gun trusts, and other specialized planning tools, are also critical for certain clients. However, this article will not delve into these specialized areas but will instead focus on the legislative updates as they relate to transfer tax planning and generic asset protection planning.

## Estate, Gift, and Generation-Skipping Transfer Taxes

Over the past two decades, the federal transfer tax exemption amounts have seen a dramatic upward trend, which significantly expands the scope for transfer tax-free wealth transfers. In the not-so-distant past, anyone with an expected net worth exceeding $1,000,000 at their death would have expected to be subject to transfer tax. Under OBBBA, each of the estate tax, gift tax, and GST tax exemption amounts were set at $15,000,000 per person (to be adjusted for inflation annually), effective on January 1, 2026, with no sunset on the books. These OBBBA changes provide an additional measure of certainty for trust and estate planning attorneys and their wealthy clients who have been living with uncertainty for so many years as to what course of action to take.

The following examples using our hypothetical client help illustrate the effect of planning techniques utilizing the higher exemption amounts and certain traditional planning techniques that are still available to them.

### No Estate Tax Example

If Marge died on January 1, 2026, leaving all assets to Morris, then Morris would have $30,000,000 ($10,000,000 of his original property, plus the $20,000,000 he inherited from Marge). All property inherited from Marge would receive a new income tax basis equal to the fair market value of the property as of Marge's date of death. If Morris dies later that year with the assets still worth $30,000,000, and assuming Form 706 (United States Estate (and GST) Tax Return) is properly and timely filed and Marge's estate tax exemption is "ported" or carried over to Morris, he should have $30,000,000 of available estate tax exemption, comprised of his $15,000,000, plus Marge's $15,000,000 of DSUE – Deceased Spousal Unused Exclusion – available to him as of his date of death, resulting in zero estate tax.[1]

## Estate Tax Example

Let's instead assume that Marge and Morris live together for ten more years. Marge then passes away on January 1, 2036, and Morris passes away later that year. Let's also assume that their assets double in size over that ten-year period, ignoring inflation. Let's also assume that their exemption amounts are still $15,000,000 each at the end of the ten-year period, ignoring inflation.[2]

Their assets, as of January 1, 2036, are therefore valued as follows:

| **Marge's Assets:** | **Value as of January 1, 2036:** |
|---|---|
| Small Business | $30,000,000 |
| Home | $4,000,000 |
| Cash/Brokerage | $6,000,000 |
| **TOTAL MARGE:** | **$40,000,000** |
| **Morris's Assets:** | **Value:** |
| Retirement Plan | $12,000,000 |
| Cash/Brokerage | $8,000,000 |
| **TOTAL MORRIS:** | **$20,000,000** |
| **GRAND TOTAL:** | **$60,000,000** |

So, if Marge died on January 1, 2036, leaving all assets to Morris, then Morris would have $60,000,000 – $20,000,000 of his own, plus the $40,000,000 inherited from Marge. If Morris dies later that year with the assets still worth $60,000,000, and assuming Form 706 is properly and timely filed and Marge's estate tax exemption is "ported" over to Morris, he should have $30,000,000 of estate tax exemption, comprised of his $15,000,000, plus Marge's $15,000,000 of DSUE available to him as of his date of death, resulting in a $30,000,000 taxable estate ($60,000,000 estate less $30,000,000 of total exemption). At 40%, the estate tax would be approximately $12,000,000 and is generally due nine months after the date of death. The estate tax and residuary inheritance available to the children are as follows:

| | |
|---|---|
| Value of All Assets: | $60,000,000 |
| Assets Not Included in Estate: | $0 |
| Taxable Estate: | $60,000,000 |
| Available Exemption: | $30,000,000 |
| Net taxable amount: | $30,000,000 |
| Tax at 40%: | $12,000,000 |
| Remaining Inheritance for Children: | $48,000,000 |

## Estate Freeze

To avoid the estate tax from the appreciation of their assets as illustrated above, Marge or Morris (or both) could make lifetime gifts to their children, in which case the appreciation on the gifted portion would occur outside of Marge's and Morris's respective estates. To illustrate this, let's assume that Marge makes a gift of $10,000,000 of her business interests in 2026 to her three children. The transfer of the $10,000,000 is a completed gift to her children for gift tax purposes and thus the assets are not includible in Marge's estate at her death. Marge will have used $10,000,000 of her available $15,000,000 gift tax exemption, leaving her with only $5,000,000 of remaining available exemption.

So, when Marge and Morris die later in 2036, and after the appreciation in their assets, their asset table is updated as follows:

| Marge's Assets: | Value as of January 1, 2036: |
|---|---|
| Small Business (1/3 interest) | $10,000,000 |
| Home | $4,000,000 |
| Cash/Brokerage | $6,000,000 |
| **TOTAL MARGE:** | **$20,000,000** |
| **Three Children:** | **Value:** |
| Small Business (2/3 interest) | $20,000,000 |
| **TOTAL CHILDREN:** | **$20,000,000** |
| **Morris's Assets:** | **Value:** |
| Retirement Plan | $12,000,000 |
| Cash/Brokerage | $8,000,000 |
| **TOTAL MORRIS:** | **$20,000,000** |
| **GRAND TOTAL:** | **$60,000,000** |

The estate tax and residuary inheritance available to the children are as follows:

| | |
|---|---|
| Value of All Assets: | $60,000,000 |
| Assets Not Included in Estate: | $20,000,000 |
| Taxable Estate: | $40,000,000 |
| Available Exemption: | $20,000,000 |
| Net taxable amount: | $20,000,000 |
| Tax at 40%: | $8,000,000 |
| Remaining Amount for Children: | $52,000,000 |

By making a gift of 2/3 of the business interests in 2026, worth $10,000,000 at the time, the result is $10,000,000 of appreciation over the ten-year period ending on Marge's date of death being excluded from Marge's and Morris's estates, saving $4,000,000 in estate tax.[3]

This is sometimes referred to as an estate "freeze" of the asset value at the 2026 level for estate tax purposes and can save the estate and its beneficiaries millions in estate tax. The greater the post-gift appreciation, the greater the transfer tax savings for taxable estates.

## More Options with an Irrevocable Gift Trust

In the example above, the gifts of the 2/3 Small Business interest to the children were made outright and free of trust. To achieve even more potential estate tax savings for future generations, the gifts to children could instead be made to irrevocable trusts for their benefit, with provisions that provide for them and their descendants over multiple generations (up to 1,000 years under Utah law). If GST tax exemption is also fully allocated to all property gifted to the irrevocable trusts, then the trust assets can be GST exempt, or exempt from the GST tax, for as long as the assets remain in the trust. This means the trust property, if the trust is drafted appropriately, will remain outside of the transfer tax system for future generations – that is, it will not count against a beneficiary's personal estate, gift or GST tax exemption amounts – for as long as the trust exists.

Adding yet another wrinkle, the Settlor of the trust could include the Settlor's spouse as a permissible beneficiary of the irrevocable trust, along with the Settlor's descendants. The same GST tax consequences could be achieved while providing for the spouse's potential future needs. This type of trust is sometimes called a "SLAT" – or, a "spousal lifetime access trust."[4]

Using the Marge and Morris example, Marge could set up an irrevocable gift trust for the benefit of her children and Morris in such a way that any gratuitous transfer of assets to the irrevocable gift trust would be a completed gift for gift tax purposes and will not be includible in Marge's estate for estate tax purposes. Marge could allocate her available GST exemption to the trust property as well for even more flexibility for Morris and her descendants.

The estate tax result would be the same in the latest example above (i.e., $8,000,000 in tax, $52,000,000 for children), with the exception that the $20,000,000 owned by the children would instead be held in a GST exempt trust for the benefit of the children and thus would not count against the children's own separate estate, gift and GST tax exemption amounts at their respective deaths. If the children owned the $20,000,000 asset in their personal names, or in the name of their own separate revocable trust, the assets would be includible in their respective estates.

Not only does an irrevocable gift trust help with estate tax savings, but it also helps with creditor protection. Because Marge no longer owns 2/3 of the business, that 2/3 interest is not subject to the claims of her future creditors. The trust also provides greater protection from Morris's and the children's creditors than if the assets were owned by them individually. Irrevocable gift trusts with spendthrift provisions, and an independent trustee who has full, unfettered discretion to make or refrain from making distributions to the beneficiary, typically provides significant creditor protection for that beneficiary.

But what if Marge is not ready to part with her ownership interest in any of her assets but still wants some sort of asset protection?

## General Asset Protection with a Utah DAPT

Since 2003, Utah law has allowed the wary client to establish an irrevocable DAPT. The client creates and transfers assets to the DAPT, which, if validly established and administered under the statute, provides creditor protection for the DAPT assets against certain creditors of the client. The contributing client would be the Settlor of the trust (i.e., the creator or transferor of assets) and may also be a permissible beneficiary. However, the Settlor would not be able to receive a distribution without the consent of a third party, as further explained in the relevant statutes (currently found in Utah Code Sections 75B-1-301 to 75B-1-310).

Under S.B. 206, several changes were made to the Utah DAPT statutes. These include:

1. clarifying that the Settlor need not be a beneficiary of the DAPT, but may be added as a beneficiary later, *see* Utah Code Ann. § 75B-1-301(1)(b);
2. removing the requirement for providing an affidavit of solvency, *see id.* § 75B-1-306;
3. updating the language surrounding the limitations period and claims for relief or causes of action stemming from fraudulent or voidable transfers, *see id.* § 75B-1-307;
4. clarifying that distributions from a DAPT are treated as coming first from the assets that were most recently contributed to the trust, updating provisions relating to the conveyance of property to the Settlor or beneficiary for purposes of securing financing, and the timing of any reconveyance to avoid a transfer for purposes of the limitations period, *see id.* § 75B-1-310; and
5. relocating the DAPT statutes from Title 25 to its present location in the Utah Code: Title 75B, Chapter 1, Part 3.

Some other basic requirements for a valid DAPT set forth in Utah Code Section 75B-1-303 include:

1. the DAPT must be governed by Utah law;
2. at least one trustee must be a Utah resident or trust company;
3. there must be a spendthrift provision (i.e., Settlor, as beneficiary, may not transfer income or principal or any other beneficial interest);
4. if the Settlor has a domestic support obligation, the trustee must notify the obligee thirty days in advance of any distribution to the Settlor, and include the date and amount of the distribution;
5. the Settlor cannot revoke or amend the DAPT without consent of another beneficiary with a substantial interest in the DAPT whose interest would be adversely affected;
6. mandatory distributions of income or principal to the Settlor are not permitted, with certain exceptions needed to accomplish other common estate planning strategies; and
7. the Settlor cannot be in default of a domestic support obligation when transferring property to the DAPT; nor can the transfer render the Settlor insolvent; nor can the transfer be derived from unlawful activities; nor can the Settlor intend to hinder, delay, or defraud a known creditor by making the transfer, but the express intention to protect assets from potential future creditors is not considered an intent to hinder, delay, or defraud a known creditor.

In addition, a DAPT is still valid even if the Settlor serves as a cotrustee and participates in distribution decisions and investment decisions. The Settlor can even unilaterally veto or consent to a distribution from the trust, redirect trust property during life or at death under a nongeneral power of appointment, give a personal guarantee on obligations secured by trust property, and pay trust expenses including taxes on trust property. *See* Utah Code Ann. § 75B-1-304.

Besides benefits against unknown future creditors, the DAPT statute can shorten the period for a cause of action or claim for relief for a fraudulent conveyance or other voidable transfer. *See id.* § 75B-1-307.

Going back to our example, let's assume Marge would like to protect 2/3 of her Small Business interests from her potential personal future creditors but still have access to those interests. So, she sets up a Utah DAPT. The trust instrument provides that the trustee may make discretionary distributions to Marge, Morris, and their descendants. Marge also has retained the ability to redirect trust property at her death among any one or more of Morris, her descendants, and charitable organizations under a testamentary limited power of appointment. If she fails to exercise that power, then the trust will terminate at the later of her death and Morris's death and be divided into sub-trusts – one for each of her children and their respective descendants (assuming they are then living).

If Marge complies with all the requirements for a Utah DAPT, the DAPT assets will be protected under that statutory scheme from Marge's future personal creditors while still allowing her access to the DAPT assets, resulting in a more robust defense against future creditor claims with respect to the trust property than if she had kept the assets in her name.

However, Marge will likely need to monitor future distributions from the DAPT that will go to beneficiaries other than herself for gift tax reporting purposes; this is because the DAPT will likely be treated as an "incomplete gift" trust; that is, transfers to the DAPT will be incomplete for federal gift tax purposes due to the retention of certain rights by Marge, as the Settlor. However, the gift by the Settlor would be completed once the property is distributed out of the DAPT and to a beneficiary other than the Settlor. *See* Treas. Reg. § 25.2511-2 (as amended 2020). If the DAPT distribution to a person other than the Settlor exceeds the remaining annual exclusion amount (currently $19,000 per person per year), then a Form 709 (United States Gift (and GST) Tax Return) will need to be filed to report the gift. *See id.* § 25.6019-1(a) (as amended 1994).

In addition, Marge will likely need to plan on inclusion of the remaining DAPT assets in her estate at her death for transfer tax purposes. This is because Marge will likely be deemed to have retained rights or interests with respect to the trust property. *See* I.R.C. §§ 2036(a)(1), 2038; *see also United States v. Byrum*, 408 U.S. 125 (1972); *Strangi v. Comm'r of Internal Revenue*, 417 F.3d 468 (5th Cir. 2005); Treas. Reg. § 20.2036-1(b) (as amended 2023); Treas. Reg. § 20.2038-1(a) (as amended 2019).

Note, however, that it is possible for a Utah DAPT to be a "completed gift" trust – that is, transfers of property by the Settlor to the trust may be deemed to be completed gifts upon transfer (versus when the trust property is distributed out of the DAPT to a non-Settlor beneficiary). It also may be possible for the property of a Utah DAPT to not be includible in the Settlor's estate at the Settlor's death.

For example, Private Letter Ruling (PLR) 200944002[5] provides that a trustee's discretionary authority to distribute income and/or principal to the Settlor of an irrevocable Alaska DAPT does not, by itself, cause the DAPT corpus to be includible in the Settlor's gross estate under I.R.C. § 2036. *See* I.R.S. Priv. Ltr. Rul. 200944002 (Oct. 30, 2009). However, the IRS specifically refused to rule on whether the DAPT trustee's discretion to distribute income and principal of the trust to Settlor, combined with other facts (such as, but not limited to, an understanding or pre-existing arrangement between Settlor and trustee regarding exercise of this discretion) may cause inclusion of the DAPT's assets in Settlor's gross estate under I.R.C. § 2036.[6]

So, could Marge use a Utah DAPT to gain the creditor protection she desires while retaining a beneficial interest in the DAPT assets, and also obtain the estate tax benefits of an estate freeze as noted above? Based on the statement in the PLR noted above, it may be possible. However, care should be taken to minimize the risk of the IRS arguing that there was an express or implied understanding or agreement that the trustee will make distributions to the Settlor other than independently. In addition, it would be prudent to provide an independent third party with the discretionary power to remove the Settlor as a beneficiary of the DAPT, which power should be exercised prior to Settlor's death to protect against the possibility of the DAPT assets being included in the Settlor's gross estate under I.R.C. § 2036.

For the conservative estate planner, the risk may be too high to try to squeeze out an estate freeze under the cover of a Utah DAPT. The planner and client may instead opt for a traditional irrevocable gift trust, like a SLAT, to achieve the freeze. The Utah

DAPT would still provide an excellent framework for self-settled trust asset protection for the right client scenario, however.

Going back to our example, let's assume that Marge created an irrevocable trust – the type is irrelevant – that is no longer working for the original intended purpose, whether due to changing tax laws, changing asset values, a changing family situation, or otherwise. Can the irrevocable trust be modified? In Utah, although there have been several methods to modify an irrevocable trust prior to S.B. 206, the new trust decanting statute provides an additional, express method that requires only trustee discretion to exercise the power.

## Trust Decanting

Trust decanting originated in the common law and involves the trustee of a trust utilizing a discretionary power to distribute trust property to or for the benefit of a beneficiary. Instead of distributing the trust property outright and free of trust to the beneficiary, the trustee instead decants (i.e., pours over, or appoints) the trust property to a second, often newly drafted, trust. *Phipps v. Palm Beach Tr. Co*., 196 So. 299 (Fla. 1940). After all, if the trustee has the discretion to grant the beneficiary outright ownership in the property, it seems appropriate the trustee should be able to grant the beneficiary something less than that, such as a beneficial interest in the second trust. The practical result is a change in the terms governing the trust property that is made solely by the discretionary action of the trustee. To be clear, the exact same result of accomplishing updated trust terms could be achieved under Utah modification statutes or court intervention, but that involves consent beyond the trustee, including one or more of the beneficiaries, the Settlor, and the court, depending on the circumstances. *See* Utah Code Ann. §§ 75B-2-410 to -417; *see also id*. § 75B-2-110.

Some trust instruments embed a decanting power in the trust terms, granting a trust protector, independent trustee, or other power holder the authority to decant. In 2019, Utah adopted the Uniform Directed Trust Act, *see* Utah Code Ann. §§ 75B-3-101 to -118, which further defines roles of "trust directors" who could exercise certain powers over trust property, which may include the power to decant or appoint property in further trust. For an excellent overview of this act including additional discussion surrounding the decanting power under common law, *see* Langdon T. Owen, Jr., *The New Utah Uniform Directed Trust Act*, 32 UTAH B.J. 28 (Nov./Dec. 2019).

The new Utah decanting statute under S.B. 206, which is found in Utah Code Section 75B-2-812.5, clearly establishes a trustee's ability to decant. The common law of trusts supplements the decanting statute. *See* Utah Code Ann. § 75B-2-106.

Under the new decanting statute, if a trustee of a trust has discretion to distribute trust property to or for the benefit of a beneficiary, the trustee may, with twenty days' notice to all beneficiaries, modify the terms of the trust, or distribute some or all the trust property to another trust. However, the trustee may not do so if the trust instrument expressly prohibits such a modification or distribution. *See id*. § 75B-2-812.5(2).

The trustee must also determine whether the decanting is necessary or desirable after taking into account the purposes of the trust, the updated terms and conditions, and the consequences of the decanting action. *See id*. § 75B-2-812.5(3).

There are also several provisions in the new decanting statute that provide safeguards for: (i) beneficiaries who are also trustees of the trust, or who have the ability to name themselves as trustee or to remove a trustee and replace them with someone who is related or subordinate to the beneficiary (preventing estate tax inclusion and gift tax consequences as a result of decanting); (ii) marital deduction trusts (protecting the marital deduction); (iii) charitable trusts (protecting the charitable deduction and charitable nature of such trusts); (iv) holders of withdrawal rights (protecting their withdrawal rights); and (v) trustees (preventing estate tax inclusion as a result of decanting). *See id*. § 75B-2-812.5(8).

Turning back to our example, let's assume that Marge set up an irrevocable trust, which holds 2/3 of the Small Business interests. The three children are permissible, discretionary beneficiaries of the trust. Let's further assume that one of the three children has become independently wealthy; in fact, they have amassed a fortune that is larger than Marge's and Morris's put together (whether by their own work, by marriage, by winning the lottery, or otherwise). All interested parties agree they would like to have the other two children split the trust between the two of them and essentially disinherit the wealthy child from benefiting from the trust.

If the trustee under the irrevocable trust (whether a traditional gift trust or a DAPT) has the discretion to make a distribution of all or a portion of the trust property to or for the benefit of one or more of the three children, they could utilize the new decanting statute to effectively modify the terms governing all or some of the trust property, and in some cases, cut out the wealthy child completely. They would need to ensure the statutory requirements are met, which should be possible with an irrevocable gift trust or with a DAPT with flexible discretionary distribution language. Limiting beneficiary and Settlor involvement (as otherwise may be required under the other available trust modification methods in Utah) may or may not have an impact on peripheral transfer tax ramifications that may result with a beneficiary participating in a shifting of value to other beneficiaries by signing a modification or consenting to a decanting, although a wary trustee will probably push for consent even if not required. (Remember, the new decanting statute requires beneficiary notice, but not consent.)

Careful consideration would also be needed to determine whether the Settlor would be completing any prior incomplete gifts (and any accompanying valuations needed to report the gift), whether the property would be includible in the gross estate of the Settlor, trustee, or any beneficiary, whether the proper rule against perpetuities period would be respected, any GST tax allocation ramifications, income tax ramifications, e.g., if the resulting trust will have the same grantor trust status as the original trust, and other considerations.

## Conclusion

Recent changes in federal and state tax and trust law have given our Utah clients more options with their trust and estate planning. With the rising federal transfer tax exemption amounts under OBBBA, for many clients the focus has turned less to estate tax exposure and more to asset protection. However, with recent updates to the Utah DAPT statutory scheme and with the addition of the decanting statute under S.B. 206, the wealthy, wary client has even more options to achieve their current goals knowing that even if circumstances change in the future, there are additional tools available to achieve the desired results.

1. Portability, or the availability of the DSUE to a surviving spouse, was first codified under Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 and made permanent under the American Taxpayer Relief Act in 2013. It is important to note that there is no similar DSUE or portability for GST exemption, meaning any GST exemption not utilized by a client during life or at death is permanently lost.
2. A quick note on ignoring inflation: as we know, inflation is a big deal. The authors are comfortable ignoring inflation in this article for two reasons: first, it is simpler to follow the math and focus on the subject matter without the added complication of inflation; and second, the growth in the example here approximates the after-inflation growth for the S&P 500 over the most recent ten year period (2016 through 2026), which is approximately 212.79% over that period, which means it has more than doubled in size, even adjusting for inflation (the non-inflation-adjusted return over the same period is 322.42%). Thus, we can use the simplified numbers above, ignoring inflation, and still approximate the same growth of the S&P 500 over the last ten-year period. *See* Ian Webster, *Stock Market Returns Since 2016*, Official Data Found., https://www.officialdata.org/us/stocks/s-p-500/2016?amount=100&endYear=2026 (last visited Mar. 22, 2026). Of course, each asset is different and grows (or shrinks) at a different rate, and the authors acknowledge the oversimplification of the assumptions in this article.
3. Note, however, that the assets owned by the children will not get an automatic basis adjustment to fair market value as of the date of death (sometimes called a "step up" in basis at death even though adjusting to market value does not necessarily mean the asset will have appreciated in value). Compare that with assets that are still owned by Marge and Morris at their deaths, which are includible in their estates, which typically get a basis adjustment to fair market value as of the date of death (with certain exceptions, including tax-deferred retirement plans).
4. This article does not address situations in which a person creates a SLAT for their spouse and the couple later divorces or otherwise find themselves in changed circumstances. In such cases, the intended transfer tax advantages of the structure will necessarily yield to broader, non tax considerations. These issues should be considered during the planning stage, including whether to incorporate provisions to address a future divorce and other circumstances.
5. A PLR is not binding authority, and while the reasoning used in a PLR may be useful in planning and analysis, it cannot be relied upon. The authors are not aware of any binding authority that comes to the same conclusion on this issue as the PLR cited above.
6. Internal Revenue Code Sections 2035 and 2038 should also be carefully considered in these DAPT scenarios.

# Crossing the Threshold: A Mentor and Mentee on Recovery, Service, and Returning to Law

by Ryan M. Springer and W. Matthew Hall

## Two Lawyers, One Program

**Mentee:** A few years ago, my life in the law fell apart.

For a long time, I lived a double life that many lawyers will recognize. Outwardly, I was competent, functional, and often successful. Inwardly, I was unraveling. Alcohol, which had once felt like a way to take the edge off the day, had become the organizing principle of my life. I told myself I was "holding it together" because the work was still getting done. That illusion evaporated quickly.

The consequences came hard and fast: criminal issues, a disciplinary suspension, and the collapse of the professional identity I had built over decades. The specific facts are less important here than their impact: I was out of practice, deeply ashamed, and unsure whether I even wanted to be a lawyer again.

During that suspension, something unexpected happened. I got sober – and stayed sober. My world narrowed to a simple priority structure: stay alive, stay sober, do the next right thing. I built a recovery life: meetings, therapy, medical care, spiritual work, slow repairs of relationships. For the first time in a long time, nothing was more important than sobriety.

After a year of continuous sobriety, a question crept in that I tried very hard to ignore: Is there a way back to the law for someone like me?

I did not trust myself to answer that question alone.

**Mentor:** By the time I first heard from Ryan, I already knew versions of his story.

I am also a lawyer in long-term recovery. I had my own period of collapse – different in details, similar in shape. I had experienced the dread of discipline and the slow work of rebuilding. I had learned how fragile sobriety can be in a profession that rewards overwork, stoicism, and denial. And I had discovered, through my own involvement with Lawyers Helping Lawyers (LHL), that service to other lawyers was not just something I could offer, but something I needed in order to stay well.

When LHL contacted me about a suspended lawyer who had been sober for a year and was wrestling with whether to seek reinstatement, I recognized the crossroads immediately. He did not need a sales pitch for recovery; he had already done a great deal of work. What he needed was someone who understood both the culture of recovery and the culture of law to sit with the question: "Can I safely go back?"

That is where our shared story begins.

## The Myth of Handling It Alone

**Mentee:** Before it all broke, I lived inside what I now think of as a "split screen."

On one side, the visible side, I looked like many mid-career lawyers: busy, competent, able to push through stress and exhaustion. I knew how to hit deadlines, argue motions, and present as the person in control. On the other side, invisible to most people, my life was narrowing around alcohol and untreated mental health issues. Relationships suffered. Health deteriorated. Secrets multiplied.


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*W. MATTHEW HALL is a corporate transactional attorney, representing a handful of companies along the Wasatch Front as a fractional in-house counsel. While he has served on the board of Lawyers Helping Lawyers for the last five years, Matthew prefers to work one-on-one with attorneys who desire to overcome chemical dependency, sharing the hope that was so freely given to him when he was struggling.*


The profession made it easy to live that way. From day one, we are trained to be self-sufficient problem solvers. Vulnerability is for clients; certainty is for lawyers. Admitting you are drowning feels like professional suicide. Research now confirms what many of us have seen up close: high rates of problem drinking, depression, and anxiety among lawyers, with too many of us suffering in silence until the damage is severe.

I knew those statistics. I sat through the CLEs. But I had absorbed a dangerous corollary: other lawyers might need help. I should be able to fix myself.

That belief almost killed me.

**Mentor:** From a mentor's vantage point, that "split screen" is heartbreakingly familiar.

By the time a lawyer reaches out to LHL or a similar program, they have often spent years using professional competence to mask personal collapse. They know how to argue a motion on two hours of sleep and a hangover. They know how to write a brief while falling apart at home. They believe that as long as the work product holds, the rest is negotiable.

The culture reinforces that. We praise toughness, long hours, and "taking one for the team." We rarely praise asking for help. We do not always make it clear that well-being is part of competence, not a distraction from it. So lawyers wait. They wait until there is a suspension, an arrest, a health crisis, or a family implosion. Then they arrive in our world – frightened, ashamed, and convinced that they are uniquely broken.

They are not.

## Standing at the Door

**Mentee:** By the time I hit twelve months of continuous sobriety, I had rebuilt enough of a life to see a future. I just did not know whether that future should include the practice of law.

On one hand, I missed it. The law had shaped my adult identity. I missed the intellectual work, the clients, the feeling of contributing to something larger than myself. On the other hand, I knew that my old way of practicing had been lethal. I was not willing to sacrifice sobriety – my literal physical survival – for a bar card.

Could those two realities be reconciled? Was there a way to practice that did not drag me back into the same patterns that had fueled my addiction? Or was the healthiest choice to walk away permanently?

It felt like standing in front of a closed door, knowing that whatever was on the other side would change my life again. I did not know whether opening it would let in light or drag in a storm. I also knew that standing there alone, arguing with myself, was not getting me any closer to clarity.

That is when I decided to contact Lawyers Helping Lawyers.

It started with an email. The act of writing it felt like putting my hand on the doorknob. I wanted to be honest without detonating my future. I wanted to say, in essence: "Here is what happened. Here is where I am now. I am sober, but I am afraid. I do not know if returning to practice is wise. I need help thinking about this."

For a long time, I stared at the screen. Then I opened the door and hit send.

**Mentor:** From the LHL side, that email showed something important: he was not just asking, "How do I get my license back?" He was asking, "How do I stay alive if I do?"

That is a different question. It is a healthier question.

I reached out, and we scheduled a call. My first job was to lower the temperature. I explained what LHL is and is not: a confidential resource, not an arm of discipline; a bridge to support, not a surveillance program. I told him he was not the first lawyer to stand at that door.

Then we began, slowly, to sort the problem into pieces:

- What had changed in his internal life – his recovery, routines, supports?

- What had changed in his understanding of the profession and its costs?
- What would have to be different about any future practice for sobriety to remain nonnegotiable?

We were not trying to slam the door shut or throw it open in one conversation. We were trying to turn on the lights in the hallway.

## What Peer Help Looked Like

**Mentee:** I expected judgment. I did not get it.

Instead, I heard the voice of someone who knew the terrain – courtrooms and treatment centers, client calls and sponsor calls. Matthew did not minimize what I had done, or what I had lost. He also did not treat me as a hopeless case.

Over time, our conversations covered two intertwined tracks. On one track, we talked about the external process: what reinstatement could look like, what conditions and monitoring often involve, how programs like LHL and the Office of Professional Conduct can coordinate to support both public protection and genuine rehabilitation. Having someone translate that landscape reduced the fear.

On the other track, we talked about the internal reality: my motives, my fears, my blind spots. We talked about the pull of identity – how tempting it is, after a year of sobriety, to try to "get it all back" as proof that you are okay. We talked about the risk of turning the practice of law into a new drug, a way to escape from the slower, less glamorous work of recovery.

Those conversations did not give me simple answers. They gave me something better: an honest framework for decision-making, based on the principle that sobriety had to remain first.

**Mentor:** From my side, the work was to balance truth and hope.

Truth: discipline is serious. Harm was done. Trust will need to be rebuilt, slowly, if reinstatement is granted at all. Recovery does not guarantee any particular professional outcome.

Hope: many lawyers do return to meaningful, ethical practice after devastating consequences. They do it by building new lives around recovery and then fitting the law into that structure, not the other way around.

My role was not to tell him whether to seek reinstatement, or to predict outcomes. It was to walk beside him as he asked the right questions, and to stay with him regardless of what he decided.

## Returning as Different Lawyers

**Mentee:** Eventually, with a network of support around me – family, recovery community, therapists, doctors, and LHL – I did seek reinstatement. That process is its own story. What matters here is that I returned to practice as a different lawyer.

Externally, there were conditions and structures: monitoring, accountability, limits on the scope of my practice. Internally, there were nonnegotiables: meetings, therapy, sleep, and honesty with a small circle of people who know exactly how I am doing.

I discovered that the skills I had been learning in recovery were, in fact, professional skills:

- Telling the truth early, before a problem metastasizes.
- Admitting when I am in over my head and asking for help.
- Setting and honoring boundaries, including saying "no" when work threatens sobriety.
- Letting trusted colleagues see the whole picture instead of curating an image.

Those are not signs of weakness. They are the habits of a sustainable lawyer.

**Mentor:** Watching Ryan return to practice underscored something I have seen again and again: when recovery is solid and remains first, lawyers can come back not just as the people they were, but as better versions of themselves – more honest, more boundaried, more human.

The broader well-being movement in our profession has started to say this out loud: that lawyer well-being is an essential part of competence, and that protecting the public includes taking care of the people who serve the public. But culture changes slowly. It changes one story, one relationship, at a time.

In mentoring relationships like ours, both people change. I have to keep my own recovery honest if I am going to look another lawyer in the eye and tell them the truth. His questions force me to examine my own motives, my own boundaries, my own blind spots. Mentorship, as bar associations and assistance programs increasingly recognize, benefits both mentor and mentee.

## From Isolation to a Network of Service

**Mentee:** At some point, the direction of the help began to run both ways.

My mentor started asking if I would be willing to talk with other lawyers in crisis. A name or number would appear. I would remember the hesitation before sending that first email, the fear of being known. I would take the call.

I do not present myself as a success story or an expert. I present myself as a peer: someone who has been where they are, who knows something about discipline and shame and the slow work of putting a life back together. I talk about Lawyers Helping Lawyers, about treatment, about recovery, about the reality that you can lose a great deal and still build something worth living in.

Each of those conversations is a reminder that my story is not mine alone. It belongs to a network of people who showed up for me when I could not show up for myself, and to the colleagues I now have the privilege to show up for.

**Mentor:** For me, this is the heart of "recovery through service."

I did not set out to become a mentor. I was asked to help, one lawyer at a time, and I said yes. Over the years, I have seen careers salvaged, families restored, and, in some cases, lives literally saved – not because I am special, but because our profession, at its best, can be a community that refuses to throw people away.

The work is quiet and mostly invisible, as it should be. It happens in coffee shops, parking lots, treatment centers, and late-night phone calls. It happens when a suspended lawyer with twelve months of sobriety steps across the threshold of asking for help, and another lawyer is waiting on the other side.

## An Invitation

We are telling this story together for a few reasons.

First, to normalize what is already true: a significant number of lawyers are struggling with substance use, depression, anxiety, and burnout. If you are one of them, you are not uniquely defective. You are not the first. You will not be the last.

Second, to make something explicit that is often left implicit: asking for help is a professional act. It is part of our duty of competence. Reaching out to a program like Lawyers Helping Lawyers, to a doctor, to a therapist, or to a trusted colleague is not a sign that you have failed at being a lawyer. It is a sign that you are taking responsibility.

Third, to highlight the power of peer mentoring. Programs like LHL work because they connect lawyers with other lawyers who have walked similar paths. Mentors benefit as much as mentees. Both are reminded that we do not practice, or recover, alone.

There are details of our respective descents into addiction and their consequences that we choose not to share here, out of respect for our families, our clients, and our own recoveries. What matters, for our purposes, is that the damage was serious – and that help was, and is, available.

If you are hovering over a phone number or staring at a blank email now, wondering whether to reach out, we can only tell you this: nothing changes until you step across that threshold. But the moment you do, you will not be standing there alone.

And that, in the end, can make all the difference.

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# How to Talk to Your Client About AI

by Alexander Chang

Do you have heartburn when your client tells you they used ChatGPT to get the same legal advice you just gave? Does the thought of trying to differentiate your legal services from an artificial intelligence (AI) chatbot give you indigestion? Then approach your client today about having a nuanced discussion of the capacity and limitations of AI in the practice of law! *Side effects may include headache, nausea, vomiting, insomnia, and crippling existential despair over the future of your legal practice. Consult your retirement planner to see if nuanced AI discussion is right for you.*

For those of you now emerging from beneath the stacks of papers on your desks, using generative artificial intelligence has become not only common but pervasive. ChatGPT – the AI tool once used to write love letters, bad dad jokes, and chocolate cake recipes – is now being used by nonlawyers to draft their own legal documents, ask for legal advice, and even represent themselves in court. While ChatGPT was previously ridiculed and infantilized after it fabricated legal citations in a filed brief and got a New York attorney sanctioned, recent advancements in the past two years have made ChatGPT and other similar advanced AI systems a potentially competitive alternative to a lawyer's expensive hourly fees. From pickleball disputes to eviction cases, litigants are now using ChatGPT to fight their court battles – and they're starting to win. AI tools like ChatGPT are driving a surge in pro se plaintiffs: pro se employment lawsuits surged by 49% last year, and Fair Housing Act lawsuits filed without a lawyer jumped by 69% through the first nine months of 2025. Roy Strom, *Big Law Grapples with AI-Fueled Pro Se Surge, Rising Legal Costs*, Bloomberg Law (Mar. 12, 2026, 3:00 AM), https://news.bloomberglaw.com/business-and-practice/big-law-grapples-with-ai-fueled-pro-se-surge-rising-legal-costs. Indeed, I hypothesized in my March-April 2024 Utah Bar Journal article that a trained AI has the potential to provide legal advice for fractions of a penny per person, plugging the access-to-justice gap that plagues our judicial system.

Assuming AI continues to grow at the exponential pace it already has, we can expect AI systems to conduct case analysis and legal research and draft appropriate legal documents at or even above the level of the average attorney. This is not a matter of if, but when, and the signs of AI's potential are already showing up in our practices and in courtrooms. To say that our legal knowledge will always be superior to any advanced AI system is an exercise in equal parts arrogance and shortsightedness. But if we really are on the precipice of such a technological revolution, can the career lawyer still exist alongside advanced AI systems? The answer to that question requires understanding what the limits of AI are (today and into the future) and goes to the heart of that nuanced discussion with clients about using AI in the practice of law. In short, AI does not have certain human characteristics (yet) which will ultimately distinguish our services to clients.

## AI Does Not Have Eyes and Ears

AI does not have eyes and ears. Most AIs are currently confined to a one-sided internet "chat" style interaction. For those of us practicing in the age of Zoom client meetings and long email exchanges, we are familiar with the limitations of clearly communicating case facts and issue-spotting legal questions through our smartphone/hand-terminals. It is even worse if the client is exclusively prompting the conversation (as is the case when they use AI). While today's AI can likely accurately answer the client's discrete legal question, it cannot identify other legal issues that the client may have, or even ask follow-up questions to seek legally-relevant facts. We attorneys offer value by seeing and hearing more than our AI counterparts, and by driving the intake conversation to more fully spot and address legal issues. Our experience built upon years of practice shines through here.

But AI's blindness and deafness are not a long-term issue. AI systems with the capability to "see" your documents and "hear" your conversations and words already have a crude implementation

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in the form of "multimodal" AIs where one can upload documents and images and record conversations and instructions. OpenAI's fifth-generation model, GPT-5, released in August 2025, unifies advanced reasoning, multimodal input, and task execution into a single system, representing one of the biggest capability upgrades in ChatGPT's history. Furthermore, AI systems can be fine-tuned and trained to ask the user for additional facts and explore other legal issues. The future of AI will be able to see and hear all, even when we do not want it to. Having eyes and ears will, unfortunately, not distinguish us from AI for long.

## AI Does Not Have Hands and Feet

AI does not have hands and feet. AI cannot make filings to the court, print documents for our clients to sign, or gather and prepare evidence. Attorneys know that litigation is as much an exercise in logistics as it is one of analysis and strategy – just ask anyone who had to file before a midnight deadline. AI does not have the hands and feet to be able to get the right things to the right place at the right time. And in our complex judicial system, you want someone with experience (and some grasping appendages) to get your evidentiary and procedural ducks in a row.

But AI's reach is extending. The transition from generative AI to agentic AI represents the most significant evolution in legal technology. Unlike tools that respond to single prompts, agentic systems interpret instructions and execute them autonomously across tools and platforms, planning multi-step research, cross-checking sources, and refining outputs without constant human intervention. These "agentic" AI systems can write you a chocolate cake recipe *and* order the necessary ingredients from your smartphone to be delivered to your home. The COVID-19 pandemic has already shown us that only having a digital footprint is not only possible, but in many circumstances, comparable or better than operating exclusively in our physical world. Agentic AI will one day (if not already) draft a contract, access your e-signature software and email, and send it off to be countersigned before your calendar deadline.

And if physical hands and feet are truly necessary, the next stage of the AI revolution is to combine our advancements in multimodal, agentic AI with humanoid robotics to build "terminator" machines with the ability to physically interact with the world. These advanced robotic systems are already here. For example, researchers from the University of Pennsylvania created a robot dog that can be walked while balancing on a yoga ball. Jijo Malayil, *Nvidia's Eureka Helps Robot Dog Perfect Yoga Ball Balance*, Interesting Engineering (May 5, 2024, 6:07 AM), https://interestingengineering.com/innovation/nvidia-robot-yoga-ball-balance. Nvidia, the now multi-trillion-dollar AI computing company, used an AI algorithm (Eureka) to train a robotic hand to perform rapid pen-spinning tricks. Angie Lee, *Eureka! NVIDIA Research Breakthrough Puts New Spin on Robot Learning*, NVIDIA (Oct. 20, 2023), https://blogs.nvidia.com/blog/eureka-robotics-research/. And China has most recently showcased humanoid martial arts robots in their premier Lunar New Year show. Laurie Chen, *China's Humanoid Robots Take Centre Stage for Lunar New Year Showtime*, Reuters (Feb. 16, 2026 1:07 AM), https://www.reuters.com/business/media-telecom/chinas-humanoid-robots-ready-lunar-new-year-showtime-2026-02-16/. Having hands and feet will not provide us job security either.

### AI Does Not Have Objectivity

AI does not have objectivity; it tells you what you want to hear. When a client asks ChatGPT whether they have a good case, the AI is statistically predisposed to say yes and to fabricate legal authority to support that conclusion. As one researcher who tracks AI hallucination cases explained: "The harder your legal argument is to make, the more the model will tend to hallucinate, because they will try to please you." Khari Johnson, *California Issues Historic Fine over Lawyer's ChatGPT Fabrications*, Cal Matters (Sept. 22, 2025), https://calmatters.org/economy/technology/2025/09/chatgpt-lawyer-fine-ai-regulation/. Indeed, as recently as April 2025, OpenAI was forced to roll back a ChatGPT update after the model became so sycophantic that users reported it praised a business idea for literal "s*%t on a stick," endorsed a user's decision to stop taking their medication, and allegedly supported plans to commit terrorism. *Tech Brief: AI Sycophancy & OpenAI*, Georgetown Law: Institute for Technology Law & Policy (July 30, 2025), https://www.law.georgetown.edu/tech-institute/research-insights/insights/tech-brief-ai-sycophancy-openai-2/.

In the words of the Utah Supreme Court, "[i]t is axiomatic that effective legal representation [depends] not only on legal expertise, but also on [a] detached and objective perspective. The lawyer who represents [themself] necessarily falls short of the latter." *Jones, Waldo, Holbrook & McDonough v. Dawson*, 923 P.2d 1366, 1375 (Utah 1996) (quoting *White v. Arlen Realty & Dev. Corp.*, 614 F.2d 387, 388 (4th Cir. 1980)). The sycophantic AI is a worse version of the self-representing lawyer: at least the self-representing lawyer *knows* the law, even if he lacks objectivity. AI lacks both. The good lawyer tells a client the hard truths: that their case has weaknesses, that the law may not be on their side, that compromise may be the wisest course. An AI trained to please will never deliver that message – the over-agreeableness of AI can lead to very disagreeable results.

But recent AI developmental methods are getting better at removing sycophancy bias through a technique called "persona vector steering," where AI models are "inoculated" from developing bad behaviors by giving models "a dose of 'evil'" as an example of inappropriate responses. Krystal Kasal, *Anthropic Says They've Found a New Way to Stop AI from Turning Evil*, TechXplore (Aug. 6, 2025), https://techxplore.com/news/2025-08-anthropic-theyve-ai-evil.html. Bias, in both humans and AIs, is a matter of improper training; sycophancy appears to be a temporary technological barrier, not a fundamental flaw.

### AI Does Not Have a Human Soul

One wonders what is left to distinguish the creators and the created. One day, and likely within our lifetimes, our industry will be confronted with the profound existential question of whether human lawyers can and should exist. If AI can draft, argue, counsel, sign, and file – without spending years in law school and decades more in practice – and all at the going market rate for electricity, we high-maintenance blood-bags will not be able to keep up! Society would certainly benefit from having a near-zero cost judiciary, and there is perhaps some comfort in dreaming of a day when history condemns our era as a barbaric age where people in want of justice paid obscene fees to other expensive (but nonetheless fallible) people in pursuit of it. For us expensive and fallible people, however, despair is perhaps the only appropriate response when that day comes.

But if I may be so bold as to hope, human lawyers may still yet exist. AI does not have a "human soul," which I believe is necessary to practice law. Justice is a human ritual. For as long as we have prayed to powers unseen for protection against cosmic chaos, we have spent twice more attempting to impose human agency and our sense of fairness over the affairs of man. To surrender our sense of right and wrong to an over-glorified computer algorithm is to forfeit our desire to be the makers of our own fate, a desire that is as old and venerable as our precursor Roman courts. Humans will (probably) never let numbers and fancy statistics decide the outcome of their case. And thus, our judges and juries must be human, because as flawed and limited as we humans may be, only another flawed and limited human can truly understand our conflicts and pass just judgment. Benjamin Joyner, *New 'AI Judge' Tool Looks to Automate Arbitration Decision Making*, Law.com (Jan. 29, 2025, 1:01 AM), https://www.law.com/legaltechnews/2025/01/29/new-ai-judge-tool-looks-to-automate-arbitration-decision-making/?slreturn=20260602005416,



And if our judges and juries must be flawed and limited human beings of bias and synaptic chemicals, they will balk at the possibility that their sense of right and wrong can be computationally manipulated, argued, and applied (even if they are wrong). *See* Ryan Heath, *AI Tells Lawyers How Judges are Likely to Rule*, Axios (Sept. 12, 2023), https://www.axios.com/2023/09/12/ai-judges-trials-predictions; Mark Beer, *Automatic Justice: The Role of AI in Judicial Determination* (Mar. 9, 2021), https://www.law.ox.ac.uk/events/automatic-justice-role-ai-judicial-determination. Judges and juries will view AI lawyers as alien interlopers, overstepping into humanity's dominion. Thus, our attorneys must be human, to better interface with the feeble fleshy frames of fat and favoritism that will decide the outcome of the case. When AI can finally do anything a human can, lawyers can still sell our relationship and experience with the court – that personal connection, fortified by rhetoric, and conveyed from one flawed, inefficient meat-bag to another.

## CONCLUSION

The rise of advanced AI systems in the legal industry presents both challenges and opportunities for attorneys. While AI may one day match or exceed the capabilities of human lawyers in many areas, I think it is unlikely to fully replace the need for the human element in the practice of law. Ultimately, the law is a human institution, designed to govern human affairs and resolve human conflicts. Judges and juries, as flawed and biased as they may be, want to see and connect with human advocates who can understand their perspectives and emotions. The ritual of justice mandates human participation.

Therefore, in discussing the role of AI with clients, it is important to emphasize the enduring importance of the human factor that attorneys provide. Our ability to connect with clients, judges and juries on a human level, to see the bigger strategic picture, to advocate with empathy and passion is something that even the future "terminator-Skynet omni-bot model 9000" (trademark pending) may struggle to fully replicate. The key for lawyers will be to harness the power of AI as a tool to enhance our efficiency and capabilities, while continuing to bring our uniquely human skills and judgment to bear in serving our clients. The lawyers who thrive in the age of AI will likely be those who can leverage technology to complement – not replace – their human expertise and connection. By having nuanced discussions with clients about these issues, attorneys can differentiate and future-proof the value proposition of their services in a rapidly evolving legal landscape.


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# Presenting the Jury With Patterns of Sexual Assault:
## Utah's New Rule Allowing Sexual Assault Propensity Evidence

by Paul G. Cassell and Ryan McBride

***AUTHORS' NOTE:*** *This article contains specific discussion of sexual assaults, which may be upsetting for some readers. Both authors testified in favor of S.J. Res. 1 during the past legislative session.*

During the 2026 session, the legislature amended Utah's Rule of Evidence 404, adding subsection (d) to allow prosecutors to present to juries sexual assault propensity evidence in sexual assault cases. The Federal Rules of Evidence have contained a similar rule (Rule 413) for more than two decades. Numerous states follow comparable approaches – either through rule or caselaw – tracking the common law approach of admitting evidence to prove a "lustful disposition." Utah's rules will now benefit from a provision codifying this result into Rule 404(d).

Because of the significance of this new rule change, this article explains the rationale behind it and how it will operate in practice. This article proceeds in four parts.

First, given the fact that most sex crimes are committed by perpetrators against victims in private places, admitting evidence of similar crimes is often critical to a successful prosecution of those perpetrators.

Second, historically Utah law recognized a similar crimes exception, only for that precedent to be obscured or ignored by what appears to have been sexist assumptions about the unreliability of women reporting sexual assaults.

Third, a majority of jurisdictions in the United States now often allow the admission of similar crimes evidence in sexual assault cases.

Fourth and finally, this article explains how the language in Rule 404(d) will operate, drawing on other parallel state and federal rules that have been in operation for some time.

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### Admitting Similar Sex Crimes Evidence Is Important to Securing Convictions for Sex Offenses.

In sexual assault cases, it is important to provide juries with full information about other similar crimes a defendant has committed. *See generally* Paul G. Cassell, *Evidence of Repeated Acts of Rape and Child Molestation: Reforming Utah Law to Permit the Propensity Inference*, 1998 Utah L. Rev. 145, 165–66. Perhaps the most crucial reason for admitting other crimes evidence is the fact that sex crimes are typically committed in private, resulting in a lack of neutral witnesses. This unavailability of witnesses often turns sex offense prosecutions into unresolvable swearing matches between the victim and the defendant. In a criminal justice system that requires proof beyond a reasonable doubt for a conviction, it is quite difficult for prosecutors to meet their burden without evidence supporting a victim's testimony. In many cases, the only available supporting evidence comes from the pattern of the defendant's attacks.

This problem of supporting evidence is particularly acute in so-called acquaintance-rape cases, where the defendants often claim that the victim consented to having sex. In such cases the accused will often admit having sexual contact with the victim, thus making physical evidence of sexual relations irrelevant. This distinguishes other crimes evidence in sexual assault cases from other types of cases, because claims of consent are rarely offered for other crimes. Senior Justice Department Attorney David Karp explained this point clearly, noting that "the accused mugger does not claim that the victim freely handed over his wallet as a gift. In contrast, claims are regularly heard in rape cases that the victim engaged in consensual sex with the defendant and then falsely accused him." David Karp, *Evidence of Propensity and Probability in Sex Offense Cases and Other Cases*, 70

*RYAN MCBRIDE is Deputy County Attorney, Utah County Attorney's Office.*

Chi.-Kent L. Rev. 15, 21 (1994). In such instances, giving the jury information that the defendant has committed rapes on other occasions may well be critical in assessing the relative plausibility of these conflicting claims.

In light of frequently conflicting testimony from victims and defendants in sexual assault cases, admitting similar crimes evidence serves to arm the jury with more information from which to determine the truth and reach an accurate verdict. When the defendant claims to have been unjustly accused, allowing evidence of other acts of misconduct often puts an entirely different light on the matter. Combining direct evidence of guilt with evidence of the defendant's past crimes may thus eliminate reasonable doubt in a case that would otherwise be inconclusive. As Utah Senator Orrin Hatch concluded in co-sponsoring legislation adding Rule 413 to the Federal Rules of Evidence, the public interest in admitting evidence "that will illuminate the credibility of the charge and any denial by the defense is truly compelling." Letter from Sen. Orrin G. Hatch, Rep. Susan Molinari, and Rep. John Kyl to Chief Justice William H. Rehnquist 2 (Oct. 11, 1994).

Since 2008, Utah Rule of Evidence 404(c) follows this exact approach of allowing similar crimes evidence to be used for propensity purposes in child molestation prosecutions. This rule has now been in effect for more than a decade, without (so far as we are aware) any significant reported problems. Utah's rules of evidence will now follow the same approach for sex offense cases involving adult victims.

> Admitting similar crimes evidence does not violate any constitutional right of the defendant. The Tenth Circuit (among many other courts) has carefully reviewed these issues in upholding Federal Rule of Evidence 413 against constitutional challenge. The Tenth Circuit explained that even the critics of Rule 413 "acknowledge the merits of the rule." *United States v. Enjady*, 134 F.3d 1427, 1432 (10th Cir. 1998), *opinion clarified*, 1998 WL 133994 (10th Cir. 1998). In particular, Rule 413 "continues the movement toward focusing on the perpetrators, rather than the victims, of sexual violence." *Id*. Because neither stranger nor acquaintance rapes generally occur in the presence of credible witnesses, Rule 413 "permits other victims to corroborate the complainant's account via testimony about the defendant's prior sexually assaultive behavior. Broader admissibility of prior rapes places before the jury evidence that the defendant lacks the moral inhibitions that would prevent him from committing rapes and implies that the threat of criminal sanctions has not deterred the defendant in the past. *Id*.

An illustration of the importance of admitting this kind of evidence comes from a recent Utah case (which we describe pseudonymously here). A manager of several convenience stores sexually abused four women who worked for him over the course of several years. The manager asked Alice, a twenty-three-year-old employee, to come to his house to talk about work-related issues. When she arrived, he gave her alcohol and then made advances on her. When she refused his advances, he forcibly groped her breasts and vagina. After a struggle, she was able to get away.

Barbara was another employee. Over time, the manager began to proposition her to have sex. She rebuffed him. Despite her refusals, the manager "accidentally" touched her breasts or buttocks at work routinely. On one occasion, he cornered Barbara and grabbed her vagina and breasts over her clothing.

Clara was another employee whose breasts the manager grabbed after failed attempts at a consensual sexual relationship in a similar pattern.

Diane was yet another employee. One night, he came into work claiming that he had been in an argument with his wife and would be spending the night in the store's office. During the night, he called Diane to the office. She entered to find that he didn't have pants on. He grabbed her and tried to kiss her. She tried to flee, but he overpowered and raped her.

Before trial in Diane's case, the judge excluded all evidence of the sexual assaults of Alice, Barbara, and Clara. The trial court held that the evidence would be considered for propensity purposes and was, therefore, inadmissible. In other words, the jury never learned that the manager had sexually assaulted three female employees besides the victim. This turned a case with corroborating witnesses who experienced very similar conduct by the manager into a he-said-she-said case. The jury acquitted the manager.

Rule 404(d) likely would have allowed the jury to consider the testimony of the other victims and, in our view, likely would have produced a different outcome. As a matter of policy, the Utah Legislature has determined justice is better served by allowing juries to consider the totality of the evidence in cases such as this one.

### Utah Precedent at the Time of the State's Admission to the Union Recognized Admission of Similar Crimes Evidence – Until Sexist Assumptions Created Conflicting Precedent.

One additional historical point is worth making regarding the admission of similar crimes evidence in Utah: Such evidence was admitted in Utah at around the time of statehood. But then those precedents were disregarded in what appears to have been a Utah Supreme Court decision motivated by sexist assumptions about women who had reported being raped.

The history begins just a few years after Utah joined the Union in 1896. Four years later, in 1900, the Utah Supreme Court first addressed whether evidence of prior acts of sexual intercourse between the accused and the victim were admissible in a prosecution for statutory rape. *State v. Hilberg*, 61 P. 215 (Utah 1900), while noting the general prohibition against propensity evidence, also recognized some important exceptions to that rule in sexual assault cases:

> [W]here the offense consists of illicit intercourse between the sexes, such as is charged here, or in case of incest, adultery, or seduction, courts have relaxed the rule, and hold that previous acts of improper familiarity between the parties, occurring prior to the alleged offense, were admissible as explaining the acts, and as having a tendency to render it more probable that the act charged … was committed, though such acts would be inadmissible as independent testimony.

*Id*. at 216.

Applying these exceptions, *Hilberg* held that *prior* acts of intercourse between the parties (but not subsequent acts) were admissible to show the accused committed the crime charged. Accordingly, *Hilberg* reversed the conviction on the ground that evidence of other subsequent sexual acts between the parties was not admissible, reasoning that subsequent acts are not probative of prior conduct. This aspect of the court's decision is persuasively criticized in II John Henry Wigmore, Wigmore on Evidence § 398, at 455 n.1 (James H.

Chadbourn rev. 1979), who explained that a jury could reasonably conclude that subsequent conduct shed light on previous conduct. But for present purposes, the key point is that – in 1900 – the Utah Supreme Court held that prior sexual acts were admissible as propensity evidence. The Utah Supreme Court reached an identical conclusion the following year in *State v. Neel*, 65 P. 494 (Utah 1901), holding that evidence of prior sexual acts between parties was admissible to explain the acts in question.

A few years later, however, in 1909, the court appeared to depart from the rationale of *Hilberg* and *Neel*. In *State v. Williams*, 103 P. 250 (Utah 1909), a seventy-year-old man had been convicted of sexual assault on a ten-year-old girl. On appeal, he challenged the admission of evidence that he had committed similar acts against other girls in the neighborhood. In overturning the conviction, the court held that a general prohibition against propensity evidence controlled. *Id*. at 252. The court quoted *Hilberg*'s language about previous acts of "improper familiarity" making it "more probable" that the charged crime was committed but narrowed the application of this language to prior sexual conduct between the defendant and the victim of the charged offense. *Id*. The court reasoned that the authorities "uniformly" hold that crimes "wholly disconnected from the crime charged on some person other than the one mentioned in the information or indictment is never admissible." *Id*.

*Williams* clearly misstated the state of the law in this country. *See, e.g.*, 3 Joel Prentiss Bishop, New Criminal Procedure § 970 at 1846 (2d ed. 1913); § 970 at 46 (1st ed. 1880) (explaining that in England such sexual predisposition evidence was not admissible, but "(t)he contrary to this, believed to be the better law, has been adjudged with us"); *see also Losasso v. People*, 287 P. 647, 648 (Colo. 1930) (holding that *Williams* was "inconsistent with our own decisions"). The court's opinion curiously offered no reason for distinguishing the defendant's prior sexual conduct with the victim of the charged offense from that with other victims. Nor did *Williams* attempt to reconcile its holding with *Hilberg*'s holding that prior sexual acts with the victim of a charged offense make subsequent sexual misconduct "more probable." Shortly before *Williams*, the renowned evidence scholar John Henry Wigmore had examined this very point and concluded that "a previous rape-assault of another woman has equal probative value for the purpose, for it is the general desire to satisfy lust that is involved in this crime, and no particular woman is essential for this." 1 John Henry Wigmore, Wigmore on Evidence § 357, at 432 (1904). Moreover, although *Williams* excluded evidence that the accused had committed previous sex crimes, *Williams* also upheld the admission of evidence of the accused's good character. Specifically, *Williams* stated that the accused "was a man of good character, and up to the time of this trouble his reputation for chastity and virtue was good." The unanswered question, of course, is how *Williams* could simultaneously hold that evidence of the accused's prior bad acts was inadmissible, while allowing general statements about his good character to be admitted.

The *Williams* decision seems so odd that perhaps its true rationale is reflected in its reference to the dictum from Lord Hale that rape of a woman "'is an accusation easily made, hard to be proved, and still harder to be defended by one ever so innocent.'" *Williams*, 103 P. at 254 (quoting 3 Greenleaf Ev. § 212). This claim about false rape claims has now been thoroughly discredited; it reflects sexist notions about the untruthfulness of women who have come forward to report being sexually assaulted, as many commentators have explained. *See, e.g.*, Vivian Berger, *Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom*, 77 Colum. L. Rev. 1, 10–12 (1977) (noting that Hale's admonition singles out rape for unique treatment and proposing to treat rape like other crimes). But the unfortunate effect of the poorly reasoned *Williams* decision was to overshadow the court's earlier holdings to the contrary. *See* Cassell at 156–60.

## Prevailing Law in this Country Allows Admission of Similar Sexual Assault Evidence.

In 1909, the Utah Supreme Court in *Williams* cited Wigmore's renowned treatise on evidence, but it is important to understand what American law truly looked like then and more recently. "An exhaustive analysis of the cases," the treatise's edition in 1983 explained, "shows there is a strong tendency in prosecutions for sex offenses to admit evidence of the accused's sexual proclivities." 1A John Henry Wigmore, Wigmore on Evidence § 62.2, at 1334 (Peter Tillers rev. 1983). These "decisions show that the general rule against the use of propensity evidence against an accused is not honored in sex offense prosecutions." *Id*. at 1334–35.

The Wigmore treatise noted that a number of states "forthrightly" admit propensity evidence in sexual assault cases under a "lustful disposition" or "sexual proclivity" exception to the general rule barring the use of character evidence against an accused. *Id*. § 62.2, at 1335 (collecting cases). Those states not expressly recognizing a lustful disposition exception "may effectively recognize such an exception by expansively interpreting … various well-established exceptions to the character rule." *Id*. at 1336 (collecting cases).

Similarly, the U.S. Department of Justice concluded in 1986 that "free use of propensity evidence in prosecutions of sex crimes is widespread." *See generally* Office of Legal Policy, U.S. Dep't of Justice, Report to the Attorney General: The Admission of Criminal Histories at Trial (rep. 4) at 10 (Aug. 14, 1986). While exact quantification of case law in multiple jurisdictions is always difficult, a fifty-state survey by Professor Thomas J. Reed in 1993 found that twenty-nine states "admit sexual misconduct evidence via the common-law lustful disposition rule." Thomas J. Reed, *Reading Gaol Revisited: Admission of Uncharged Misconduct Evidence in Sex Offender Cases*, 21 Am. J. Crim. L. 127, 188 & n.340 (1993) (listing Utah as among the twenty-nine, based on *Neal*, discussed earlier). That rule, in short, is that "the prosecution in its case in chief could prove the defendant's lustful disposition to commit sex crimes by proof of prior or later instances of sexual misconduct with the same victim or a different victim." *Id.* at 168. Even in states that did not follow a lustful disposition approach but instead applied Rule 404(b), the survey found that "the courts generally grant the prosecution great leeway to introduce uncharged sexual misconduct" evidence even when the other purpose besides propensity "is not truly an issue in the case." *Id.* at 200.

And, most important, in 1994, the Congress simply followed this well-trodden path in adding a similar crimes rule into the Federal Rules of Evidence, by adopting Rule 413. The federal rule was essentially a codification of the common law lustful disposition rule. *See* Basyle J. Tchividjian, *Predators and Propensity: The Proper Approach for Determining the Admissibility of Prior Bad Acts Evidence in Child Sexual Abuse Prosecutions*, 39 Am. J. Crim. L. 327, 341 (2012).

As a result of the amendment to the Federal Rules of Evidence, the admission of propensity evidence in sexual assault cases has now expanded. The current, i.e., 2019, Wigmore treatise on evidence notes the enactment of Rule 413 and concludes that "recent developments in evidence law have rendered such evidence [i.e., evidence of uncharged misconduct evidence in prosecutions for sex crimes,] more broadly admissible in many jurisdictions . . . ." David P. Leonard, The New Wigmore: A Treatise on Evidence; Evidence of Other Misconduct and Similar Events § 8.5.3 (2d ed. 2019). The treatise hastened to emphasize, in addition, that even apart from specific rules of evidence, "courts have long approved admission of such evidence in sexual crime and child molestation cases." *Id.* The basic rationale across the country is that proof of such sex crimes is "exceedingly difficult to muster" for three, commonly offered reasons. First, these crimes generally take place in private, meaning that the only witnesses are likely to be the defendant and the victim, who often will give diametrically opposed stories. Second, these crimes are often committed without leaving significant physical traces, making circumstantial proof difficult. Third, even if physical evidence did exist at one time, it often has been destroyed by the time the crime is reported and investigated. *See, e.g.*, Leonard at § 8.5.3 (summarizing the cases).

## How Utah's Rule 404(d) Will Operate.

Utah's new Rule of Evidence 404(d) makes other sex crimes evidence presumptively admissible in sexual assault cases for propensity purposes, essentially tracking Federal Rule of Evidence 413 and the law in many other states. The drafting of this provision was straightforward. Federal Rule 413 provides that "[i]n a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault." Similarly (among other examples), California Evidence Code § 1108 provides that "[i]n a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, [which tracks Federal Rule 404(b)], if the evidence is not inadmissible pursuant to Section 352 [which tracks Federal Rule 403]." Georgia has simply adopted Federal Rule of Evidence 413 in toto. Ga. Code Ann. § 24-4-413.

Utah's new Rule 404(d) simply tracks Utah's existing Rule 404(c), which allows admission of similar crimes evidence in child molestation cases. For the reasons explained above, such a rule constitutes sound public policy. However, some opponents of the new rule might argue that it was unnecessary, because evidence of similar sexual misconduct is already admissible in some cases under Utah Rule of Evidence 404(b). But the new rule goes beyond existing law to admit propensity evidence. Indeed, this bridge of going beyond Rule 404(b) has already been crossed for child molestation cases. In adopting Rule 404(c) in 2008, the Utah Supreme Court presumably recognized that the frequency with which these issues arise required a specific rule providing more clarity to trial courts and litigants about what evidence is admissible in child molestation prosecutions. Moreover, in adopting Rule 404(c), the Utah Supreme Court determined, as a matter of public policy, that such an amendment was appropriate. As the Utah Court of Appeals recently explained, "[t]he drafters of our rules of evidence have determined, as a policy matter, that propensity evidence in child molestation cases can come in on its own terms, as propensity evidence, even if there is no other plausible or avowed purpose for such evidence." *State v. Fredrick*, 2019 UT App 152, ¶ 42, 450 P.3d 1154, *cert. denied*, 458 P.3d 748 (Utah 2020). As a policy matter, the same general reasoning allowing propensity evidence in child molestation cases supports the new Rule 404(d) admitting propensity evidence in sexual assault cases more broadly.

Moreover, forcing these issues to be decided under the general language of Utah Rule of Evidence 404(b) leads to considerable litigation – which is, presumably, one reason why the legislature decided to step in and squarely address the issue. As David Karp has explained in connection with Federal Rules 404(b) and 413:

> The vagueness of the standards of Rule 404(b) ensures considerable variation in their application by the courts, and this tendency is magnified in sex offense cases by the special pressures courts have felt to find some way of getting the evidence in. People's security against sexual violence should not have to depend on the willingness of courts to stretch evidentiary rules in particular cases.
>
> [Rule 413] … provides a reasonable and honest alternative. It permits the use of evidence of other sex crimes in sex offense cases, while providing appropriate safeguards of fairness for the defendant. No fictions of limited admissibility are relied on; evidence admitted under the new rules would be subject to rational assessment. The result would be a major step forward in achieving justice and protecting people from one of the most atrocious forms of criminal violence.

Karp at 35.

This point about the vagueness of Rule 404(b)'s language may apply with particular force to Utah Rule 404(b). Utah's rule has been subject to conflicting interpretations. Indeed, in 1998, the rule was subjected to a unique, Utah-only amendment following a confusing interpretation of the rule by the Utah Supreme Court in 1997. *See* Advisory Comm. Note, Utah R. Evid. 404(b) (amending Rule 404(b) so as to "abandon[]" additional requirements for admissibility imposed by *State v. Doporto*, 935 P.2d 484 (Utah 1997) (discussed in Cassell at 163–64, 169)). More recently, in 2017, the Utah Supreme Court altered the standards for review of a trial court's decision to admit evidence under Utah Rule 404(b), concluding that the issue was not the "scrupulousness" of the district judge's review of the other bad acts evidence, but rather whether "the district judge made an error in admitting or excluding the evidence in question." *State v. Thornton*, 2017 UT 9, ¶ 53, 391 P.3d 1016 (emphasis omitted).

Since then, Utah courts have sometimes interpreted Utah Rule 404(b) as allowing something akin to propensity evidence under the "doctrine of chances." For example, in February of 2020, in *State v. Richins*, 2020 UT App 27, ¶ 21, 460 P.3d 593, the Utah Court of Appeals affirmed the admission of evidence relating to a defendant's prior acts of lewdness under Rule 404(b). The court of appeals concluded that the prosecution did not use the evidence for propensity purposes but rather for rebutting a defendant's argument that a victim was either mistaken or intentionally lying about the defendant's actions. This reasoning would seem to allow similar sex offense evidence into a wide variety of cases, since a defendant will almost invariably argue that the victim has inaccurately described him as the perpetrator of a crime.

Interestingly, the Utah Supreme Court granted certiorari to review the issue further – demonstrating how reasonable jurists can find questions of the applicability of Utah Rule 404(b) to be complicated. The court then affirmed the trial court's determination that the evidence in question was admissible, finding that rebutting a claim of fabrication was a proper purpose under the "doctrine of chances." *State v. Richins*, 2021 UT 50, ¶¶ 51–55, 496 P.3d 158. But the court also concluded that the limitations on the doctrine of chances had to be applied with "increased rigor" and overturned the conviction because, in its view, the district court had failed to properly determine the issue of "frequency."

Then, just two years later, in 2023, the Utah Supreme Court decided to abandon the "doctrine of chances." In *State v. Green*, 2023 UT 10, ¶¶ 55–59, 532 P.3d 930, the court concluded that issues related to rebutting claims of prior fabricated evidence were better evaluated under Rule 404(b) without regard to a doctrine of chances. The court made clear, though, the prior sexual assault evidence could only be admitted under Utah's rules (at the time) if the evidence was used for a "proper, non-character purpose."

More broadly, outside of Utah, courts around the country have had difficulty in deciding whether something like the lustful disposition rule survives Rule 404(b) or is abolished by it. *See* Reed at 186–88 (discussing conflicting interpretations in various state courts). The Utah Legislature has now ended any further possible confusion by simply adopting new Rule 404(d), which directly answers that question and permits similar sexual assault evidence to be admitted against a defendant for propensity purposes. New Rule 404(d) thus supersedes the Utah Supreme Court's 2023 ruling in *Green* and makes admissible propensity evidence to prove that a defendant committed a sexual assault. *Compare Green*, 2023 UT 10, ¶¶ 67–68 (describing Utah Rule 404(b) as barring the admission of propensity evidence), *with* new Utah Rule 404(d) (allowing prior sexual assault evidence to "be considered on any matter to which the evidence is relevant, including to prove a propensity to commit the crime charged").

While new Utah Rule 404(d) makes propensity evidence presumptively admissible, it is important to note that the rule does not make it automatically admissible in every case. Like other parts of Rule 404, the trial court must also apply Rule 403, which requires the exclusion of evidence in rare cases where the probative value of evidence is "substantially outweighed" by prejudicial effect. Here it is useful to look to federal law interpreting

Federal Rule 413 for guidance on how this safeguard will work.

The Tenth Circuit, for example, has explained how federal Rule 413 remains subject to Rule 403, which allows a trial court to exclude similar crimes evidence if its probative value is substantially outweighed by the risk of unfair prejudice. *United States v. Enjady*, 134 F.3d 1427, 1432–33 (10th Cir. 1998). The Rule 403 balancing test requires a trial court to consider (among other things) "(1) how clearly the prior act has been proved; (2) how probative the evidence is of the material fact it is admitted to prove; (3) how seriously disputed the material fact is; and (4) whether the prosecution can avail itself of any less prejudicial evidence." *Id*. The trial court must then weigh these factors favoring admissibility against the prejudicial dangers, including "(1) how likely is it such evidence will contribute to an improperly-based jury verdict; (2) the extent to which such evidence will distract the jury from the central issues of the trial; and (3) how time consuming it will be to prove the prior conduct." *Id*. As part of this balancing, the trial court must "make a preliminary finding that a jury could reasonably find by a preponderance of the evidence that the 'other act' occurred." *Id*. Like new Utah Rule 404(d) (and Utah Rule of Criminal Procedure 16(a)(5)(A) (requiring disclosure of witness lists)), Federal Rule 413 also requires prosecutors to disclose such similar crimes evidence to the defendant in advance of trial. In light of these procedural safeguards, the Tenth Circuit concluded that Rule 413 was constitutional – a conclusion uniformly reached by the nation's federal appellate courts.

Utah's new Rule 404(d) is comparable to federal Rule 413 and will, presumably, be interpreted as containing the same sorts of protections. For example, in *State v. Lucero*, 2014 UT 15, 328 P.3d 841, interpreting Utah Rule 404(b), the Utah Supreme Court required a trial court determination, by a preponderance of the evidence, that there was sufficient evidence from which a reasonable jury could find that the similar bad act occurred and that the defendant was the actor. *Id*. ¶ 19. The court also emphasized that a Rule 403 prejudice versus probative value assessment is required as well. *Id*. ¶ 30. These protections for defendants would also apply to any similar crimes evidence rule for sexual assault cases – as the new rules' supporters explained during the legislative process. (Note: *Lucero* was *overruled on other grounds by Thornton*, 2017 UT 9, 391 P.3d 1016).

## Conclusion

The Utah Legislature has acted wisely in adopting a new provision – Utah Rule of Evidence 404(d) – which creates a presumption of admissibility for similar crimes evidence in sexual assault cases. In sexual assault cases where propensity evidence is available, prosecutors should seek to introduce that evidence, which will give Utah's juries a fuller appreciation of all the circumstances.

*The views expressed in this article are those of the authors and not an official position of their employers.*

# 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

### *Deer Valley v. Olson*
### 2026 UT 5 (Mar. 26, 2026)

**In this appeal, the Utah Supreme Court examined the reach of the holding in *Pugmire v. Oregon Short Line Railroad Co.*, 92 P. 762 (Utah 1907), that an agreement between an employer and an employee waiving liability is void as against public policy.** The court noted that "[i]t is not clear whether [Pugmire's] holding applies only to releases of liability between employers and employees for injuries sustained while working, or whether it applies more broadly to such releases of liability for injuries sustained at any time." After analyzing that case, **the court held that its holding must be confined to releases of liability between employers and employees for work related injuries.** Because the injury at issue in the present case was not a work related injury, the court reversed the grant of summary judgment to defendant Deer Valley on the plaintiff's direct liability negligence claim.

### *Maldonado-Velasquez v. Ron J. Peterson Construction*
### 2026 UT 8 (Apr. 16, 2026)

Plaintiff's decedent was killed in an underride crash in which the car he was riding in rear ended a flatbed semi-trailer. The trial court held there was no duty to improve the trailer beyond the requirements of the applicable Federal Motor Vehicle Safety Standards. The supreme court, however, held that **even though the statutory requirement to not operate unsafe vehicles on the highway expressly provides that it does not supersede FMVSS, the federal regulations provide a floor, not a ceiling, and so the statute does not limit the imposition of a separate tort duty.** Because imposing a separate tort duty to provide underride protection does not conflict with federal standards in a way that would make compliance with those standards impossible, the trial court erred in defining the duty narrowly.

### *In re Adoption of R.P.*
### 2026 UT 9 (Apr. 23, 2026)

In this adoption proceeding filed by the minor children's paternal grandmother and her husband, the district court granted summary judgment in favor of the maternal grandmother, who had intervened in the proceeding, barring the paternal grandmother from pursuing her petition because she failed to intervene in the maternal grandparents' separate, second-filed petition. On certiorari from the court of appeals' reversal of that decision, the supreme court **rejected the paternal grandparents' argument that application of the intervention provision of the Adoption Act, Utah Code § 81-13-207(6), to bar a guardian and first-in-time petition filer from maintaining her adoption petition for failing to intervene would be absurd.** The court explained that the absurdity doctrine does not apply if there is a rational explanation for the plain language of a statute. Here, "the legislature could have reasonably determined that imposing a strict intervention requirement would help ensure that all parties interested in the adoptees are brought to the table in each proceeding."

## Utah Court of Appeals

### *Prisbrey v. Prisbrey*
### 2026 UT App 39 (Mar. 19, 2026)

In this divorce proceeding, the wife failed to provide any initial discovery under Rule 26 of the Utah Rules of Civil Procedure until less than three weeks before trial. The trial court overruled the husband's objection and denied his motion to exclude the late-produced evidence without ruling that the late disclosures were harmless or that the failure was justified by good cause. Analyzing Rule 26 requirements, the court of appeals held that the wife did not demonstrate harmlessness or good cause to excuse her late disclosures. A party cannot rely on need for the evidence alone, on the other party's failures to justify the party's own failure to timely disclose, or on the lack of surprise to the other party to avoid Rule 26 requirements. A party seeking to admit late-disclosed information and evidence must demonstrate good cause or harmlessness. **Good cause specifically must be related to the reason that the late disclosure happened. Harmlessness centers on the ability of the other party to build their defense against the late evidence at trial.**

### *O'Loughlin v. AESA Enterprises*
### 2026 UT App 41 (Mar. 19, 2026)

The court of appeals affirmed dismissal on the basis that plaintiff's damages evidence was excluded under Rule 26(d)(4) for failure to disclose the methodology for calculating his damages. The plaintiff had invested in ASEA (a pharmaceutical supplement company) but subsequently sued the company and its founders after learning ASEA did not own the intellectual property behind its products. In his initial disclosures, plaintiff had stated his damages computation was unavailable, asserting the defendants possessed all relevant information. Eventually, toward the end of fact discovery, plaintiff served his expert witness disclosure, which included an opinion as to plaintiff's estimated damages. On the day fact discovery closed, plaintiff supplemented this disclosure with a worksheet underlying the expert's damages estimates. Defendants moved to exclude evidence of plaintiff's damages, arguing the plaintiff had failed to disclose a damages computation methodology under Rule 26(a)(1)(C), and that the expert disclosure did not remedy the failure. The district court granted the motion in limine and dismissed plaintiff's claims for lack of damages evidence. The court of appeals affirmed, concluding that **there was not good cause for failing to disclose a computation methodology, that the failure was not harmless to the defendants, and that there was no error in dismissing the claims for lack of damages evidence.**

### *State v. Gaines*
### 2026 UT App 44 (Mar. 26, 2026)

On appeal from conviction of twelve counts of sexual exploitation of a minor, the Utah Court of Appeals held the district court erred in denying the criminal defendant's motion under Rule 702 to exclude evidence about what specialized software known as "Torrential Downpour" had indicated related to child sexual abuse materials on his devices. **The court rejected the defendant's argument that it was necessary for the State to present testimony from a software expert regarding the inner workings of the software: while this may be one method of establishing reliability, it is not the only method.** The court explained that the State alternatively could have made the required threshold showing that Torrential Downpour reliably identifies child sexual abuse materials at specific IP addresses by presenting evidence of scientific studies demonstrating its reliability and accuracy. **But having failed to do either, the State failed to carry its burden of making the threshold Rule 702(b) showing of reliability for Torrential Downpour search results.** The court additionally declined to affirm the exclusion of that evidence on the alternative basis advanced by the State: that Torrential Downpour is generally accepted in the relevant community, such that its results are admissible under Rule 702(c). The evidence presented at trial about two Utah law enforcement officers' regular use of the software was insufficient to show the software is generally accepted in the relevant community.

### *State v. Allen*
### 2026 UT App 47 (Apr. 2, 2026)

After Allen was convicted, his counsel moved unsuccessfully to arrest judgment under Utah R. Crim. P. 23, arguing that the State had failed to demonstrate an essential element of the crime. On appeal, the State argued that the basis of the motion was unpreserved for appellate review because it was not raised during trial. Acknowledging Utah Supreme Court authority holding that "an objection that could have been raised at trial cannot be preserved in a post-trial motion," the Utah Court of Appeals nevertheless deferred to the plain text of Rule 23, which permits a defendant to raise certain objections "[a]t any time prior to the imposition of sentence." Harmonizing the rule with potentially conflicting case law, the court of appeals held that **the supreme court's pronouncements regarding trial preservation do not extend to a sufficiency-of-the-evidence objection made pursuant to Rule 23.**

### *Abdelgader v. Department of Transportation*
### 2026 UT App 50 (Apr. 2, 2026)

A decedent's estate challenged the district court dismissal of a wrongful death claim against the Utah Department of Transportation (UDOT) under the Utah Governmental Immunity Act. The estate bringing the claim alleged that UDOT's failure to collect and evaluate crash data, analyze that data using proper standards, and take necessary precautions to protect against truck accidents was on the "operational level," not the "policy making level," removing UDOT's negligence from the scope of the Act. Looking to the narrowly read discretionary function exception, the court of appeals affirmed. Governmental immunity analyses require a focus "on the entire process" and does not "allow a plaintiff to flyspeck the entire discretionary process for an alleged failure in a purportedly operational component of that broader process." **Because one component, or a potential component, of the decision-making process was omitted or could have been conducted differently does not defeat discretionary function immunity when the "*ultimate* decision is grounded in policy."**

### *Cook Martin Poulson P.C. v. Smith*
### 2026 UT App 54 (Apr. 9, 2026)

For the case's third time on appeal, defendant and counterclaimant challenge the district court's order imposing Rule 26 exclusionary sanctions. Specifically, the district court barred the defendant from presenting any evidence for failure to produce initial disclosures during the discovery period, including the defendant's own declarations where the defendant had failed to identify himself as a potential witness. **The court of appeals declined to adopt a per se rule that the failure of a party to disclose themselves as a potential witness is always harmless because the**

**harmless analysis depends on the circumstances of each individual case.** In this particular case, the defendant had testified at an evidentiary hearing months before fact discovery closed and had submitted declarations opposing various motions. Taking the defendant's testimony, various declarations which included attachments with documentary evidence, and detailed factual allegations in his counterclaim and third-party complaint, the other parties were not prejudiced by his failure to identify himself in his initial disclosures.

### *Boyle v. Baumhaus*
### 2026 UT App 55 (Apr. 9, 2026)

When the district court entered an interlocutory order requiring specific performance of a real estate purchase agreement, the seller promptly complied and the parties closed the agreement as ordered. A year later, after other issues in the litigation were resolved, the seller appealed the district court's order of specific performance, but the Utah Court of Appeals dismissed the challenge as moot. **The appellate court explained that the seller's full compliance with the district court's specific performance order without objection rendered his appeal moot.** Rather than simply acquiescing to the interlocutory order, the seller could have moved for a stay of the order, sought interlocutory appeal, or complied "under protest" with a reservation of rights.

### *State v. Bunton*
### 2026 UT App 59 (Apr. 16, 2026)

The Utah Court of Appeals vacated the defendant's convictions for multiple counts of aggravated sexual abuse of a child, one count of child endangerment, and one count of surreptitious administration of a substance, and remanded for a new trial because the trial court had abused its discretion when it declined to remove a juror for cause. During voir dire, the juror had initiated a dialogue with the prosecutor, expressing reservations that he could not be unbiased given the nature of the alleged crimes and the fact that he also had children. The prosecutor attempted to rebut the inference of bias in the remainder of the dialogue, and the trial court denied the defense's motion to strike the juror. However, **the trial court exceeded its discretion by not dismissing the juror for cause. When statements in voir dire raise a question of bias, an abuse of discretion occurs unless the trial court removes the juror or finds the inference of bias has been rebutted.** Importantly, the court relied on the established standard that such rebuttal "is accomplished by showing that a juror's statement was merely the product of a light impression and not one that would close the mind against the testimony that may be offered in opposition." Here, the court determined the necessary rebuttal had not been accomplished.

### *State v. Young*
### 2026 UT App 64 (Apr. 23, 2026)

The Utah Court of Appeals reversed a conviction for aggravated assault because the district court erred in refusing to give an instruction on defense of habitation. Young was charged after confronting a contracted utility worker with a shotgun when the contractor arrived at Young's home to replace a power meter. The confrontation ended after the contractor was able to convince Young he was, in fact, performing work for the utility company and not a trespasser. At trial, the district court refused to give a jury instruction on defense of habitation. It reasoned that no evidence supported a justification for brandishing the firearm because no reasonable person could conclude that the contractor attempted to enter Young's property violently, tumultuously, surreptitiously, or stealthily, or that the contractor had committed any felony. In reversing the conviction, the court of appeals explained that **the controlling statute Utah Code § 76-2-405 contains two distinct variants of this affirmative defense, the "Baseline Defense of Habitation" and the "Heightened Defense of Habitation." While the Heightened Defense involves the use of force intended to cause death or serious bodily injury, the Baseline Defense does not.** The court of appeals concluded there was a reasonable basis from which a jury could find Young's conduct was justified under the Baseline Defense, and so the district court erred in refusing to give that instruction, and that Young was prejudiced by that refusal.

### *Nielsen v. Cronquist*
### 2026 UT App 65 (Apr. 23, 2026)

The Nielsens brought suit against adjacent landowners. While appealing a lower court order against them, the Nielsens sold their parcel to a third party. The Utah Court of Appeals subsequently dismissed their appeal, concluding that the Nielsens were no longer the proper party in interest to pursue any title- and boundary-related claims. **While Utah R. Civ. P. 25(c) permits a party to litigate claims through trial even if that party transfers its interest in the lawsuit, the Utah Rules of Appellate Procedure contain no such provision. Thus, "ordinary standing and mootness principles apply" and the Nielsen's sale of the parcel during the pendency of the appeal rendered their appeal moot.**

## Tenth Circuit Court of Appeals

### *Vasquez-Garcia v. Centurion*
### 172 F.4th 1150 (Apr. 15, 2026)

The plaintiff, a former prisoner, appealed the district court's dismissal on statute of limitations grounds of her claims against officials and contractors of the Western New Mexico Correctional Facility that during her incarceration they had been deliberately indifferent to her serious medical needs, in violation of her Eighth and Fourteenth Amendment rights. The Tenth Circuit reversed, holding the district court incorrectly applied the Rule 12(b)(6) standard for adjudicating the defendants' statute of limitations defense and misapplied the law of accrual for the plaintiff's injury. The court explained, "When married with the statute of limitations and accrual rules … [the two] elements [of a deliberate indifference to medical needs claim] set a correspondingly high bar for a statute of limitations defense to prevail, especially at the pleadings stage." With respect to accrual, the court explained, **the plaintiff's "alleged claims did not accrue whenever she incurred an injury. Nor did her claims accrue whenever she became aware of her injuries. Instead, her claims accrued when she knew or reasonably could have known that a) her injuries were objectively and sufficiently serious and b) the defendants acted with the requisite subjective state of mind, which is deliberate indifference."**

### *National Ass'n for Gun Rights v. Polis*
### 173 F.4th 1317 (Apr. 23, 2026)

**The trial court abused its discretion when it refused to grant a preliminary injunction enjoining enforcement of a Colorado statute prohibiting possession of unserialized firearm parts kits.** The trial court's rationale – that the prohibition was purely a "condition or qualification on the commercial sale of firearms" – did not align with the statute, which prohibited on possession no matter how the person previously acquired the frame or firearm.

### *Martinez v. City of Aurora, Colorado*
### 174 F.4th 745 (Apr. 27, 2026)

In this Section 1983 case, the plaintiff brought excessive force and false arrest claims against an Aurora City police officer, and a claim against the City for failure to train or supervise. The plaintiff brought the claims after the officer, who was on administrative leave at the time, violently assaulted and purported to arrest her during an altercation in the parking lot of the apartment complex where both resided. The on-leave officer was in plain clothes but produced his badge during the assault. **The court of appeals reversed denial of the City's motion to dismiss because there was no plausible allegation the officer was acting under color of state law, as the officer had no actual authority for the City while he was on leave.** The court rejected plaintiff's argument that either apparent or actual authority would suffice to meet the under-color-of-state-law element of the Section 1983 claims.

# Before There's Trouble: How to Draft ADR Agreements that Protect Client Interests

by Francine Griesing

When drafting agreements, we usually focus on documenting the deal between the parties. During that process, parties may overlook how to manage a dispute. Whether memorialized in a freestanding agreement or embedded in comprehensive transaction documents, a fulsome dispute resolution provision is a critical component of any agreement. The operative language may specify the court in which a case may be commenced and the applicable law, or it may provide for alternate dispute resolution (ADR) such as good faith negotiation, mediation, and/or arbitration. If parties opt for ADR, the agreement should designate whether the parties will rely upon a third party administrator (ADR Administrator), incorporate the rules of the ADR Administrator or another source, or establish unique procedures they intend to follow. The more precisely the ADR terms are stated, the more likely the parties will experience an efficient process. Absent specificity as to how disputes will be resolved, the process can be delayed, cumbersome, and costly. When drafting agreements, there are key elements that should be included in an ADR provision to best protect client interests. In doing so, a practitioner who focuses principally on transactional representation may find it helpful to enlist input from a colleague who has been in the trenches as an advocate for clients in litigation and alternate dispute resolution.

## The Importance of Agreeing Upfront to Clear Dispute Resolution Provisions

Imagine this hypothetical scenario. Any resemblance to actual people or a specific situation is unintended.

Attorney Jones is in the office expecting new clients Jim and Abigail MacDonald. The MacDonalds are a long-married couple with two grown children, Junior and Abby. Jim and Abigail are facing a problem threatening to divide their family and business they built. They hope Attorney Jones can untangle the mess before the situation worsens.

The senior MacDonalds met at State University where they were studying environmental science. Abigail has a passion for horticulture having spent formative years in her parents' florist shop in Ogden. The couple settled in Ogden where they launched *Grow-It-All*, a landscaping business, drawing upon the reputation established by Abigail's parents' florist shop. Over twenty-five years they expanded their clientele beyond Ogden to serve Weber County more broadly and made inroads into neighboring Davis County.

Five years ago, the next generation graduated from the University. Junior, with a landscape architecture degree, was most interested in getting his hands in the soil, while Abby, with her business degree, was more focused on profitability. Looking forward to retirement, Jim and Abigail were delighted by their children's preparedness to run *Grow-it-All* together. In anticipation of passing the baton to the next generation, the senior MacDonalds consulted nephew Newbie Attorney who was fresh out of school. The senior MacDonalds sought to transfer the business equally to their children. Lacking experience, Newbie Attorney draws from online templates to prepare the *Grow-it-All* Partnership Agreement, including an ADR provision lacking key details on how disputes would be resolved. He would have been more effective if he sought guidance from other sources, such as applicable statutes or ADR agreement examples readily available from courts and private entities that provide ADR services. The MacDonald Family does not focus on this section of the Agreement because as a tight-knit family they do not anticipate conflict will divide them.

During the first five years, Junior and Abby collaborate and grow the business. They expand beyond serving Weber and Davis Counties into Salt Lake County. Junior is happily ensconced in Ogden servicing local clientele, while Abby seeks growth across Utah and the Intermountain West. Abby wants to

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expand well beyond Junior's comfort zone. Over Junior's objections and at considerable expense, Abby engages a bevy of advisors to realize her ambitious goals for *Grow-it-All*. The partners are at loggerheads.

## Applying the Dispute Resolution Provisions of the Partnership Agreement

The Partnership Agreement reads in part:

> Dispute Resolution and Arbitration Agreement
>
> If a dispute arises between the partners of *Grow-it-All*, the parties shall have thirty days in which to meet and attempt in good faith to resolve the dispute.
>
> If the parties do not reach a resolution, the parties agree to submit the dispute to mediation before a neutral person.
>
> If the parties do not resolve the dispute through mediation, they agree to submit the dispute to arbitration by filing a Demand for Arbitration with a recognized provider of Alternate Dispute Resolution (ADR) services in the city in which *Grow-it-All* maintains its principal place of business. The parties shall agree on a mutually acceptable neutral arbitrator within 30 days of filing the Demand for Arbitration, and the arbitration hearing shall commence within 90 days of the initial filing date. The arbitrator shall issue their Award within thirty days of the conclusion of the hearings and no later than 150 days after filing of the Demand.

Troubled by Abby's brazen power play, Junior sends Abby an email requesting they meet to discuss a compromise they can both accept. Unpersuaded by Junior's pleas that rapid growth will jeopardize the business, Abby ignores the email assuming Junior will acquiesce. More than thirty days pass, with Abby snubbing Junior and incurring expenses in furtherance of her expansion goals. Junior sends Abby another email requesting they engage a mutual friend to mediate before the situation gets out of hand. Abby rejects Junior's proposed mediator without making a counter proposal.

## What's Lacking in the ADR Provision as to Meeting and Mediation?

ADR provisions may provide for good faith meeting and neutral mediation as preliminary phases before initiating more adversarial processes such as arbitration or litigation. When parties want to preserve a working relationship despite differences, these steps can be productive and prevent escalation. To be effective, however, they need more precision than the barebones approach Newbie Attorney used. As a preliminary matter, Newbie Attorney should have urged Junior and Abby to retain their own counsel in connection with the Partnership Agreement because he would have a conflict and could not represent either of them in a partnership dispute.

In drafting threshold resolution steps, Newbie Attorney should have included more details. With respect to the good faith meeting requirement, setting an interim response deadline could have avoided delay and uncertainty for Junior as the party seeking resolution. There is italicized language below added to Newbie's basic template language demonstrating one way Newbie could have addressed this phase more effectively.

> If a dispute arises between the partners of *Grow-it-All*, the parties shall have thirty days in which to meet and attempt in good faith to resolve the dispute. *If a party seeks a meeting under this provision (Requesting Party), the Requesting Party shall send a written request (Meeting Request) by email with a delivery receipt to the other party (Receiving Party) using the Receiving Party's email address listed in the Notice Section of the Agreement. The Meeting Request shall state the disputed issues the Requesting Party seeks to resolve and specify a date within seven to fourteen days at a time during regular business hours when the Meeting will occur at the company's headquarters. If the Receiving Party does not respond within seven days of delivery of the Meeting Request by accepting the Meeting Request or proposing another date and time during business hours no later than fourteen days from the date specified in the Meeting Request, the Meeting Request is deemed rejected. If the Meeting Request is rejected, the Requesting Party can immediately invoke mediation.*

With this language in effect, Junior could have moved more swiftly to invoke mediation. As to mediation agreements, ADR Administrators offer sample provisions counsel can refer to for drafting guidance. Newbie also could have referred to the Utah Uniform Mediation Act, Utah Code Section 78B-10-101 et seq., for inspiration. The italicized proposed language below reflects additions to Newbie's version that could facilitate mediation if a good faith meeting does not occur or is not productive.

> If the parties do not reach a resolution through a good faith meeting, the parties agree to submit the dispute to mediation. *Once the right to request mediation is met, the Requesting Party shall file a request for mediation (Mediation Request) with [Agreed ADR Administrator such as American Arbitration Association (AAA), Jams, Utah ADR, or other agreed provider] with a copy sent at the same time by email with a delivery receipt to the Receiving Party using the Receiving Party's email address listed in the Notice Section of the Agreement. The Requesting Party will include a copy of this Agreement with the Meeting Request. The Mediation Request should specify that within fifteen days of the Mediation Request the ADR Administrator shall appoint a neutral Mediator who is available to conduct the Mediation within thirty days of being appointed.*
>
> *The Mediator shall be appointed by the [ADR Administrator] and the Mediation shall be conducted in accordance with its customary procedures provided, however, that the mediation will be conducted in accordance with the Utah Mediation Best Practices Guide (Best Practices Guide), which shall control if there is any discrepancy between the [ADR Administrator's] procedures and those set forth in the Best Practices Guide. The parties shall be equally responsible to pay all fees and expenses associated with the Mediation. Each party may be represented by counsel of their choice in connection with all aspects of arranging, preparing and engaging in the Mediation*
>
> *If a party fails to comply with the good faith meeting or mediation terms of the Agreement or there is an issue that requires emergency relief, either party may file an action with a court of competent jurisdiction over disputes arising in Ogden, Utah, solely for the purpose of enforcing the ADR provisions of this Agreement or addressing the application for emergency relief.*

Without these guardrails in the Partnership Agreement, disputing parties face obstacles triggering escalation to arbitration or litigation.

## Escalating When Negotiation and Mediation Fail

When Abby continues to avoid Junior's overtures "to attempt to resolve the dispute in good faith," Junior consults Newbie Attorney who recommends filing suit against Abby. Newbie files litigation seeking an order barring Abby from using company resources without Junior's consent. Abby engages Attorney Anderson, who successfully moves to disqualify Newbie Attorney, to dismiss the suit, and to compel arbitration. With the motion pending, Attorney Anderson commences arbitration asserting claims against Junior for breach of fiduciary duty alleging expansion is in the company's best interests. Junior is taken aback when the court dismisses his case without prejudice to resolve claims in arbitration. Junior is alarmed Newbie Attorney did not advise him (1) Newbie had a potential conflict and (2) the Partnership Agreement required disputes be resolved through arbitration rather than in court. Although the senior MacDonalds no longer own the business, they are concerned about the siblings' rift and arrange a meeting with Attorney Jones to advise Junior on how to proceed after the court case dismissal and Abby's Demand for Arbitration.

Abby's attorney filed the Arbitration Demand with "Innovative ADR," an ADR Administrator that touts itself as "more informal" than established providers such as the AAA or court-annexed arbitration. At Innovative ADR, there are no published rules of the type utilized by the AAA or other established ADR Administrators. In Innovative ADR proceedings, the parties and arbitrator "adapt as the proceedings unfold." This is not the structured process Junior hoped would control.

Attorney Jones is troubled by the Partnership Agreement ADR provision and by Abby's choice of Innovative ADR over a more reputable forum with clear procedures. Although Junior did not file first, Attorney Jones suggests Junior challenge Innovative ADR as not satisfying the "recognized provider" requirement by filing a separate Demand for Arbitration with the AAA under its Commercial Rules. Newbie could have tracked, incorporated, or modified procedures followed by a designated Arbitration Organization that routinely administers these proceedings. The Utah Uniform Arbitration Act, Utah Code Section 78B-11-101 et seq., defines an "Arbitration Organization" as "an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator." *Id.* § 78B-11-102(1). An ADR Administrator may be an Arbitration Organization under the Utah statute, but it may also administer mediation or other dispute resolution services. The parties are back in court where the judge rejects Junior's challenge to Innovative ADR and orders the parties to proceed before Innovative ADR pursuant to Abby's Demand.

### What Can Go Wrong in this Arbitration?

The court has ordered the dispute proceed in arbitration before Innovative ADR. The clock is ticking as the parties must agree on a neutral arbitrator within thirty days of Abby's Demand so the hearing can commence within ninety days of the initial filing date. Innovative ADR directs the parties to select the arbitrator from a roster they provide. The parties exchange proposed arbitrators, but neither side will agree to someone proposed by the other. When thirty days pass without progress, Innovative ADR appoints Arbitrator Hyde. Hyde does not appear to have any relationship that poses a conflict preventing Hyde from serving, but Hyde usually manages labor union arbitration and is not experienced in closely held business disputes. Neither Junior nor Abby had the opportunity to provide criteria for a suitable arbitrator, such as years of experience or industry expertise, and that was not covered in their Partnership Agreement. Absent grounds to challenge Hyde's neutrality and unable to agree to an alternative, the parties are stuck with Innovative ADR's choice.

Newbie could have drafted a more productive ADR provision by adopting a model from an established ADR Administrator or Arbitration Organization such as AAA, modifying the language to suit the situation or crafting original language after researching various providers. The language below reflects several issues with the language in the Partnership Agreement. For clarity, the italicized language is intended to be added to the existing language. The non-italicized bold language reflects phrases to be deleted from the existing language.

> If the parties do not resolve the dispute through mediation, they agree to submit the dispute to arbitration by filing a Demand for Arbitration with *[a recognized "Arbitration Organization" as defined by the Utah Uniform Arbitration Act]* in the city in which *Grow-it-All* maintains its principal place of business. *If the parties do not agree on a specific location for arbitration hearings, or whether the proceedings will be conducted in person or virtually, the Arbitrator shall decide.*

*The neutral Arbitrator shall have a minimum of fifteen years of legal experience in matters involving closely held business disputes and shall be selected using the Arbitration Organization's] usual procedures for selecting an Arbitrator. The Arbitration shall be conducted under the Arbitration Organization's customary rules for commercial disputes.* **[The parties shall agree on a mutually acceptable neutral arbitrator within thirty days of filing the Demand for Arbitration, and]** The arbitration hearing shall commence within ninety days of the initial filing date. The arbitrator shall issue a *reasoned* Award within thirty days of the conclusion of the hearings and no later than 150 days after filing of the Demand.

If templates from ADR Administrators or Arbitration Organizations did not suit the situation, Newbie Attorney could have incorporated rules from a judicial forum or court-annexed arbitration or Newbie could have drafted procedural rules addressing the myriad issues customarily managed in well-run arbitration. For example, rather than using vague and limited terms, Newbie could have modeled the ADR language on excerpts from the Utah Alternate Dispute Resolution Act, Utah Code Section 78B-6-201 et seq., applicable to specified court-annexed ADR.

Before the parties here face their first scheduling conference with the Arbitrator, consider how Newbie Attorney could have drafted the ADR provision to protect the siblings. First, Newbie should have urged them to have separate counsel. If they insisted on joint representation and they waived in writing any conflict, Newbie should have discussed with them the benefits and burdens of litigation compared to arbitration. Among other things, Newbie should have explained arbitration can be more economical and efficient, but that is not always the case. If they invoke arbitration, they would incur administrative and arbitrator fees that are not incurred in court cases. As the bases for challenging an arbitration award are more limited than the grounds for appeal from a jury or court decision, arbitration may offer more finality. However, if parties disagree with factual determinations or legal conclusions, they have a better chance of reversing the outcome on appeal from a court decision as there are more grounds available than exist for challenging an arbitral award.

Second, if the parties opt to include arbitration in their agreement, the ADR provision should state more than select deadlines Newbie included. The ADR language ideally should specify an administering entity, an Arbitration Organization, to manage the process and incorporate the rules of that forum. Alternatively, parties can agree to abide by the rules of an independent forum without agreeing to have that organization administer the arbitration. Newbie also should have discussed with the partners and included in the ADR provision the minimum expertise and qualifications of the potential arbitrator and the process for arbitrator selection if they could not agree. Finally, an arbitration agreement should include the option to seek emergency relief from a court to stop irreparable harm. This is important because a court may be able to act faster and enforce their own orders quickly. These are considerations Newbie should have evaluated with the stakeholders at the outset. It is easier to reach consensus as to these issues when parties are not in conflict. Unfortunately, Newbie did not engage in this dialogue with Junior and Abby nor did he consider these issues when drafting the Partnership Agreement.

## Conducting Arbitration When the Rules Are Unclear

Attorney Jones agrees to represent Junior despite the challenges. By considering ADR when parties are optimistic about their relationship, they are more likely to adopt procedures from an established ADR Administrator or Arbitration Organization or to craft procedures to suit the situation. When the ADR provision is barebones, the process can be more expensive, inefficient, and disappointing to both stakeholders.

Against this backdrop, Attorney Jones contacts opposing counsel Attorney Anderson to collaborate on an arbitration timetable and procedural rubric. Abby wants to delay hearings while expanding the business. To that end, her counsel Attorney Anderson balks at Junior's proposed schedule, demanding they extend the contractual deadlines for months. Without controlling rules, Arbitrator Hyde has discretion to establish procedures and set deadlines. However, Hyde derives authority from the Partnership Agreement and should abide by the terms barring unusual circumstances. For example, extending agreed deadlines over Junior's objections could provide a basis for Junior to seek emergent court intervention. If the ADR provision had provided detailed protocols, problems such as potential squabbling, arbitrator whim, and attendant delay could be avoided.

The following analysis focuses on three elements of a sound arbitration agreement Newbie Attorney should have addressed: (1) Conflicts and Disclosures; (2) Exchange of Information and Confidentiality; and (3) Hearings and Form of Award. Other issues covered in omnibus arbitration procedures, but not addressed here, include cybersecurity, use of artificial intelligence, remote proceedings, hearing transcription, and code of conduct for counsel and parties.

### Conflicts and Disclosures

When appointed, Arbitrator Hyde is not aware of and does not disclose any relationship that creates actual or potential conflict. After Hyde conducts the initial conference and issues the scheduling order, a partner at Abby's counsel Attorney Anderson's firm contacts Hyde to serve as a mediator in an unrelated matter. As Innovative ADR does not have a questionnaire to assess potential bias, parties need to provide detailed information as to stakeholders so a potential arbitrator can consider whether relationships exist that pose conflicts or may create a perception of bias. At the outset, Arbitrator Hyde must conduct a conflict search and disclose personal or business ties bearing on actual or perceived impartiality. Disclosure obligations persist for the duration of the proceedings and all participants must update them if new facts emerge. Counsel or anyone from their firms should not contact Arbitrator Hyde directly without notifying opposing counsel. Even if there was no conflict initially, Attorney Anderson's firm should have conducted a conflict check before approaching Hyde to serve as a mediation in an unrelated matter. A conflict check by Attorney Anderson's firm should have revealed that Hyde was appointed Arbitrator in the *Grow-it-All* partnership dispute. With this knowledge, Hyde's colleagues at the firm should not communicate with Hyde to serve as a mediator or for any other reason without informing Attorney Jones. Hyde should not accept the mediation engagement; it is unlikely Junior would waive the conflict given the tenor of the dispute with Abby before Hyde in arbitration.

Failing to delineate the arbitrator selection and disclosure process, Newbie Attorney left the door open for inevitable disagreement before the parties even addressed the substantive claims. A well-written ADR agreement should include a thoughtful arbitrator appointment and conflict protocol specifying the arbitrator and include the parties' ongoing disclosure obligations. Those procedures afford parties an opportunity to vet, reject, and rank potential candidates, and grants the ADR Administrator or Arbitration Organization authority to select the neutral if the parties cannot agree. In the absence of clarity, the Utah Uniform Arbitration Act, Utah Code Section 78B-11-101 et seq., provides detailed guidance on arbitration, including appointing a neutral and ensuring impartiality. For example, "Appointment of arbitrator – Service as a neutral arbitrator," Utah Code Section 78B-11-112, provides:

> (1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed by the court has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.
>
> (2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

*Id.* § 78B-11-112.

The following section, "Disclosure by arbitrator," Utah Code Section 78B-11-113, provides detailed direction as to the upfront and "continuing obligation" of a proposed or appointed arbitrator:

> to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
>
> (a) a financial or personal interest in the outcome of the arbitration proceeding; and
>
> (b) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

*Id.* § 78B-11-113(1).

Section 78B-11–113 elaborates on how failure to meet these requirements can affect the proceedings. Rather than leaving these issues to chance, Newbie should have collaborated with the parties to identify an Arbitration Organization with established procedures or referenced the statute to resolve differences as to arbitrator selection and disclosure duties. This is particularly important in situations where the arbitration locale or governing law is disputed or may be in a jurisdiction other than Utah.

### Exchange of Information and Confidentiality

As Abby has been concealing her actions from Junior, Attorney Jones seeks documents and depositions on an expedited basis. The discovery request includes financial projections prepared by Abby's advisors that she considers confidential. In arbitration, as in litigation, there are issues about the scope, types, and amount of discovery. Parties can include provisions limiting discovery to avoid complication. Arbitration is intended to be faster and cheaper than litigation, but if discovery is not managed smoothly, the cost and delay increase. Newbie should have included discovery parameters – the form, type, and amount of discovery (whether limited to written discovery or allowing depositions and the number permitted for each side). This can be accomplished by reference to the Arbitration Organization's discovery practices or by express agreement. For example, parties can agree to adhere to the "American Arbitration Association® Initial Discovery Protocols for Employment Arbitration Cases and Fair Labor Standards Act Cases," where applicable, to reduce disputes over the scope of relevant information exchange.

Where parties have not agreed to parameters or procedures for reconciling differences as to procedure, the arbitrator needs to set boundaries. The Utah Uniform Arbitration Act, Utah Code Section 78B-11-101 et seq., grants the arbitrator considerable authority to manage discovery. However, one party or the other may not agree with those limits. Where the parties are concerned about exchanging sensitive information, the need for a confidentiality agreement should also be evaluated upfront. The parties can agree upon a confidentiality protocol as part of the ADR provision or provide for the arbitrator to do so. Even if established procedures do not prevent discovery disputes, lack of procedures can delay exchange of information, depositions, and hearings. To give parties maximum control over discovery rather than deferring to the arbitrator, a detailed arbitration agreement should address the types and amount of discovery to be exchanged, whether the parties can conduct depositions, confidentiality protocols, and a mechanism for resolving discovery disputes. These issues can be covered by agreeing to abide by the discovery rules promulgated by a selected Arbitration Organization, or by customized parameters. The more specific the ADR agreement, the less likely it is the parties will have to defer to the arbitrator's discretion or get bogged down in bothersome discovery disputes that waste time and money.

### The Hearing and Form of Award

The *Grow-it-All* parties agreed to a hearing within ninety days from Demand filing. That was one of the few things Newbie Attorney addressed. Absent agreement, the Arbitrator should set the hearing date so deadlines for discovery and pre-hearing submissions (exhibits, witnesses, evidentiary issues, and locale) can be set. Parties can agree, or the arbitrator may decide to postpone hearings under appropriate circumstances, but arbitration is supposed to move swiftly.

Junior is eager to progress so everyone can focus on operations. He would be satisfied with a simple award that Arbitrator Hyde can issue quickly. In contrast, Abby wants Hyde to issue findings of fact and conclusions of law so she has a record if needed to challenge the award. The Agreement does not stipulate a form of award, and Innovative ADR does not have a default provision as to type of award if the parties do not agree. Standard options found in arbitration agreements include (1) simple award without explanation, (2) reasoned award explaining the basis for decision, or (3) award with findings of fact and conclusions of law. Without parameters, Arbitrator Hyde should consider the value of parties understanding the basis for the decision. If Newbie Attorney had focused on these issues, the ADR provisions might have required a reasoned award, which neither side requested. That strikes a balance providing insight without expense of preparing findings of fact and conclusions of law.

## Why are these issues important?

Efficient dispute resolution procedures may be obvious to experienced ADR practitioners whether advocates or neutrals. Those considerations may not, however, be top of mind for lawyers drafting agreements focusing on a successful deal rather than subsequent disagreement. Concentrating on the transaction, the nuances of ADR may not be front burner. The dispute resolution provision may be an afterthought or pulled from a template. In this case, a thoughtful arbitration agreement could have addressed procedural issues directly or incorporated rules or statutes by reference. Had Newbie Attorney put more effort into the terms, the *Grow-it-All* partners could have been spared time and expense. Newbie could have designated a specific ADR Administrator or Arbitration Organization with integrated rules incorporating provisions of the Utah Uniform Mediation Act, Utah Uniform Arbitration Act, and Utah Mediation Best Practices Guide. Alternatively, Newbie could have crafted protocols for selecting the neutral, managing discovery and confidentiality, and designating the award format. Practitioners may not be aware of the wealth of free drafting tools available for these purposes. ADR Administrators and ADR Organizations such as AAA, JAMS, and CPR Dispute Services, among others, make these resources available to facilitate preparing ADR agreements.

Until they are on the verge of litigation or arbitration, parties may eschew advice on the minutiae of resolving conflicts. By ensuring the counsel drafting these agreements consider and advise clients about potential issues upfront, parties will be better equipped when a disagreement cannot be resolved amicably. Unfortunately, parties in closely held businesses may assume their relationship will not sour so they do not focus on dispute resolution terms that could become critical. *Grow-it-All* partners Junior and Abby deserved more effective representation than Newbie Attorney provided. It is counsel's responsibility to discuss these issues with clients so the Partnership Agreement protects their interests.

# America250: Preserving the Rule of Law and Judicial Independence

by Keith A. Call

In 1838, twenty-eight-year-old Abraham Lincoln worried deeply about the founding generation fading away and the rise of increasingly bitter political division. In what became known as the Lyceum Address, Lincoln warned that America's greatest danger would not come from abroad:

> Shall we expect some transatlantic military giant, to step the Ocean, and crush us at a blow? Never! All the armies of Europe, Asia and Africa combined, with all the treasure of the earth (our own excepted) in their military chest; with a Buonaparte for a commander, could not by force, take a drink from the Ohio, or make a track on the Blue Ridge, in a trial of a thousand years. At what point then is the approach of danger to be expected? I answer, if it ever reach us it must spring up amongst us. It cannot come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen, we must live through all time, or die by suicide.

Abraham Lincoln, "The Perpetuation of Our Political Institutions," Address Before the Young Men's Lyceum of Springfield, Illinois" (January 27, 1838), https://www.abrahamlincolnonline.org/lincoln/speeches/lyceum.htm [hereinafter Lyceum Address].

Nearly 250 years after the signing of the Declaration of Independence, Lincoln's warning feels remarkably current. Although America's constitutional experiment has endured longer than many thought possible, we are a nation of sharp disagreements, strong personalities, and fiercely contested politics. Yet generation after generation, Americans have largely resolved disputes through legal institutions rather than violence or raw political power.

That achievement should not be taken for granted.

As we celebrate America's 250th anniversary, lawyers have particular reason to reflect on what has made this nation exceptional. The United States is not held together merely by geography, military strength, or economic success. It is held together by a shared commitment to constitutional order and the rule of law.

That commitment depends heavily upon lawyers.

John Adams famously described the American Republic as "a government of laws, and not of men." John Adams, *Novanglus Papers*, Boston Gazette, no. 7 (Mar. 6, 1775), https://www.masshist.org/dorr/volume/4/sequence/771. The phrase captures one of the most important ideas in human history: that no person is above the law, and no citizen is beneath its protection.

But the rule of law is more fragile than it sometimes appears.

It depends upon public confidence that courts are fundamentally fair. It depends upon judges willing to decide cases according to law rather than popularity. And it depends upon lawyers who understand that their professional obligations extend beyond merely winning disputes.

When confidence in legal institutions erodes, the consequences are serious. Courts begin to look like political weapons rather than neutral forums. Opposing counsel become enemies rather than professional adversaries. Public officials attack judicial legitimacy whenever they lose. Eventually, the law itself begins to look less like a shared framework and more like raw power exercised by whichever side temporarily prevails.

Lawyers should be especially concerned about this trend. Like Lincoln, we have inherited "a system of political institutions" more protective of liberty than any the world had previously known, while also witnessing "the growing disposition to substitute the wild and furious passions, in lieu of the sober judgment of Courts." Lyceum Address.

As we celebrate America250, one of the most important stewardships lawyers have is preserving judicial independence. The Declaration of Independence itself makes this clear. Among the grievances listed against the King of Britain, the authors of the Declaration of Independence included attacks on judicial independence:

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> *He has obstructed the Administration of Justice . . . .*
>
> *He has made Judges dependent on his Will alone . . . .*
>
> *For depriving us in many cases, of the benefits of Trial by Jury . . . .*

The Declaration of Independence (U.S. 1776).

The Founders understood that liberty cannot survive without independent courts.

But judicial independence does not sustain itself automatically. As Utah Supreme Court Justice Paige Petersen recently observed, you can't have an independent judiciary without *systems and structures* that make it independent. Utah State Bar, *Let's Talk & Let's Listen – Part II* (March 17, 2026), https://www.youtube.com/watch?v=LPftj0PVV08. Judicial independence requires structures, cultural norms, and public trust strong enough to withstand political pressure. Lawyers have concrete responsibilities to preserve it.

First, lawyers should defend the legitimacy of courts even when criticizing particular decisions. Reasonable lawyers and judges will disagree about difficult legal questions. Criticism of judicial reasoning is entirely appropriate. But the focus should be on judicial reasoning, not judicial outcomes. Lawyers should resist rhetoric suggesting judges are merely political actors whose decisions depend entirely upon ideology or party affiliation. This hits at the heart and soul of what the "rule of law" is. People who criticize judges based solely on outcomes act contrary to the letter and spirit of our constitutions. *See* Utah Const. Art. VIII, § 8(4) ("Selection of judges shall be based solely upon consideration of fitness for office without regard to any partisan political consideration."); U.S. Const. Art. III, § 1 (protecting federal judges from political influence by granting lifetime appointments and protecting salaries). Public confidence in the judiciary depends upon preserving the distinction between disagreement and delegitimization.

Second, lawyers should speak out against casual accusations of judicial corruption or bad faith. Unsupported claims that courts are "rigged" or politically dishonest may generate attention in the short term, but they inflict long-term damage on public trust in the justice system.

Third, lawyers should educate clients, friends, and neighbors about why judicial independence matters. Courts exist precisely to apply law neutrally, especially during moments of political pressure or public anger. As Justice Anthony Kennedy observed: "Judicial independence is not conferred so judges can do as they please. Judicial independence is conferred so judges can do as they must." Anthony M. Kennedy, Testimony in Senate Judiciary Committee Hearing on Judicial Independence (2007).

Fourth, lawyers should actively participate in Utah's electoral and judicial-selection and retention processes. Encourage highly qualified attorneys to apply for judgeships. Engage in the public comment process for judge applicants. Take time to fill out those judicial performance evaluations. And, when elections come, educate your friends and neighbors about the important work performed by the Judicial Performance Evaluation Commission (https://judges.utah.gov/s/). Speak out to your representatives about your views. And, most importantly, when you vote this year, do more than just go with your gut. Study the issues, the candidates' views, and their voting records, and exercise your right of suffrage more deliberately.

Fifth, lawyers should distinguish between judicial misconduct and disagreement with judicial outcomes. Judges should absolutely remain accountable for genuine ethical violations or abuse of office. But a judiciary cannot remain independent if judges face political retaliation merely for issuing controversial rulings. The rule of law requires judges to decide cases according to law, not fear of backlash.

Finally, lawyers should be willing to defend judicial independence publicly when it is genuinely threatened. Courts possess neither the power of the purse nor the sword. They typically do not hold press conferences or speak outside of their written decisions. Their legitimacy ultimately depends heavily upon public trust. Lawyers therefore bear a special responsibility to defend constitutional structure, separation of powers, and the principle that disputes should be resolved through law rather than intimidation or political pressure.

America's 250th anniversary should be more than a historical celebration. It should be an opportunity for reflection. The American experiment has endured because previous generations preserved institutions they did not create for the benefit of people they would never meet. Judicial independence and the rule of law are part of that inheritance. Lawyers bear a special responsibility to protect it.

Quoting Benjamin Franklin, Utah Senate President J. Stuart Adams has said, "We formed a republic, … if you can keep it." Utah State Bar, *Let's Talk & Let's Listen – Part I* (Dec. 10, 2025), https://www.youtube.com/watch?v=_-_Vrag65vo. If we fail, no constitutional text or historical tradition alone will save us. If we succeed, future generations may continue to enjoy what Lincoln called "the last best hope of earth." Abraham Lincoln, Second Annual Message to Congress (Dec. 1, 1862), https://www.presidency.ucsb.edu/documents/second-annual-message-9.

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



## Utah State Bar Adopts New Subject Line Schema to Improve Email Clarity

The Utah State Bar is introducing a new standardized email subject line schema designed to help Bar licensees more quickly identify the purpose, urgency, and relevance of emails received from the Bar and affiliated entities.

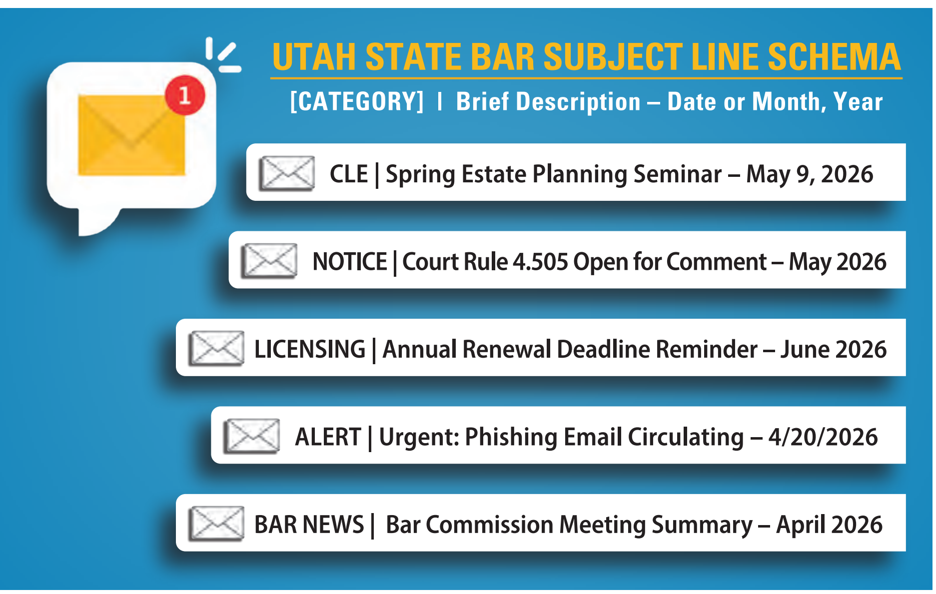
As inboxes continue to grow and professionals increasingly rely on AI-powered email summaries, preview tools, and mobile notifications, clear and consistent subject lines have become more important than ever. The new format is intended to improve readability, reduce confusion, and help attorneys prioritize communications more efficiently.

The new structure follows a simple format:

**[CATEGORY] | Brief Description – Date or Month Year**

Examples can be seen in the graphic below.

This standardized approach provides several benefits and reflects modern email communication best practices:




### Faster Identification of Important Emails

Category labels such as **[CLE]**, **[NOTICE]**, **[BAR NEWS]**, **[LICENSING]**, and **[ALERT]** allow recipients to immediately recognize the type of communication before opening the message.

### Improved Compatibility with AI & Mobile Email Tools

Many email platforms now generate AI summaries, smart inbox categorizations, and mobile previews. Consistent subject line formatting improves how these systems interpret and display information, helping attorneys quickly understand the purpose of an email at a glance.

### Better Searchability and Organization

Standardized subject lines make emails easier to search, sort, and filter within inboxes. Attorneys and staff can more efficiently locate past communications related to CLEs, licensing, court notices, or Bar news.

### Reduced Risk of Overlooking Critical Information

Clear labeling helps distinguish routine informational emails from time-sensitive notices or urgent alerts. This is especially important in a high-volume communication environment where legal professionals receive significant daily email traffic.

### Greater Internal Consistency

The schema also creates consistency across departments, vendors, and communication platforms used by the Bar, helping ensure a more predictable and professional communication experience.

The Utah State Bar recognizes that effective communication is essential to supporting its licensees. This updated subject line structure is one of several ongoing efforts to modernize communications, improve accessibility, and help licensees more easily navigate important information in an increasingly digital environment.

## 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 Adam S. Hensley has filed a Petition for Reinstatement in *In re the Discipline of Hensley*, Second Judicial District Court, Civil No. 220901045. Any individuals wishing to oppose or concur with the petition are requested to file a notice with the district court within twenty-eight days of the date of this publication.

## America250 Symposium Brought National Constitutional Leaders to Utah

The Utah State Bar joined America250 Utah, Utah Chapter of the Federal Bar Association, and Utah Lawyers for Good Policy on May 21 to host **America250: Sharing Stories About America**, a landmark constitutional symposium at The Grand America Hotel. The event served as one of Utah's signature commemorations of the nation's upcoming 250th anniversary while also celebrating the Bar's 95th year of service.


Jeffrey Rosen

Attorneys, judges, educators, and community leaders gathered for a day of constitutional discussion and continuing legal education focused on the enduring role of the rule of law in American democracy.


Jonathan Turley

The symposium featured keynote presentations from nationally recognized constitutional scholars **Jeffrey Rosen**, CEO Emeritus of the National Constitution Center, and **Professor Jonathan Turley** of George Washington University.


Christine M. Durham

The program also included presentations from prominent Utah leaders, including Judge Carolyn B. McHugh of the U.S. Court of Appeals for the Tenth Circuit, Utah Supreme Court Justice Jill Pohlman, Utah Attorney General Derek Brown, retired Utah Supreme Court Chief Justice Christine M. Durham, and other civic and legal leaders.

The event opened with a presentation of colors by West High's ROTC, the Pledge of Allegiance, and the national anthem, underscoring the connection between civic traditions and constitutional principles. Attendees explored historical and contemporary constitutional issues while reflecting on the values that have shaped the nation.

## Utah State Bar Honors 29 Attorneys for 50 Years of Service

The Utah State Bar honored twenty-nine distinguished attorneys during its annual Fifty-Year Plaque Presentation and Luncheon on May 15 at the Utah Law & Justice Center, recognizing a remarkable milestone of fifty years of active licensure and service to the legal profession.

The celebration held special significance as the Bar marked its 95th anniversary. Family members, colleagues, and several past Bar presidents gathered to recognize the attorneys' decades-long contributions to the practice of law, the courts, and their communities.

Bar President Kim Cordova praised the honorees for their unwavering commitment to professionalism, integrity, and service. Throughout their careers, the attorneys advanced the rule of law, mentored younger lawyers, volunteered in their communities, and provided leadership within the legal profession.


50-Year Plaque Recipients (L–R): L. Benson Mabey, Bryan W. Cannon, Michael J. Van Wagenen, Robert A. Alsop, and Larry G. Reed

One of the event's memorable moments came when former Bar President Katie Woods invited attendees to identify the lowest bar number in the room. Robert A. Alsop, one of the fifty-year plaque recipients, held bar number sixty-two, while John A. Adams drew admiration with bar number twenty-three – the lowest number present at the luncheon.

### 50-Year Plaque Recipients

| | | | |
|---|---|---|---|
| Robert A. Alsop | Russell J. Gallian | Phillip Wm. Lear | Mary Ellen Sloan |
| Mark H. Anderson | H. Craig Hall | Robert P. Lunt | Robert M. Taylor |
| Spencer E. Austin | Royal I. Hansen | L. Benson Mabey | Thomas N. Thompson |
| Bryan W. Cannon | Michael R. Jensen | Rinehart L. Peshell | Michael J. Van Wagenen |
| Steven E. Clyde | Miles P. Jensen | Larry G. Reed | Glen D. Watkins |
| N. George Daines | Boyd L. Jentzsch | Bruce W. Shand | Bert R. Wonnacott |
| Donald J. Eyre Jr. | Keith G. Larsen | Franklin L. Slaugh | Ronald J. Yengich |
| Randall T. Gaither | | | |


Attorney Robert A. Alsop, Bar# 62, and Utah State Bar President Kim Cordova

## VOLUNTEER OPPORTUNITY Guardianship Signature Program

Are you looking for a meaningful way to give back to your community while enhancing your legal skills? The Guardianship Signature Program (GSP) is looking for volunteer attorneys to make a profound difference in the lives of vulnerable Utahns.

Under Utah law, individuals facing guardianship proceedings are required to have legal representation, yet many lack an attorney of their own, someone who can advocate on their behalf and work to help them retain the most rights possible. The GSP connects these unrepresented respondents with volunteer attorneys who serve on a time-limited basis.

Here is why you should join the GSP today:

- Ultimate Flexibility – you choose only the cases that suit your schedule and preferences. There are no minimum requirements or mandatory caseloads.
- When you volunteer, malpractice insurance is covered by the Utah State Bar.
- The barrier to entry is low. You must be eligible to practice law in Utah, accept the fee limits, and certify your knowledge of guardianship law. (Sponsored law students may also be eligible.)
- If you are new to this area of law, free online training courses are available to help you meet the competency requirement, and you can request an experienced mentor to guide you.
- Whether you are fresh out of law school, an established practitioner, or an inactive attorney, this program allows you to gain valuable, specialized experience and earn eligible CLE credits.

Take control of your pro bono work and provide substantial, meaningful help to those who need it most.

**To learn more, contact the program at: GRAMP@utcourts.gov or 801-578-3925**

**Visit: utcourts@gov/gramp/gsp**

# Pro Bono Honor Roll

The Utah State Bar and Utah Legal Services wish to thank these volunteers for accepting a pro bono case or helping at a recent free legal clinic. To volunteer, call the Utah State Bar Access to Justice Department at 801-297-7049.

### Domestic Family Law Pro Se Calendar

Dwight Adams
Lucas Adams
Jessika Allsop
Amanda Bloxham
Sarah Box
Victoria Camejo
Leda Chavez
Brent Chipman
Jill Coil
Rasheedah Corbitt
Kent Cottam
Kristie Cowman
Hayli Dickey
Carolina Duvanced
Alva Escarzaga
Kaitlyn Gibbs
Thomas Greenwald
Jared Hales
Laurel Hanks
Laura F. Hansen
Ashley Harrison
Joe Henderson
Jim Hunnicutt
Heather Carter Jenkins
Melanie Jensen
Karrie Ketchum
Nima Kian
John Kunkler
Ben Lawrence
Chris Martinez
Sydney Mateus
Bryant McConkie
Cassie Medura
Alva Miller
Susan Morandy
Rachel Namba
Rita Offrett
Stewart Ralphs
Clay Randle
Heather Rupp
Alison Satterlee
Gary Scholes
Micah Scholes
Caitlin Shreeve
Linda Smith
Leslie Staples
Paula Storey
Kaelynn Studebaker
Heather Thomas
Michael Thornock
Arayan Torres
Sade Turner
Cory Wall
Jesse West
Scott Wiser

### Family Justice Center

Jennifer Arganbright
Steven Averett
Kadyn Ballard
Kyra Boone
Erin Cranor
Karissa Gillespie
Athelia Graham
Michael Harrison
Loren Paul Husselbee
Steven Johnson
Samuel McVey
Maureen Minson
Victor Moxley
Mariah Nuttall
Matthew Rich
Daniel Richards
Stacy Runia
Hailey Russell
Alisen Setoki
Spencer Shields
Babata Sonnenberg
Maya Sonnenberg
April Subashe
K. Rochelle Sumision
Holly Tripp
Jane Wise
Zach Zalar

### Private Guardian ad Litem

Mary Bevan
Amanda Bloxham
Eve Call
Jessica Couser
Velvet Rodriguez
Alison Satterlee
Linda Smith
Rachel Whipple
A. Leilani Whitmer

### Pro Bono Initiative

Jessica Arthurs
Noah Barnes
Flynn Beckham
Wayne Bennett
Amanda Bloxham
Alexander Chang
Lauren Cormany
Dan Crook
McKaela Dangerfield
Russell Evans
Michael Farrell
Courtney Gamangasso
Lauren Harvey
Samantha Hawe
Dino Lauricella
Adam Long
Orlando Luna
Jan McCosh
Cait McKee
Emily McKenzie
Kate Menlove
Bella Miles
Andy Miller
John Morrison
Tracey Olson
Anna Paseman
Leonor Perretta
Abigail Philips
Stewart Ralphs
Brian Rothschild
Austin Sabin
Lauren Scholnick
Craig Smith
Ethan Smith
Jake Smith
Andrew Somers
Austin Sork
Jesse West
Leilani Whitmer

### Pro Se Debt Collection Calendar

Miriam Allred
Nolan Andreasen
Mark Baer
Alex Chang
Megan Connelly
Sue Crismon
Ted Cundick
KC Decker
Kimberly Farnsworth
Sam Gardiner
Denise George
Russell Griggs
Hong Her
Carolyn Howe
Matt Jaynes
Benson Killpack
Claire Kirkland
Andrew Navarro
Thomas Newman
Vaughn Pedersen
Brian Rothschild
Nanette Serrano
AJ Somers
George Sutton
Dylan Thomas
Matthew Thomas
Derek Williams

### Talk to a Lawyer Legal Clinic

Leonard Carson
Jennifer Dobson
Adrienne Ence
William “Bill” Frazier
Lewis Reece
Jamin Seegrist
Lane Wood

### Timpanogos Legal Center

Jenny Arganbright
Hannah (Rigby) Ashton
Steve Averett
Amarali Barker
Hannah Barnes
Bryan Baron
Lindsey K. Brandt
Ken Brown
Nate Buttars
Sophia Chima
Erin Cranor
Dave Duncan
Athelia Graham
Mackenzie Heinrichs
Christy Hoffman
Allie King
Brennan Lethco
Emily McKenzie
Maureen Minson
Matthew Rich
Nathan Rich
Thomas Scribner
JC Sessions
Alisen Setoki
Erin Strahm
April Subashe

### Utah Bar’s Virtual Legal Clinic

Jonathan Bench
Dan Black
Adam Clark
Matthew Couser
Thom Gover
Tyson Horrocks
Justin Jones
Steven Park
Alex Paschal
Katherine Pepin
Stanford Purser
Liana Spendlover
Jeff Tuttle
Chad West

### Utah Legal Services Pro Bono Case

Ted Cundick
Jeremy Eveland
William Morrison
Daniel Ruskin
Ryan Simpson

# 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.**

## Mandatory Online Licensing

The annual Utah State Bar online licensing renewal process is now open. An email with instructions for renewing online through your practice portal was sent on June 1.

All renewals must be completed online at services.utahbar.org. Attorneys are required to complete the renewal form individually and certify that they are the licensee identified in the renewal system.

The Bar accepts all major credit cards, as well as ACH/E-check payments. Paper checks will not be accepted.

To avoid a $100 late fee, your completed renewal and payment must be received no later than July 31. If your renewal is not completed and all fees are not paid before September 1, your license will be suspended.

For assistance with the online renewal process, please contact us by email at licensing@utahbar.org.

**Additional information regarding licensing policies, procedures, and guidelines is available at: www.utahbar.org/licensing.**

BROWN
FAMILY LAW

# WANTED

## ALIVE, PREFERABLY

**SHARP SHOOTIN FAMILY LAW ATTORNEY**

**WHO WE'RE LOOKIN' FOR**

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

**SCAN HERE FOR MORE DETAILS**

## $10,000 REWARD

**DEAD SERIOUS, WE'LL PAY YOU $10,000**

# Lawyer Discipline and Disability

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

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

## PUBLIC REPRIMAND

On April 14, 2026, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Rudy J. Bautista for violations of Rules 1.4(a)(4) (Communication), 1.5(a) (Fees), 1.15(d) (Safekeeping Property), 1.16(a)(3) (Declining or terminating representation), and 8.1(b) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:* Mr. Bautista represented a client in a criminal matter. The parties signed a Legal Services Agreement on November 17, 2023. As part of the agreement, the client paid a $50,000 retainer to Mr. Bautista, which was to be deposited in Mr. Bautista's IOLTA account and billed against at an hourly rate of $395. The agreement provided that Mr. Bautista would invoice for his services prior to transferring retainer funds from his IOLTA account for fees earned. Mr. Bautista's client first requested an invoice on January 18, 2024. Over the next twelve months, the client made three additional requests for invoices and an accounting of the funds held in Mr. Bautista's IOLTA account. During this same time period, the client terminated Mr. Bautista's services, but Mr. Bautista failed to file a withdrawal with the court.

Mr. Bautista failed to timely respond to his client's requests for an accounting. He also failed to respond to multiple notices and requests for information by the OPC. It was only as part of the OPC's investigation that Mr. Bautista ultimately provided an accounting by sending an invoice to his former client in December of 2025, nearly two years after the initial request. Mr. Bautista spent four and a half hours preparing the invoice and billed his client for that time at his full hourly rate, despite the task being administrative in nature and not requiring a lawyer's specialized skill. As part of the invoice, Mr. Bautista also billed his former client $7,426 for services he purportedly provided up to two years before the client signed the Legal Services Agreement. Mr. Bautista also transferred the client's money out of the IOLTA account prior to sending any invoice to the client, in violation of the Legal Services Agreement.

*Mitigating circumstances:* Absence of prior record of discipline, no selfish motive, good character and reputation, and remorse.

## PRIVATE ADMONITION

On April 14, 2026, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Private Admonition against an attorney for violations of Rules 1.4(a) (Communication), 1.15(a) (Safekeeping Property), and 8.1(b) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:* An attorney represented a client in a criminal matter through trial, following which the client was convicted of several felony counts. After trial but before sentencing, the client requested new counsel, and the attorney was allowed to withdraw from the case after representing the client for approximately two years. Over the course of the representation, the attorney failed to keep the client reasonably informed about his case and its status, either directly or through the individuals the client had specifically authorized to speak to the attorney for this purpose. The attorney also failed to reasonably consult with his client about the means of accomplishing his objectives, resulting in decisions being made without the client's input or understanding. In addition, the attorney took possession of the client's laptop and cell phone but failed to safeguard them, resulting in their loss. The attorney also failed to respond to a notice of charges issued by the OPC in the disciplinary proceeding.

## RESIGNATION WITH DISCIPLINE PENDING

On April 23, 2026, the Utah Supreme Court entered an Order Accepting the Resignation with Discipline Pending of Paul E. Mayer for violating Rule 8.4(b) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:* On May 1, 2025, the State of Utah charged Mr. Mayer with thirteen counts of Aggravated Sexual Exploitation of a Minor, a first-degree felony, in violation of Utah Code section 76-5b-201.1, and six counts of Voyeurism, a class A misdemeanor, in violation of Utah Code Section 76-12-307, in Third Judicial District Court, Salt Lake County. On November 17, 2025, Mr. Mayer pleaded guilty or no contest to one count of Aggravated Sexual Exploitation of a Minor and two counts of Voyeurism. On December 30, 2025, the court sentenced Mr. Mayer to one to fifteen years in the Utah State Prison. By engaging in criminal acts that reflected adversely on Mr. Mayer's honesty, trustworthiness, and fitness as a lawyer in other respects, Mr. Mayer violated Rule 8.4(b). The Utah Supreme Court approved Mr. Mayer's resignation with discipline pending on April 23, 2026.

## DISABILITY

On April 23, 2026, the Honorable Laura Scott, Third Judicial District Court, entered an Order Transferring Michael J. Boyle's License to Practice to Disability Status, pursuant to Rule 1-568(a) of the Supreme Court Rules of Professional Practice (2026).

## PROBATION

On May 14, 2026, the Honorable Robert Van Dyke, Sixth Judicial District Court, entered an Order of Discipline: Probation against Lloyd D. Rickenbach (Order), placing him on probation for six months for violating Rules 1.9(a) and 3.4(c) of the Utah Rules of Professional Conduct. The Order was based upon a Discipline by Consent and Settlement Agreement between Mr. Rickenbach and the Utah Office of Professional Conduct (OPC).

*In summary:* For approximately fifteen years, Mr. Rickenbach represented various businesses jointly-owned by a husband and wife. When the husband and wife sought a divorce, the businesses became marital assets subject to division by the court. Mr. Rickenbach sought permission from the wife to represent the husband in the divorce action, but she did not agree. Mr. Rickenbach nevertheless appeared as counsel for the husband in the divorce action.

The wife's counsel filed a motion to disqualify Mr. Rickenbach. At a hearing on the motion to disqualify, the court found that Mr. Rickenbach had had an attorney-client relationship with both the husband and the wife; therefore, he could not represent the husband in the divorce action. At the same hearing, the court appointed a special master to administer the largest jointly-owned business (Business) at issue in the divorce action and make recommendations about its disposition. The court subsequently issued an order disqualifying Mr. Rickenbach as husband's counsel in the divorce action.

Despite the disqualification order, Mr. Rickenbach, thereafter, wrote a demand letter to wife's counsel on behalf of the husband. Mr. Rickenbach also had regular communications with the special master and advocated for the husband's preferred outcome regarding the disposition of the Business. The wife and her counsel reminded Mr. Rickenbach that he had been disqualified from the divorce action and voiced their disapproval of his ongoing participation.

Mr. Rickenbach filed a request for clarification of the court's prior disqualification order against him. The court issued a Clarified Order of Disqualification, finding that Mr. Rickenbach was disqualified from representing the husband in the divorce action under Rules 1.9 and 3.7, because the husband and wife's interests were clearly adverse and his knowledge of the jointly-owned businesses made him a potential witness.

Even after the entry of the clarified order, Mr. Rickenbach continued to regularly communicate and attend meetings with, and give advice to and draft documents for, the special master. After the special master issued his report, the wife filed an objection. At the hearing regarding the objection, when apprised of Mr. Rickenbach's ongoing involvement with the special master, the court warned the special master to cease all consultation with Mr. Rickenbach and later issued an order to that effect. At that point, Mr. Rickenbach completely removed himself from any further involvement in the divorce action.

*Mitigating circumstances:* Absence of a dishonest or selfish motive, cooperative attitude towards discipline proceedings, good character or reputation, personal and/or family problems, and remorse.

## SUSPENSION

On May 7, 2026, the Honorable Kraig Powell, Fourth Judicial District Court, entered an Order of Discipline: Two-Year Suspension against A. Samuel Primavera, placing him on a two-year suspension for violating Rules 1.1 (Competence), 1.3 (Diligence), 1.4(a) (Communication), 1.5(a) (Fees), 3.1 (Meritorious claims and contentions), 8.1(b) (Bar admission and disciplinary matters), and 8.4(c) (Misconduct) of the Utah Rules of Professional Conduct.

*In summary:* From approximately mid-2022 to early 2024, Mr. Primavera represented three clients in family law and criminal proceedings. In one of the family law matters, Mr. Primavera failed to determine the proper jurisdiction in which to file the action; filed four separate actions when only one was necessary; incorrectly advised his client on the applicability of a foreign order; did not submit necessary documentation to the court; repeatedly filed incorrect or inapplicable papers and motions; failed to keep his client informed of the accurate status of his case(s); collected $7,600 in fees without accomplishing his client's objectives; and made false statements to his client about what was happening in his case(s). In this matter, the court determined that Mr. Primavera violated Rules 1.1, 1.4(a), 1.5(a), 3.1, and 8.4(c).

In another family law matter on behalf of a second client, Mr. Primavera repeatedly filed motions or papers without any content and with improper certificates of service; filed a motion that did not explain what relief he was seeking or why; filed the same document twelve times, and withdrew from the case after the court had already permitted him to withdraw. In this matter, the court determined that Mr. Primavera violated Rule 1.1.

In state and federal criminal proceedings on behalf of a third client, Mr. Primavera filed motions for continuance without providing a legal or factual basis; filed motions in federal court based on state rules; filed unwarranted motions to suppress in both state and federal courts; filed incorrect documents containing significant errors and/or no substantive content; failed to appear at multiple hearings even after being ordered to do so; failed to timely file his appearance in federal court; failed to adequately communicate with his client regarding both cases; and collected $3,500 in fees without accomplishing any meaningful work for the client. The court found that Mr. Primavera violated Rules 1.1, 1.3, 1.4(a), and 1.5(a) in these criminal matters.

In two of the disciplinary cases, Mr. Primavera did not respond to the OPC's requests for information in violation of Rule 8.1(b).

# 2026 Paralegal of the Year: Congratulations Jessika Allsop!

by Greg Wayment

On Thursday, May 21, 2026, the Paralegal Division of the Utah State Bar held the Annual Paralegal Day celebration at the Hotel Monaco in Salt Lake City. Third District Justice Court Judge Ryan Holtan was the keynote speaker. The division would like to thank all those who organized the event, particularly Alba Monge-Rosa, Izamar Rael, Geysa Peeler, Edna Garcia, and Coryne Lake.

One of the highlights of the event is the opportunity to recognize those who have achieved their national certifications through NALA. This year seven individuals were recognized for obtaining a Certified Paralegal designation: Amanda Belliston, Elissa Collins, Anna Fluellen, Andrea Gaytan, Michael Johnson, Danielle Morris, and Hector Rios. In addition, one individual was recognized for obtaining an Advanced Certified Paralegal designation: Madison Morgan. Congratulations!

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

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

The hard-working individuals on the 2026 selection committee included: Judge Brian D. Bolinder (Seventh District Court), Nicholas Remkes, Sharee Laidlaw, Jacob Clark, and Michelle Yeates. We are pleased to announce that the winner of the 2026 Utah Distinguished Paralegal of the Year Award is Jessika Allsop.

Jessika's academic and professional credentials reflect a lifelong commitment to growth. In 2014, She earned a Bachelor's Degree in Human Development and Family Studies with an emphasis in Early Education and Development. In 2020, she earned a paralegal certification from Weber State University and the Center for Legal Studies. She is also a Certified Paralegal from NALA. In 2023, Jessika undertook rigorous study to become a Licensed Paralegal Practitioner of the Utah State Bar. She is a Utah Notary Public. Jessika has been a paralegal at the law firm of Dolowitz Hunnicutt & Gibbs since 2020.

Jessika has significant drafting experience in the family law field and uses her knowledge to help clients get their legal paperwork completed efficiently, saving time and money. She is committed to providing her clients with the

**Paralegal of the Year, Jessika Allsop**

highest level of service and support. Jessika is known for her attention to detail, excellent communication skills, and ability to work under pressure.

Today, she is not only a steadfast advocate for her clients but also a mentor and champion for the LPP program, generously sharing her expertise to elevate the profession across Utah. Jessika is actively involved in community, volunteering her time and providing pro bono assistance through the following programs:

- Court Appointed Special Advocate (CASA) sponsored by the Utah Court Appointed Special Advocates and Utah Office of Guardian Ad Litem;
- Pro Se Document Preparation Clinic sponsored by the Utah State Courts;
- Mediation Day sponsored by the Utah Association of Family and Conciliation Courts (AFCC);
- Pro Bono Program sponsored by the Utah State Bar;
- Virtual Legal Clinic sponsored by the Utah State Bar;
- LPP Exam Committee for the Utah State Bar; and
- Planning Committee for the Utah Association of Family and Conciliation Courts.

Jessika grew up in Columbia, Missouri. In her free time, she enjoys reading, volunteering with children, and spending time with her family. Jessika is the author of a children's book, *Mommy's Imaginary Friend: Talking to Young Children about Depression.*

**From Dolowitz Hunnicutt & Gibbs:**
Jessika's contributions to our firm and our clients are truly outstanding. She possesses a sophisticated understanding of family law, which is reflected in her legal work such as crafting intricate legal documents and conducting thorough legal research. Her meticulous attention to detail has been instrumental in the successful preparation of numerous complex cases. Her organizational skills allow her to manage multiple high-pressure deadlines with remarkable efficiency. More importantly, her empathetic communication style provides a sense of calm and security that helps to place our clients at ease during difficult times.

**From Trish Hatch, Third District CASA Program Coordinator:**
Jessika has been a CASA volunteer for close to four years. In this role, she has spent countless hours of her personal time advocating for the most vulnerable members of our community – children thrown into the foster care and dependency court systems because of the actions of their primary care givers. Her tireless dedication, compassionate heart, and unwavering sense of justice have positively impacted the lives of the children she serves.

**From Todd Wetsel, Attorney:**
Jessika has been a terrific volunteer paralegal for Utah AFCC's Mediation Day Program. Mediation day is a day of service in which AFCC volunteers – including mediators, attorneys, paralegals, and mental health professionals – provide free mediation services in pro se family law cases. It is a substantial undertaking. Just as importantly, Jessika is a good and decent person. She brings professionalism to her work, but she also brings kindness, reliability, and the kind of attitude that makes people want to work with her.

**From Audrey Meyer, J.D. Candidate 2026:**
Jessika is a model of everything a paralegal should be: professional, experienced, communicative, and organized. Student volunteers love working with her and often opt to consult with her over other attorneys. She is always the first to volunteer when our program is short-staffed and in need of assistance. She has helped us instill in law students early on that often the most knowledgeable person in the room will be the paralegal!

**From Janicka Carver, Paralegal:**
Jessika is a remarkable paralegal and someone I can tell is compassionate and dedicated to her job. I trust and respect her. She has always worked with me on deadline or decisions that needed to be made on cases. When she is the paralegal on the other side, I know I can be candid with her and she will treat me with respect in response.

Jessika Allsop and Kaitlyn Gibbs

# Classified Ads

## RATES & DEADLINES

**Classified Ad Rates:** Up to 100 words, $70. Cancellations must be sent in writing to: BarJournal@utahbar.org.

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*Utah Bar Journal* and the Utah State Bar do not assume any responsibility for an ad, including errors or omissions, beyond the cost of the ad itself. Claims for error adjustment must be made within a reasonable time after the ad is published.

**CAVEAT:** The deadline for classified advertisements is the tenth day of the month prior to the month of publication. (Example: April 10 deadline for the May/Jun issue.) If advertisements are received later than the tenth, call 801-297-7022 to see if the ad can still be placed.

## OFFICE SPACE/SHARING



## SERVICES



## VOLUNTEER OPPORTUNITY Utah Bankruptcy Pro Bono Program

Do you want to make a direct impact in your community while gaining valuable federal court litigation experience?

The Utah Bankruptcy Pro Bono Program connects eligible low-income individuals sued in the bankruptcy court with volunteer attorneys willing to provide critical legal representation. Those individuals determined by the Utah State Bar to be eligible for pro bono services are assigned a volunteer attorney. Legal representation can make a meaningful difference to individuals because these cases often involve high-stakes issues, including the ability of a debtor to discharge some or all their debts, or an individual's potential liability to a bankruptcy estate for funds claimed to be owed by a trustee. Volunteers attorneys receive support and resources from the Pro Bono Bankruptcy Committee of the Utah State Bar.

If you are interested in participating as a volunteer attorney, or should you or your client wish to learn more about the Utah Bankruptcy Pro Bono Program, please contact the Utah State Bar's Access to Justice office at utahbar.org/access to justice/.

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