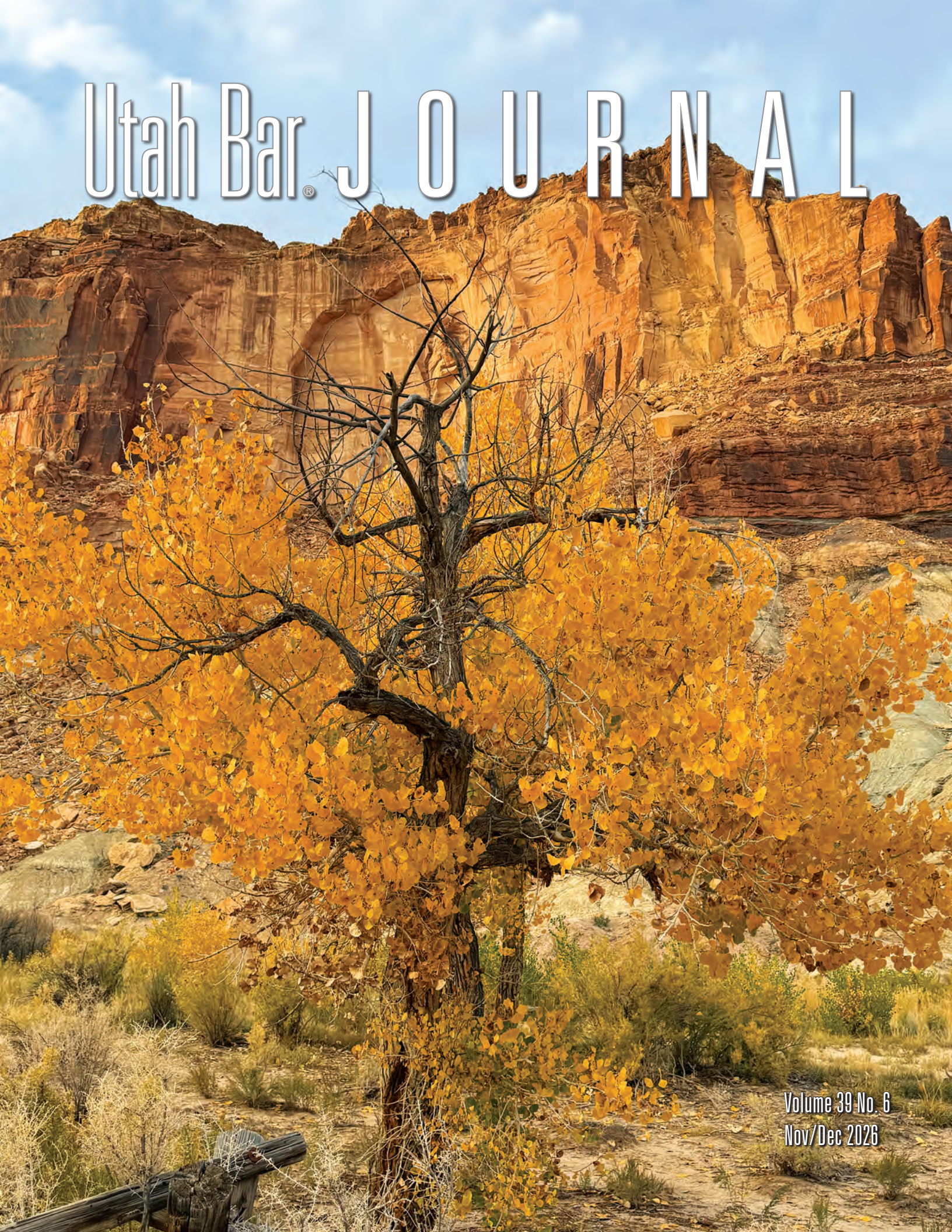
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Golden by Utah State Bar licensee Paul C. Burke.

PAUL C. BURKE is a shareholder and serves as general counsel of Ray Quinney & Nebeker P.C. His cover photograph was taken east of Huntington along Emery County Road 332 (also known as Buckhorn Draw Road) in the vicinity of the Swinging Bridge over the San Rafael River.

When asked about the origins and inspiration for his photo submission, Paul explained, "I was exploring the fall colors and natural beauty of the San Rafael Swell. As the golden hour arrived, the cliffs in the background caught the day's closing rays while the golden leaves in the foreground foretold the ongoing change of seasons. These elements combined to create a moment of natural beauty whose composition is evocative of a work of modern art, thanks to the autumn colors, contrasting textures, and almost abstract shapes."

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

Utah Bar JOURNAL

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SCAN

Letters to the Editor

Editor,

Mr. Miller's autumnal ode to the work of the defense bar was inspiring. Thank goodness someone is standing up to the "courts, prosecutors, [and] juries" who struggle to see defendants as human beings.

Still, I am mindful of the words of Utah's own Justice Sutherland, who held in *Berger v. United States* that prosecutors are

> the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

Protecting the innocent from being prosecuted in the first place, and guiding the guilty toward moral development so they can become better people, makes a positive difference. Along with thanking the defense bar for its noble work in upholding the constitutions, I thank the prosecutors for helping us when we are hurt and when we are trying to keep our children safe.

Paul Wake
Springville

Editor,

I've been alarmed by what's happening to judges in the Washington, D.C. area as indicated by the president of the District of Columbia Bar recently pleading with bar members to help protect the judiciary.

More specifically, D.C. Bar president Diane Seltzer asked bar members to "use whatever platform you have to speak out, loudly, in support of judicial independence and the separation of powers."

> Nationwide, our judges are dealing with previously inconceivable attacks on their independence and impartiality, such as calls for impeachment or removal, intimidation and threats to their and their families' safety, doxxing, swatting, baseless ethics complaints, willful failure to comply with lawful judicial orders, and personal attacks by members of co-equal branches of government.

https://washingtonlawyer.dcbar.org/septemberoctober2026/index.php#/p/6

Be grateful that judges in Utah are not yet being subjected to such attacks.

Michael Barrett
CIA assistant general counsel, Retired

LETTER SUBMISSION GUIDELINES

1. Letters should pertain to recent articles, columns, or another published letter.
2. All letters submitted for publication shall be addressed to Editor, *Utah Bar Journal*, and shall be emailed to barjournal@utahbar.org at least six weeks prior to publication.
3. Letters shall not exceed 500 words in length.
4. No one person shall have more than one letter to the editor published every six months.
5. Letters shall be published in the order they are received for each publication period, except that priority shall be given to the publication of letters that reflect contrasting or opposing viewpoints on the same subject.
6. No letter shall be published that (a) contains defamatory or obscene material, (b) violates the Rules of Professional Conduct, or (c) otherwise may subject the Utah State Bar, the Board of Bar Commissioners, or any employee of the Utah State Bar to civil or criminal liability.
7. No letter shall be published that advocates or opposes a particular candidacy for a political or judicial office or that contains a solicitation or advertisement for a commercial or business purpose.
8. Except as otherwise expressly set forth herein, the acceptance for publication of letters to the Editor shall be made without regard to the identity of the author. Letters accepted for publication shall not be edited or condensed by the Utah State Bar, other than as may be necessary to meet these guidelines.
9. If and when a letter is rejected, the author will be promptly notified.

Editor,

The Hon. Adam T. Mow's recent article titled *The State of the Third District* says HB 366 "also dictates that [municipal] cases must be heard in the courthouse closest to the municipality unless there is an agreement otherwise."

That dictate is consistent with Administrative Office of the Courts (AOC) and Judicial Council (JC) past statements about the West Jordan Courthouse (WJC): "The [WJC] will allow the public from the south end of the valley convenient access to court services[.]" *West Jordan Courthouse to Open Doors in June*, Utah Bar J., May/June 2005, at 39. "The [WJC] will administer cases from the south of the Salt Lake Valley[.]" *Id.* "As the population grew steadily in the south end of the Salt Lake valley, the need for a new courthouse became apparent. … [T]he West Jordan site will accommodate the needs of district and juvenile courts in the southwest part of the valley for years to come." Nancy K. Volmer, *Utah Judicial Council History: Programs and Highlights 1998–2010*, Oct. 2011, at 16–17.

It's also consistent with "[t]he mission of the Utah judiciary[, which] is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law." https://www.utcourts.gov

The bar journal's 500-word maximum for letters limits me to discuss one policy reason supporting HB 366's referred-to dictate. Take for example a class B misdemeanor domestic violence (DV) case dispositioned in Herriman City Justice Court then de novo appealed to Third District Court (or transferred pre-disposition). When that appeal/transfer is assigned to a judge in the WJC, the DV victim, victim advocate, and prosecutor must undertake separate 14-minute, 10.6-mile drives for settings, which can be multiple. Same goes for the defendant and maybe defense counsel.

But if the same appeal/transfer were randomly assigned to a judge in Matheson Courthouse (Matheson), 29-minute, 24.5-mile drives (in Wasatch Front traffic) would be required, inconsistent with the convenient access, accommodation of needs, and efficiency views the AOC, JC, and Utah Courts have expressed – and inconsistent with some venue transfer notions (minimize inconvenience to parties and witnesses, avoid unnecessary costs), not to mention additional victim time off work for extra travel time and incrementally more vehicle emissions into Wasatch Front air. Similarly for a Salt Lake City Justice Court case later randomly assigned on appeal/transfer to the WJC (absent the referred-to agreement) or a Bluffdale City Court case later in Matheson.

Seemingly little things, maybe not affecting all involved, add up too – think Matheson parking, multiplied by up to five people coming from the South Valley, for one case, for every setting, compared to the WJC's closer access and ample parking. For any public transportation nonusers who would suggest it for others, victim personal safety and even more extra travel time for people with schedules can be factors. Victims can be worn out by the process, all parts of it, including logistics.

Ed Berkovich
Municipal prosecutor in the Salt Lake Valley. These thoughts are his, not necessarily his employer's.

Welcome to Spencer Fane!

Spencer Fane is pleased to welcome **Tyler Hardman**, **Robert Scott**, and **Chandler Thompson** to the Salt Lake City office.

Tyler Hardman joins as an Associate and focuses on helping clients navigate complex business and regulatory matters, federal and state compliance, and corporate governance. Robert Scott joins as a Partner with deep commercial and consumer litigation experience spanning a wide variety of industries, issues, and jurisdictions. Chandler Thompson, a Partner, represents clients in diverse commercial litigation matters with a primary focus on consumer lending.


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Interested in writing an article or book review for the *Utah Bar Journal*?

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

GUIDELINES FOR SUBMITTING ARTICLES TO THE UTAH BAR JOURNAL

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

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

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

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

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

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

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

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

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

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



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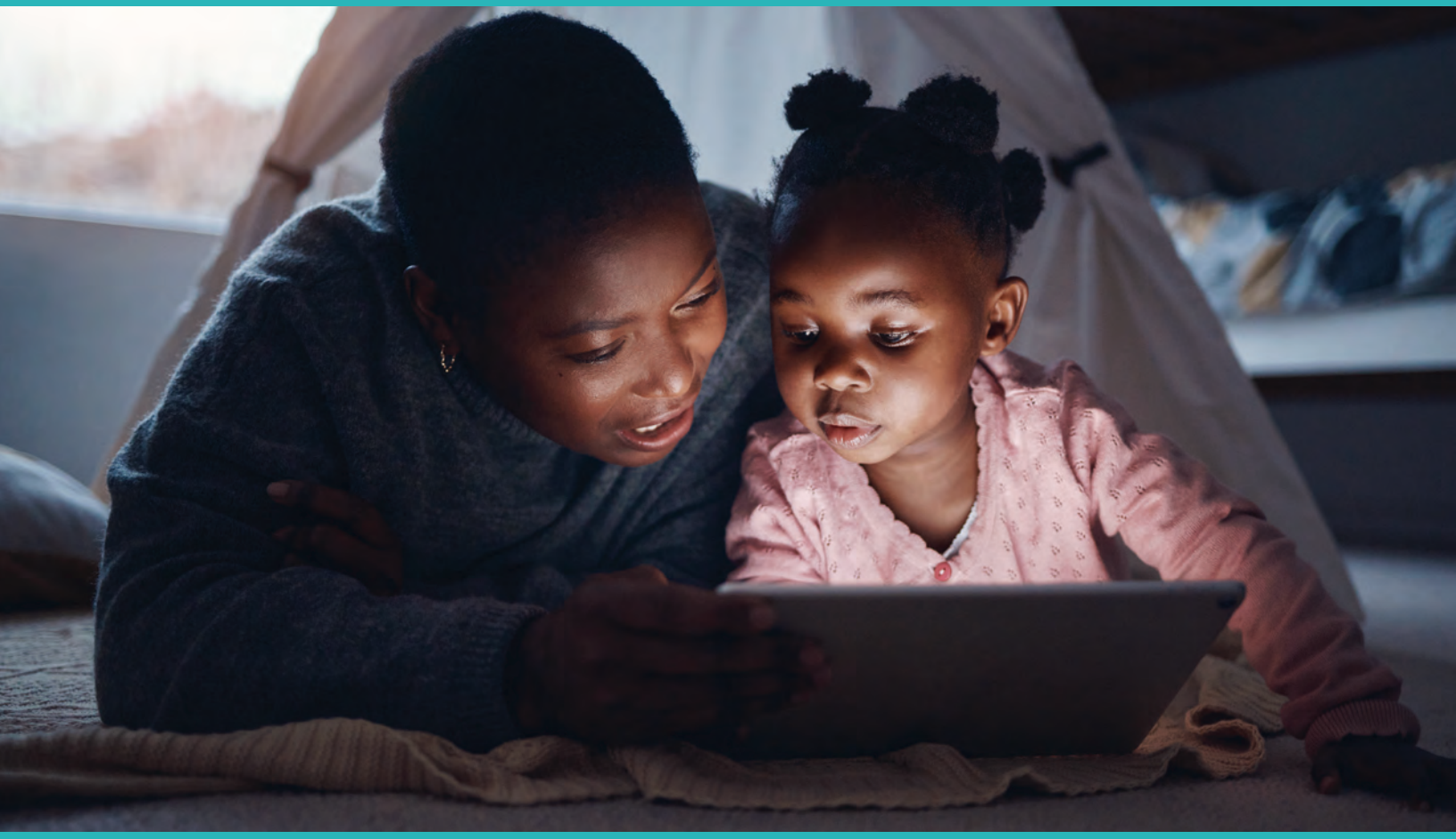
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The Truck at the Bar's Back Door

by Tyler S. Young

More than once, a box truck has backed up to the Utah State Bar's back door and unloaded a dead lawyer's practice. Not a file. A practice. Banker's boxes of it – open matters, closed matters, original documents, and a calendar nobody has looked at in weeks. The family did what grieving families do. They cleared out the office and brought everything to the only address they could think of.

What happens next falls to the Office of Professional Conduct (OPC). OPC did not take those cases. It has no engagement agreement, no authority over the files, and no idea what is in the boxes. Somewhere in them is a client with a statute of limitations running. Somewhere is a client whose settlement money is sitting in a trust account nobody can sign on. Somewhere is a hearing set for next Tuesday. None of those clients has been told anything because nobody yet knows who they are.

Our clients deserve better than a stranger sorting through boxes at the Bar's back door. So do our families. The last thing a grieving spouse should inherit is a law practice they have no authority to close, no ability to bill, and no way to unwind.

The Rules Already Assume You Have a Plan

Utah has no rule that says, in so many words, that you must plan for your own incapacity or death. But do not mistake that for permission to skip it. The Utah Rules of Professional Conduct already assume that someone can carry out your obligations when you cannot. Rule 1.3 tells us that a lawyer's duty of diligence includes making arrangements to protect clients' interests in the event of the lawyer's death, disability, impairment, or incapacity. *See* Utah R. Pro. Cond. 1.3 cmt. [5]; *see also* ABA Comm. on Ethics & Pro. Resp., Formal Op. 92-369 (1992). Rule 1.15 requires that client funds be safeguarded and accounted for, and that trust records be preserved. Rule 1.16(d) requires that on termination of a representation the client get reasonable notice, time to find new counsel, the file, and any unearned fees. Rule 1.17 governs the sale of a practice. And Rule 1.6 follows your files wherever they go.

The backstop, if you leave nothing behind, is Supreme Court Rules of Professional Practice, Rule 1-538. On OPC's request, a district judge may appoint a trustee to inventory your files, notify your clients, distribute the files, and return unearned fees. Read the rule and you will see what it is for: it applies where no partner, executor, or other responsible party capable of conducting the lawyer's affairs is known to exist. It is a remedy of last resort. It runs after the damage, it requires a court, and it depends on some volunteer agreeing to walk into a practice they have never seen. It is not a plan. It is what happens when there isn't one.

The Forms Are Now on the Bar's Website

Here is the good news, and the reason for this column. The work is already done. In November 2021, the Bar's Well-Being Committee for the Legal Profession, under the direction of the Utah Supreme Court, published *Planning Ahead: A Guide to Protecting Your Practice, Family & Clients' Interests in the Event of Your Disability or Death.* It is thorough, it is free, and – most usefully – every form you need is already drafted.

The Committee has now made those forms available individually on the Bar's website under https://www.utahbar.org/well-being/preparing-for-lifes-events/. You no longer have to download seventy pages to get to the two documents that apply to you. Among what you will find there:

- Agreement to Close Law Practice, in a full form and a short form, authorizing another lawyer to close your practice, transfer files, and wind down your affairs;

TYLER S. YOUNG is the President of the Utah State Bar. He practices plaintiff's personal injury and wrongful death law at Young, Kester, Black & Jube in Provo and is of counsel at Dewsnup, King, Olsen, Worel and Havas in Salt Lake.



- Limited Power of Attorney and specimen signature page, for your bank;
- Letter of Understanding, for the family member or friend who will hold the power of attorney until it is needed;
- Notice of Designated Receiver/Assisting Attorney and Notice of Designated Authorized Signer;
- Sample will provisions directing your personal representative to carry out the agreement;
- Sample letters to clients, authorizations for transfer of file, and acknowledgments of receipt;
- Law Office List of Contacts, a file tracking chart, and checklists for closing your own office, closing someone else's, and closing a trust account.

Take an hour with them. Most lawyers reading this could be finished before the end of the week.

What I Am Asking You to Do

If you are in a larger firm, verify what you assume is already handled.

Ask the specific questions. If a partner is hospitalized tomorrow, who signs on the trust account – and is that person's signature card on file at the bank today? Who has the passwords? Who calls the clients, and how quickly? Does your partnership agreement address disability, or only death and withdrawal? "We would figure it out" is not a plan. It is a description of what OPC does.



If you are a solo or small-firm lawyer, start with a name.

Who is the lawyer you would call? Who is the second lawyer, if the first one cannot? Who is the non-lawyer – a spouse, an office manager, a paralegal, a personal representative? Who knows where things are and who to hand the keys to? Once you have the names, the forms take an afternoon. Choosing the people is the hard part, and no form and no rule will do it for you.

Then tell somebody else.

This is the part I would ask you not to skip. Every one of us knows a solo practitioner – a friend from law school, opposing counsel we like, the lawyer down the hall who has practiced alone for thirty years. Send them this column or send them the link. Raise it at your next firm meeting and ask whether the younger lawyers in your office know any of these exist. The lawyers most at risk are the ones least likely to be reading about succession planning on a Tuesday afternoon, and the Bar cannot reach them the way you can.

Worth Knowing From the Handbook

A few points from *Planning Ahead* that tend to surprise people:

Split the roles.

The handbook recommends naming someone other than your assisting attorney as the authorized signer on your trust account. Two sets of eyes on the money, and it avoids conflicting fiduciary duties if the account does not balance.

Decide the trigger and decide who pulls it.

The hardest question is not who will step in. It is under what circumstances they get access, and who decides those circumstances have arrived. A physician's letter? The assisting attorney's good-faith judgment? A family member who holds the power of attorney until they conclude the day has come? Pick one and write it down.

Call your bank before you sign anything.

An agreement between you and your assisting attorney may not satisfy your bank's records requirements. Most banks want a power of attorney. Get written confirmation that yours will honor what you have signed. Otherwise you have a plan the bank will not recognize on the one day it matters.

Put it in the engagement letter.

The simplest way to notify clients is a clause in your retainer or fee agreement. The client's signature is the authorization, and it gives the client the chance to object while you are still here to discuss it.

Stop holding original client documents.

Original wills and estate planning documents sitting in your file cabinet become somebody else's emergency.

Write down where everything is.

Passwords, cloud storage credentials, how to generate the active client list, where closed files are kept, where the mailbox key is, who the landlord is. The Law Office List of Contacts does this for you if you will sit down and fill it out.

Renew it every year.

Confirm your assisting attorney is still willing and able. Make sure the name in your fee agreement is still current.

Before the End of the Week

Nobody plans on being the lawyer whose files end up at the Bar's back door. The lawyers whose practices arrived that way were, by every account, good lawyers who cared about their clients. They simply never got to the one afternoon of work that would have made the difference, because there was always a deadline in front of it.

The Well-Being Committee has done the hard part. The forms are drafted, they are free, and they are now sitting on the Bar's website waiting for your signature. Please go get them. Then call the solo practitioner you thought of while you were reading this and tell them to do the same.



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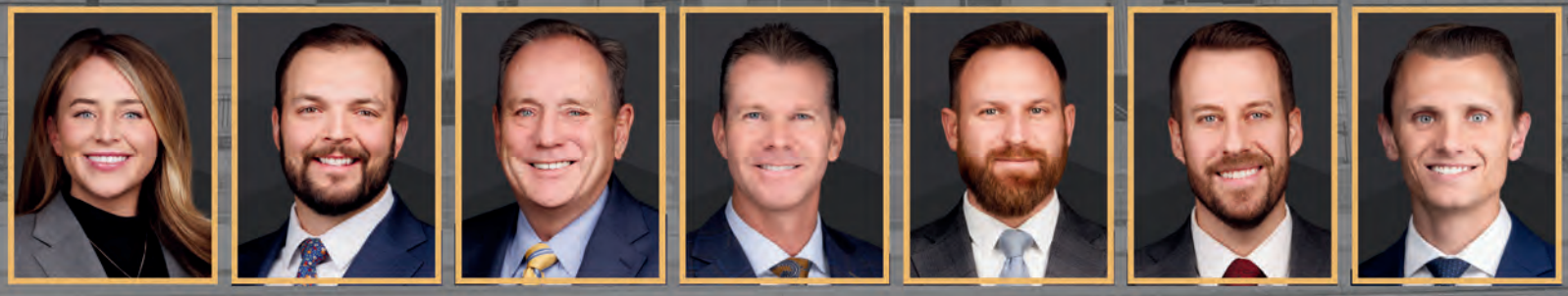
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Finding Strength in Gratitude

by Justice Jay T. Jorgensen

I grew up in the small farming community of Ioka, Utah. My earliest memory is simple and stirs joy in me every time I think of it. I was riding a tricycle in the Pioneer Day parade in nearby Roosevelt. My parents had taped red, white, and blue tinsel streamers at the end of each of my handlebars. I was cruising in the sun and having the time of my young life.

While this is my first memory, it is just one of many moments where people were kind and I was happy. On our family farm I learned that alfalfa makes a distinct fragrance when it is cut and another when it is baled. The air in Utah has a distinct, beautiful smell after a rain. The pines in the Uintah mountains also produce a sharp scent. A pheasant bursting from its cover makes me feel like I'm having a heart attack. The valley where I grew up is still after a winter snowfall. The recollection from each of these experiences is a treasure I can store in my library of memories and then enjoy again and again.

> *"One tool to maintain our well-being is actively practicing gratitude.... I have discovered that, the more I mull over happy memories and am grateful, the easier it is to notice new joyful experiences...."*

In the May/June edition of the *Utah Bar Journal*, Justice Nielsen wrote about the importance of finding mentors and mentoring others. Our profession has a long tradition of learning or "reading" the law under the guidance of more seasoned lawyers. In addition to education, mentors can help us find happiness in our practice. I often reflect on experiences with lawyers and judges who mentored me. When I was a summer associate at Stoel Rives in Salt Lake City, the former United States Attorney – David Jordan – had a pro bono criminal trial and invited me to be part of his three-person trial team. The excitement I felt at going to trial! My part was small, but I felt like I was doing what I had dreamed about. Each witness, each exhibit felt like a milestone in my new career. Our client was acquitted, which was a sweetness I hadn't expected when I was invited to join the team. Similarly, when I was in my first years of practice, a kind associate taught me how to handle various aspects of litigation and was a constant friend. She is now Associate Chief Justice Jill Pohlman, and I am enjoying an unexpected second opportunity to learn from her.

Uplifting moments surround us, but if we aren't looking for them, only the most dramatic ones catch our attention. We must learn to recognize and treasure the joyful parts of each experience. I often worked late at night when I served as a law clerk to Chief Justice William H. Rehnquist. It would have been easy to feel the heavy schedule was a burden. But what I remember is my daughters, who were toddlers at the time, laughing and chasing their bouncy balls down the marble hallways after the Supreme Court was closed for the night. We can cultivate the habit of noticing the beautiful, uplifting, and joyful aspects of even our difficult days and then intentionally curate those experiences

HON. JAY T. JORGENSEN was appointed to the Utah Supreme Court in June, 2026 by Governor Spencer J. Cox.



into a library of memories. Then, we can withdraw those memories from our library and enjoy them anew.

Gratitude isn't only for the easy days. Being a lawyer is challenging. We face stress, long hours, and often contention. The practice and its demands sometimes pile burdens upon us. Not every moment is happy. Indeed, some moments are the opposite. Lawyers help people at the best and worst moments of their lives. Although we try to maintain a professional distance from our clients, sometimes we can't help but feel deep emotions about their struggles. The Utah Supreme Court, the Utah Bar, and the state's law schools have noted that studying and practicing the law can take a toll on attorneys. They have introduced programs to help lawyers learn how to care for their mental and physical health and to provide support in hard moments. I applaud these efforts.

One tool to maintain our well-being is actively practicing gratitude. My memory library is a key part of that effort. Reviewing happy memories and feeling grateful for those experiences gives me strength and improves my mood on both good and bad days. I have discovered that, the more I mull over happy memories and am grateful, the easier it is to notice new joyful experiences and add them to my collection. There is something about grateful reminiscence that sharpens my ability to recognize the good moments and to collect them for future use.

It's easy to get started. All of us have precious memories. Set aside some time today and think about some of your favorites. Then do it again tomorrow. This meditation can fit into any time and can be done in any place where you find a moment. All you need is your memories and a few minutes to be grateful. Little by little, you'll feel stronger as this becomes a habit and you recognize and remember the many joys of life and serving in the law.



The Legacy of Chief Justice Matthew Durrant

by Ron Gordon



On August 31, Chief Justice Matthew Durrant retired after twenty-nine years of exceptional service to the Utah Judiciary and the people of Utah. He leaves a legacy that will be hard for anyone to match.

Chief Justice Durrant's jurisprudence speaks for itself. During his time on the Utah Supreme Court, the court decided over 2,100 cases and he authored 457 majority opinions. His contributions as a justice will continue to shape Utah law for decades. His reputation for excellence is reflected in his 2024 Judicial Performance Evaluation Commission (JPEC) report, which is one of the most laudatory reports I have seen from JPEC, and I have read hundreds. (He probably beat himself up over his lowest score on any question – 4.6 out of 5 – even though that score was ten points above passing and was still higher than the average of all appellate court judges on that question.)

It is hard to overstate the significance of his contributions to the Utah Judiciary. Even so, it is his character, and approach to interacting with other people, that impress me the most. In addition to the many other roles he filled in the Utah Judiciary, Chief Justice Durrant served as my direct supervisor for the past five years. This gave me a front row seat to observe him and learn from him. What I observed was a masterclass in being a strong, gracious, and effective leader and a genuinely exceptional person.

Humility

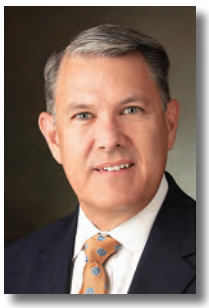
An attribute that is quickly apparent when interacting with Chief Justice Durrant is his humility. He is brilliant, one of the smartest, most insightful people I have ever met. Yet, he is always humble in his approach to the law as well as his approach to working with other people.

His humility allows him to be a skillful and respectful listener. He is not just quiet when other people are talking. He listens to what they are saying with a belief that they have something of value to say. He processes information he gains from others and uses it to make an informed opinion or decision. For those of us who always have more to learn, listening is essential. It seems as though it would not be as essential for someone like Chief Justice Durrant who is always one of the smartest people in the room. Even so, he always asks people for their opinions and input before sharing his.

This was most evident to me during our many one-on-one meetings. The chief justice is the head of both the Utah Supreme Court and the Utah Judicial Council, the two governing authorities of the Utah Judiciary. As such, that person is the decision-maker on many governance questions. So, Chief Justice Durrant and I met at least weekly. I often came to the meetings with pressing questions that only he could answer because of his leadership roles. After I would explain an issue and ask a question, his first response was always the same: "What do you think, Ron?"

I would like to think I was special somehow and that is why he asked my opinion. The truth is that is how he treats everyone.

RON GORDON serves as the State Court Administrator for the Utah Judiciary. He has held that position since June 2021.



He always gives others an opportunity to speak before he speaks. He understands that when leaders speak first, others are often less likely to share their opinions, especially when those opinions differ from the leader. He also believes that he can learn something from others and wants to hear what they have to say. It takes a mature leader, a humble leader, to give everyone else the chance to speak before weighing in on any given issue.

The humility shown by Chief Justice Durrant is not only kind and polite. It has significant impacts on people around him. His humility disarms people and encourages participation by those who might otherwise be reluctant to do so. It makes him approachable and relatable. It also inspires confidence, growth, and excellence in those he leads.

Leadership

Chief Justice Durrant's humility and kindness should never be confused with weakness or reluctance to lead. He is a strong, effective leader who builds the organization by building those around him. His humility also should not be confused with contentment. He has high expectations for himself and those he leads. He helps others meet those expectations in a style all his own.

He is quick to praise and understands that recognizing someone else's accomplishments and virtues never diminishes his own. When speaking about me, he said far more complimentary things than I deserved. On more than one occasion, I wondered if I should interrupt and let him know he had confused me with someone else. He is not lying, or even exaggerating, when he does this. He sees the best in people and encourages them to see the best in themselves. His confidence in others encourages individuals to raise their standards and improve their performance.

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Through praising others and leading by example, he establishes a culture of constant improvement. Among state judicial leaders, the Utah Judiciary is considered an innovator and is often praised at national gatherings. Chief Justice Durrant knows this and has never let that slow his efforts to improve our ability to deliver justice.

He stated in the 2013 State of the Judiciary, his first as chief justice, "Our courts need to be welcoming to all.... I see a critical part of my job as making sure our courts are like a big tent, with its flaps wide open, instead of a walled fortress accessible only to a few." His efforts to improve access to justice began long before he assumed the role of chief justice and continued through his final days on the bench. Ultimately, he led the judiciary through a time of unprecedented improvements in accessibility and modernization.

There is not enough space in this article for an exhaustive review of the improvements and accomplishments under the leadership of Chief Justice Durrant, so I will simply provide a partial list.

- Tiered civil discovery
- Statewide electronic filing
- Licensed paralegal practitioners
- Online dispute resolution
- MyCourtCase
- MyPaperwork
- Community Court
- Office of Fairness and Accountability
- Self-Help Center
- Regulatory sandbox
- Virtual hearings

Justice

Chief Justice Durrant cares deeply about the judiciary and its ability to deliver justice to all who need our services. During his 2013 State of the Judiciary address, he also hinted at what justice means to him. Referring to court patrons, he said they "deserve a judge who is fair, impartial, and committed to fairly applying the law to the facts; they deserve a judge who is uninfluenced by public opinion, position, power, race, gender, or anything beyond the law and the facts." This message was important in 2013 and became increasingly important over the next thirteen years.

Perhaps nowhere did Chief Justice Durrant articulate his vision of the judiciary more clearly than in two speeches that bookended the construction of the new Manti courthouse. In August 2023, he said the following at the groundbreaking ceremony:

> So what can people expect when they enter the walls of this courthouse? For many of them, they will come with their most precious and painful

problems. And the minutes or days they spend within the walls of this courthouse will be among the most important of their lives.

They can expect to see a judge who will decide their case fairly, through the application of the law to the facts. Who requires proof by evidence and a disciplined process. Who won't care who they know, or how much they make, or what their gender, their race, or their sexual preference may be. They'll decide the case on the facts and the evidence.

In that sense this will be a sanctuary. A place where justice is its lifeblood. The rule of law will reign in this courthouse. And under the rule of law, no person is above the law, and no one is below its protection.

A little over eighteen months later, after the building was constructed, Chief Justice Durrant spoke during the dedication ceremony of the Manti courthouse. The event occurred during a time when protecting judicial independence was becoming increasingly important. His remarks are evidence of his strong leadership and his commitment to the foundational principles of justice in this country.

Since that groundbreaking, we have witnessed increasing attacks on the judiciary both nationally and locally. Why do we see these increasing attacks? I suppose there are many reasons. I think part of it is that some want judges to follow public opinion or political pressure, not constitutional principle. But the work of a judge is not to please, it is to uphold the law even when the result is unpopular.

Judicial independence is what allows a judge to do just that. It ensures that decisions are grounded in the law and facts, not political pressure or popular demand. It is the safeguard that protects individual rights even when they are inconvenient or controversial. As Justice Kennedy said, "Judicial Independence is not conferred so that judges can do as they please, it is conferred so they can do as they must."

. . . .

This courthouse, the Manti courthouse, can and must be a shining city on a hill. It must reflect the best of who we are, of people committed to fairness, truth, and the rule of law. But that light can shine only if we defend what makes our courts strong: their impartiality, their independence, and their commitment to the Constitution. Every judge who serves within these walls has taken an oath to support, obey, and defend the Constitution of the United States and the Constitution of Utah. That oath is not merely ceremonial; it is a promise, a sacred duty.

Chief Justice Durrant spent his career making our court system more accessible, protecting the independence of the judiciary, and deciding cases based on the law. He showed that strong leaders can also be humble, gracious, respectful, kind, and fair.

The Utah Judiciary is better because of him. I am better because of him. I wish him congratulations on a well-earned retirement.



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Your Inventors Used AI. So Can Opposing Counsel.

Detecting and Exploiting AI-Use Indicia in Patents and Applications

by John W. Ogilvie

AUTHOR'S NOTE: *This article is for informational purposes only and does not constitute legal advice.*

Your client's inventors are using artificial intelligence (AI). Some are using it in problematic ways that will surface years later in a deposition transcript or a due-diligence memo. The use does not disappear when the chat window closes. AI use leaves traces in the language of a patent application, in the architecture of patent claims, and eventually in a permanent public record of examination by the United States Patent and Trademark Office (USPTO), known as the "file history" or "prosecution history."

That file history is an asset. The same kind of AI use that creates exposure in a patent your client owns represents leverage against a patent threatening your client. A litigator defending an infringement suit, a transactional lawyer pricing a portfolio, and an in-house lawyer supervising an inventor team are all looking at the file history from different perspectives, with different ultimate goals. But an early goal for each is to identify potentially damaging uses of AI.

These issues land close to home in Utah, where a dense concentration of technology companies, startups, and independent inventors generates a steady stream of patent filings, with a steady stream of AI-assisted invention work. This article explores the implications of AI use in drafting and obtaining patents; how you respond to those implications depends on your situation. The implications of AI use are relevant to Utah litigators, deal counsel, patent practitioners, and in-house counsel who supervise inventors. None of these groups can safely treat AI-assisted invention as someone else's problem. That doesn't mean that every AI-assisted patent is defective. It does mean that AI use can leave footprints that help focus legally significant inquiries.

Why This Matters Now

Three developments make this a present concern rather than a speculative one.

First, AI adoption. Inventors and the patent practitioners who help draft and prosecute applications now use general-purpose AI tools as a matter of routine; many practitioners also use special-purpose AI tools. The question is no longer whether AI touched a given patent, but where and how it touched, and with what consequences. Assuming the answer is "nowhere" often misses threats or opportunities.

Second, inventorship guidance has reset. On November 28, 2025, the USPTO rescinded its February 13, 2024 guidance on AI-assisted inventions and replaced it with revised guidance. Revised Inventorship Guidance for AI-Assisted Inventions, 90 Fed. Reg. 54636 (Nov. 28, 2025). The move was a rescission-and-replacement, and its effect is clarifying rather than liberating: there is no separate or modified inventorship standard for AI-assisted inventions, so the same rule governs regardless of whether AI was used. Only natural persons may properly be named as inventors on U.S. patent applications. *See Thaler v. Vidal*, 43 F.4th 1207, 1212–13 (Fed. Cir. 2022). An AI system is thus treated as a tool that may assist a human inventor. Inventorship analysis anchored to the rescinded guidance is stale, and conclusions drawn from it should be revisited.

Third, the privilege questions are no longer purely theoretical. Courts have begun to address how particular AI-use scenarios bear on attorney-client privilege and work-product claims. In early 2026, a federal court held that a defendant's self-directed exchanges with a publicly available AI platform were protected by neither attorney-client privilege nor the work-product doctrine. *See United States v. Heppner*, 820 F. Supp. 3d 292, 296–99 (S.D.N.Y 2026) (determining that an AI platform is not a lawyer;

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the defendant acted without counsel's direction; and the platform's terms of service defeated any reasonable expectation of confidentiality). A week earlier, a different federal court reached a protective result on different facts, declining to find work-product waiver where a litigant used AI tools to process her own mental impressions, on the view that an AI platform is a tool, not a person to whom disclosure waives protection. *Warner v. Gilbarco, Inc.*, 820 F. Supp. 3d 629, 636–37 (E.D. Mich. 2026).

The two decisions are best read together, not against each other. Neither created a special AI privilege rule. Both applied familiar questions about relationship, confidentiality, counsel direction, and litigation purpose to a new context. The body of law probing privilege protection for uses of AI is thin and still developing, but it is no longer absent; a litigant can now point to authority rather than speculation when contesting, or asserting, privilege over an AI session.

The Liability Side: What AI Use Does to a Patent You Own

Inventorship and Human Conception

The live risk is not that an AI will be named as an inventor. The risk is subtler and more dangerous: an unprovable human conception story. Conception is the touchstone of inventorship. If the claims of an application emerged substantially from AI output, and no human can later persuasively describe an act of conception for the claimed subject matter, the inventorship record is vulnerable. *See* 35 U.S.C. § 100(f); *Thaler*, 43 F.4th at 1212–13. The problem compounds when the claim set is broad and the human contribution to particular claims is diffuse. The defect is not that AI helped; it is that the human conception narrative cannot be provided when an adversary properly demands it. Improper assertions of inventorship can often be corrected when a human should have been named as an inventor but was not. But if the de facto inventor is an AI, similar correction is not possible, and the patent may face a serious validity challenge.

The Duty of Candor

Every person substantively involved in preparing or prosecuting a patent application owes the USPTO a duty of candor and good faith. 37 C.F.R. § 1.56. That duty attaches to material information known to the human actors, regardless of how the information reached them. AI is a remarkably effective surfacer of prior art, especially in response to open-ended questions such as "Is my invention patentable?" or "Is my invention new?" If AI surfaced material prior art that a human reviewed, the obligation to disclose that prior art may attach. Intentionally withholding non-cumulative material prior art exposes a patent to unenforceability for inequitable conduct.

Careful analysis notes two points of nuance. First, the duty of candor runs to information known to humans; an AI's internal processing, standing alone, is not knowledge held by a person. Second, the disclosure obligation operates differently at the provisional patent application stage; a provisional application cannot issue as a patent and carries no information disclosure duty. Instead, the exposure crystallizes when a corresponding non-provisional application is pursued with a priority claim to the provisional. Proving inequitable conduct remains difficult, generally requiring both but-for materiality and a specific intent

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to deceive, each shown by clear and convincing evidence. *See Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276, 1290–93 (Fed. Cir. 2011) (en banc). AI-use indicia alone do not establish inequitable conduct, but they may help one identify where to look.

Public Disclosure and Lost Rights

Independent of any privilege or candor question, feeding unpublished invention details into an AI platform can threaten patent rights directly. Under 35 U.S.C. § 102, an invention disclosed to the public before its effective filing date may be unavailable for patenting. Potential impact is not limited to U.S. patents. Many foreign jurisdictions impose an absolute novelty rule that, aside from narrow exceptions, prevents a valid patent from being obtained if the claimed subject matter was public before the application was filed.

Whether inputting invention details into a given platform constitutes a public disclosure is fact-dependent. Disclosure turns on factors such as the data-use terms, whether AI model training was disabled, and whether third parties could access the information. The one-year grace period of 35 U.S.C. § 102(b)(1) offers only partial cover and has limits.

The impact of public disclosure can be permanent. An inadvertent disclosure to an AI platform may reduce or eliminate options for obtaining valid patent protection. Rights lost that way cannot be restored by later establishing that the conversation was privileged. This is a risk that inventors are not likely to see coming, because it is invisible at the moment it is incurred: the prompt is submitted to the AI and the rights are impaired, but nothing visibly alarming to the inventor happens in the chat session.

Trade Secret Exposure

Particular subject matter discussed in a patent application can be maintained as a trade secret for a time, but it will be made public if the patent application is published (as many are) or if the patent application issues as a granted patent. Thus, a choice is sometimes necessary between trying to patent the subject matter or trying to maintain it as a trade secret. For inventions a client has chosen to protect as trade secrets, or has not yet decided how to protect, inadvertent disclosure to an AI platform raises a serious concern.

Trade-secret protection requires reasonable measures to maintain secrecy. *See* Utah Code Ann. § 13-24-2(4)(b) (defining, for purposes of the Utah Uniform Trade Secrets Act, a trade secret to require efforts "reasonable under the circumstances to maintain its secrecy"); *see also* 18 U.S.C. § 1839(3)(A) (requiring that, under the Defend Trade Secrets Act, the owner "has taken reasonable measures to keep such information secret").

Inputting detailed technical information about an unpublished invention into an AI platform, for which terms reserve a right to use inputs for training, invites the argument that reasonable secrecy measures were not maintained at that time. The decision to use an AI tool is not only a patent-impacting decision; it is also a trade-secret decision, whether the AI tool user recognizes it as such or not.

The File History

Patent examination generates a permanent public record that can be used to construe claim scope in later litigation. In some scenarios, an accused infringer argues for a narrower claim scope to move an accused product or service outside the claims.



In other scenarios, an accused infringer argues for a broader claim scope to encompass prior art and thereby invalidate the claim. Statements characterizing prior art or distinguishing references can give rise to an estoppel useful in either case. *See Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co*., 535 U.S. 722, 733–34 (2002). Where AI-generated analysis shapes the arguments made during examination, the AI's role in producing that strategy becomes a fact that may matter. The file history (examination record) of a granted patent is public, and it cannot be edited.

Privilege and Work Product

The privilege and work-product questions surrounding AI sessions deserve their own in-depth treatment, which the limited space here does not allow. Briefly, the protected status of AI chat logs, prompt histories, and outputs is unsettled, and courts are just beginning to address it. *See Heppner*, 820 F. Supp. 3d 292; *Warner*, 820 F. Supp. 3d 629. An attorney or an inventor should not assume that an AI session is privileged or immune from discovery merely because it was created in the course of legal work. A safer working assumption is that more is needed. As *Heppner* and *Warner* illustrate, the answer is fact-dependent: it turns on the tool and its terms, the user's role, whether counsel directed the work, the confidentiality controls in place, and the purpose for which the AI session was created.

The AI Footprint Is Detectable

All of this assumes the AI use can be spotted. Often it can. AI-assisted drafting tends to leave characteristic traces in the two document types that matter most here: patent applications and Office Action responses.

General-purpose AI-detection and plagiarism-detection tools exist and can be run against patent documents like any other text. They are not useless. But detecting AI use in the crafting of patent documents benefits substantially from indicia particular to patent applications and patent Office Action responses. The best analyses of AI use in patent documents rely on signals a general text classifier is not built to recognize, because those signals are artifacts of the patenting process rather than features of prose generally. The patent-specific content is where the most meaningful signals live.

Detecting AI use and exploring its implications require careful analysis, not a mere checklist. No single indicator reliably proves damaging use of AI. Some candidate indicia occur coincidentally in documents no AI ever touched. The analytical value comes from experienced analysis of aggregated signals: reading multiple indicia together, weighing their co-occurrence, and mapping the result to specific legal questions and a particular kind of proceeding. A credible analysis is a product of legal judgment, not mere software output.

The Opportunity Side: What an Adversary Does with the Footprint

The same AI footprint that is an exposure for a patent owner is an opportunity for an adversary. Cybersecurity has a similar attacker-versus-defender reality and supplies useful vocabulary for thinking about AI use and its implications. A patent or patent application, like a computing system, has vulnerabilities. AI-use vulnerabilities, like cybersecurity vulnerabilities, can be exploited, e.g., through discovery requests, deposition questions, and negotiating leverage. Counsel for patent owners can "red-team" a patent before an adversary does, probing it for the weaknesses an opponent would find. A legal defense-in-depth approach makes sense for preventing or mitigating patent weaknesses, just as cybersecurity defense-in-depth helps prevent or mitigate computing system weaknesses.

An accused infringer who has received a demand letter can use the asserted patent's file history to focus discovery and deposition strategy. That may include identifying the questions about conception, the questions about attorney review, and the implications of AI use most likely to be productive, before committing to a costly litigation posture.

A potential acquirer or licensee conducting diligence can price in conduct-based exposure that a purely structural review of the claims and supporting specification and prior art would miss. A patent can be structurally sound and describe a credible advance over prior art, but still carry conduct-based risk in how it was drafted or obtained. The two analyses are different, and a buyer who runs only the first remains exposed to the second.

An inter partes review petitioner or district court adversary faces a proceeding-sensitivity filter. Some proceedings limit arguments to prior-art challenges under 35 U.S.C. Secs. 102 and 103. Other proceedings are more wide-ranging. The same AI use indicator can support different tactical or strategic moves depending on the forum.

In many proceedings, certain questions can be constructed in an either-or form so that they are uncomfortable to answer either way. Suppose an adversary asks who authored a particular passage of an application: answering "the attorney did" opens one line of inquiry, and answering "the AI did" opens a different one. Either path of inquiry poses risks to the patent owner. Identifying which questions have that scissor structure for a given document and a given proceeding is attorney work, not a form to fill in.

That's not to say an attorney should avoid using suitable AI tools, under suitable circumstances, to assist their work. But the risks discussed here do not disappear merely because the user

of AI is an attorney. Knowing the limitations of AI, and understanding the privilege landscape, can be very helpful when using AI, whether to draft documents or to detect AI-assisted drafting or explore its implications.

A prudent patent owner runs the AI use analysis on its own patents and applications, red-teaming before filing the application and again before asserting an infringement claim. In that way, vulnerabilities can be found and addressed by friendly counsel instead of being discovered by an opponent.

The Response, on Both Sides

For patent owners, understanding the implications of AI use enables vulnerability prevention and pre-filing hygiene. Inventor use of AI is not something to forbid; it is something to direct and monitor. Effective guidance recognizes that an AI-assisted invention process involves distinct roles for the inventor, the AI tool, and the attorney, each with its own proper scope. Keeping those roles distinct helps protect the resulting patent rights; blurring them creates avoidable exposure. The specific content of the guidance depends on factors such as the client's goals, the invention's technology, and the AI platform, and is developed in consultation with counsel.

For adversaries and deal counsel, understanding the implications of AI use enables a structured, attorney-directed analysis of the patent and its examination record, generated and refined as privileged attorney work product that reflects counsel's opinions, mental impressions, and legal judgment. Whether and how a client uses such an analysis is a separate question. But any strategic use of the analysis depends on the analysis being sound.

Conclusion

The AI footprint in a patent cuts both ways. In a portfolio a client owns, it is exposure: an inventorship gap, a candor question, a lost-rights risk, or a permanent record that can be read against the patent later. In a patent a client faces, it is leverage, providing a roadmap for discovery, diligence, and negotiation.

Inventors use AI on their way to a patent. Counsel, including opposing counsel whose goal is to reduce or eliminate that patent's value, also use AI. The lawyers best positioned will not necessarily be those who use the newest AI tools. It will be those who understand where AI use changes the evidentiary, prosecution, diligence, and litigation record and who proactively turn those implications to their clients' advantage instead of being surprised by them.





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Appellate Highlights

by Rodney R. Parker, Dani Cepernich, 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

RV Holdings 4, LLC v. Standard Fiber Investors, LLC
2026 UT 15 (July 9, 2026)

In reviewing arbitration decision, courts "resolve all doubt in favor of arbitration." But over time, this phrase has expanded from its original purpose – favoring arbitration only when there is doubt that the dispute was subject to arbitration – to determining whether the arbitrator exceeded his or her jurisdiction. In this case, the supreme court limited the deference owed to arbitrator's decisions upon judicial review to its original scope. **Resolving "all doubts in favor of arbitration" is appropriate only when deciding whether an issue subject to arbitration.** Courts must review arbitration awards and other issues without "putting a thumb on the scale" to favor the arbitrator's decision.

RMB, Inc. v. Celotto
2026 UT 19 (July 23, 2026)

In this dramshop case, the question was whether bars who settled dramshop claims against them can then seek contribution from the intoxicated driver. **The court held that a voluntary settlement is not an "award" under the Dramshop Act and so contribution from the intoxicated driver is not available.**

State v. Jaramillo
2026 UT 20 (July 23, 2026)

The Utah Supreme Court reversed the suppression of evidence seized during nighttime execution of two daytime-only search warrants. The court reaffirmed that under *State v. Fixel*, 744 P.2d 1366 (Utah 1987), and *State v. Rowe*, 850 P.2d 427 (Utah 1992), "a violation of our criminal procedure rules requires suppression in only three circumstances: where (1) the rule violation also violates the federal Constitution; (2) the officer acts in bad faith; or (3) the warrant would not have been granted – or execution would have been less abrasive – had the rule been complied with." **Applying this framework, a violation of Rule 40(e)(1) of the Utah Rules of Criminal Procedure, which undisputedly occurred here, does not alone justify suppression.** The district court erred in suppressing the seized evidence in the absence of any of the three circumstances.

In re J.M.
2026 UT 21 (July 23, 2026)

In Utah, some juvenile offenders qualify for a deferment of prosecution agreement called a "nonjudicial adjustment." J.M. accepted a probation officer's offer of a nonjudicial adjustment and completed the required community service, but prosecutors referred her for prosecution anyway. The district court denied J.M.'s subsequent motion to dismiss the charges against her, and the Utah Supreme Court affirmed. As a matter of apparent first impression, the appellate court held that **the prosecutor's charging discretion is not restricted by the juvenile court's statutory authority to refer a juvenile for a nonjudicial adjustment if the adjustment is not actually available to the juvenile under the statute**. Because the adjustment wasn't lawfully available to J.M., the probation officer's representation or the juvenile court's subsequent referral were not binding on the prosecutor who eventually brought charges. Chief Justice Durrant dissented, arguing the statutory scheme inherently limits prosecutorial discretion once the juvenile is offered and agrees to nonjudicial adjustment.

In re J.A.C.
2026 UT 27 (July 30, 2026)

On a mother's second appeal from proceedings terminating her parental rights, the State and guardian ad litem argued that a jurisdictional defect in the first appeal deprived the Utah Supreme Court of subject-matter jurisdiction in the second appeal. Rejecting this argument, the supreme court explained that "the ability to challenge a jurisdictional defect does not extend forever." Instead, **"the ability to raise questions of jurisdiction expires after the last available opportunity to appeal final judgments on a particular set of issues has passed."** Thus, the appellate court had jurisdiction to address any issues which arose after conclusion of the jurisdictionally deficient first appeal.

Western Mortgage & Realty Co. v. Walker
2026 UT 30 (Aug. 20, 2026)

The trial court awarded the Walkers attorney's fees as part of their consequential damages for breach of contract. After trial, they revealed that their attorneys were working on a contingency fee. The supreme court reversed the award of those fees, applying ordinary disclosure rules applicable to damages. **Because the Walkers had not timely disclosed that the calculation of their damages included a contingency fee, the award was disallowed.**

State v. Tamoua
2026 UT 31 (Aug. 20, 2026)

The State sought and was granted interlocutory review of the district court's denial of its motion to preclude the criminal defendant from pursuing special mitigation based on a schizophrenic delusion he claimed compelled him to kill the victim. The Utah Supreme Court considered what constitutes "legal justification" for purposes of the special mitigation statute, under which a homicide conviction can be reduced in seriousness if the defendant acted under a delusion that, if true, "would provide a legal justification for the defendant's conduct." Utah Code § 76-5-205.5(2)(a)(ii). **It held "legal justification" is a term of art for that category of defenses that would have fallen under "justification" as that term was understood as common law.** Compulsion is not such a defense.

Darden Restaurant v. Labor Commission
2026 UT 32 (Aug. 20, 2026)

An employee failed to notify his employer of injuries from an industrial accident within the statutory 180-day notice period, which acts as a statute of limitations for such claims. In subsequent agency proceedings, the employer pleaded a limitations defense and established some evidence supporting the defense in the record. But the employer did not move for dismissal based on the limitations defense; instead, the administrative law judge (ALJ) raised the issue sua sponte and dismissed the employee's claims as time-barred. The Utah Supreme Court held, as an apparent matter of first impression, that **the employer's failure to seek affirmative relief based on the limitations defense amounted to a waiver, and the ALJ's *sua sponte* ruling on the defense was not enough to overcome that waiver.**



Utah Court of Appeals

Hammon v. Zoom, Inc.
2026 UT App 106 (July 16, 2026)

Hammon defaulted on some $10 million of real estate loans. She sued the lender for fraud and other claims, including declaratory relief. In reviewing dismissal of her fraud claims, the court of appeals held that **the economic loss rule applies to bar a fraud claim against an agent or employee of a lender acting in that capacity.**

Paulson v. Paulson
2026 UT App 108 (July 16, 2026)

In this divorce case, the court held that, although Husband's expert disclosures were inadequate, the trial court nevertheless abused its discretion when it found that the failure was not harmless. Three weeks after the disclosure, Husband had both provided a full expert report and offered to allow Wife to depose the expert. Wife, however, "made the strategic decision" to respond only by seeking summary judgment on the issue and claimed that she had been harmed because it was too late to designate her own rebuttal expert. The court of appeals held that the **trial court exceeded its "considerable discretion" by excluding the expert without considering harmlessness in the context of the steps taken to ameliorate the harm, where a trial had not been set and would not be for a considerable time because of the Covid pandemic.**

Taylor v. Lawlor
2026 UT App 118 (Aug. 6, 2026)

The district court struck plaintiff's timely memorandum in opposition to a motion to dismiss for an unspecified "failure to comply with the Utah Rules of Civil Procedure" – later identified as a failure to double-space the memorandum in accordance with Rule 10(d). The district court then rejected an amended memorandum as a sanction under Rule 37 and granted the motion to dismiss for lack of opposition. The court of appeals reversed, holding **neither Rule 10 nor Rule 37 permitted the sanction imposed, meaning the district court exceeded its authority by rejecting the memorandum and granting the motion to dismiss.** Although other sources of authority may permit the district court to impose such sanctions for procedural failures, the court of appeals emphasized that "the 'general philosophy' of our rules of procedure 'is that liberality should be indulged to secure the just, speedy, and inexpensive determination of every action.'"



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Gallegos v. Brewski's on Historic 25th Street
2026 UT App 120 (Aug. 6, 2026)

In this fractured opinion, **the court addressed the district court's order precluding the plaintiff from relying on his rebuttal expert in his case in chief.** The district court had excluded plaintiff's burden-of-proof expert witness as a sanction for counsel's unilateral decision to end the expert deposition mid-way through due to the expert being unprepared. Because the district court held expert testimony was required for plaintiff's claims but he could not rely on his rebuttal expert in his case-in-chief, the district court granted summary judgment to the defendant. The majority on this issue "assume[d] without deciding that where the district court may decide to preclude a rebuttal expert from testifying in the case-in-chief [under Rule 26(a)(4)(C)(iii)], it may also decide not to preclude such testimony." It then held the district court did not abuse its discretion. Judge Harris, dissenting on this issue, explained that in his view the plaintiff "should be allowed to present testimony from Rebuttal Expert during his case-in-chief if he wishes, so long as Rebuttal Expert doesn't stray from (or add to) the conclusions he offered in his deposition."

State v. Hall
2026 UT App 121 (Aug. 6, 2026)

In an appeal involving the district court's *Allen* instruction to a deadlocked jury, all members of a panel of court of appeals judges joined in a concurrence **urging district court judges to consult with counsel on the record before responding to any note from the jury during deliberations.** Though responding to a jury note without consulting counsel is not necessarily reversible error, all three appellate judges called it "folly" and "a significant breach of best practices." Ultimately, "the slight inconvenience of putting jury questions and proposed answers, including objections, on the record, and avoiding error through consultation of counsel, is hardly burdensome."

Tenth Circuit Court of Appeals

Harden v. Hedgecock
181 F.4th 1094 (July 14, 2026)

In Section 1983 cases, current Tenth Circuit precedent adopts a "weak" presumption that a plaintiff inmate consents to any sexual encounter with a correctional officer absent "some form of coercion." While concurring in the panel's application of this presumption as dictated by binding precedent, Judge Moritz nevertheless advocated for a future panel to abandon the **presumption given the "inherently coercive" nature of the prison environment. Judge Moritz would substitute "a straightforward presumption that inmates do not consent to sexual activity with prison staff, and that such sexual activity violates the Eighth Amendment, absent compelling evidence of consent put forth by the defendant."**

Wilson v. Stoltenberg
182 F.4th 903 (July 17, 2026)

In this section 1983 claim for deliberate indifference of school officials to years of racial bullying, the Tenth Circuit affirmed denial of defendants' motion to dismiss on qualified immunity grounds, **holding (1) it was clearly established that a school official's deliberate indifference to racial bullying violated the Equal Protection Clause; and (2) complaint adequately particularized allegations to individual school board member defendants.**

United States v. Smith
182 F.4th 937 (July 20, 2026)

A police officer was convicted of falsifying records based on his deactivation of his body camera and dashboard camera during a traffic stop, during which he sexually assaulted the driver. **The majority joined other circuits that have held "intentionally creating a misleadingly incomplete official record can be enough to satisfy a conviction for falsifying or making a false entry in the record" under 18 U.S.C. § 1005.** The deactivation of the cameras was such conduct. Judge Phillips dissented.

United States v. Threatt
182 F.4th 1222 (July 21, 2026)

Federal Rule of Criminal Procedure 32 requires a sentencing court to "verify" that a defendant and his attorney have read and discussed the presentence investigation report. A district court generally satisfies this obligation by directly asking defense counsel if she and the defendant have read and discussed the PSR. But, as a matter of apparent first impression, the Tenth Circuit held that **the district court's obligation is not satisfied if, after an affirmative response from defense counsel, the defendant says otherwise. At that point, the district court must "follow up on [the defendant's] assertion" before proceeding with sentencing.**

Pomeroy v. Utah State Bar
— F.4th — (Aug. 31, 2026)

Attorney filed a section 1983 action against the state Bar and Bar officials alleging that the Bar violated her First and Fourteenth Amendment rights by compelling membership, collecting mandatory Bar licensing fees without affirmative consent, and providing inadequate procedures to ensure proper use of members' mandatory licensing fees. The district court rejected attorney's arguments and the court of appeals affirmed, holding that the Bar's opt-out procedures comported with members' First Amendment rights; the Bar adequately explained the basis for its calculation of members' pro rata rebates of their licensing fees attributable to legislative activity; and the Bar provided an adequate basis for members to determine its non-germane non-legislative activities.

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Utah's Uniform Health Care Decisions Act (UHCDA): What You Need To Know

by Paul Bryner and Adam Long

Attorneys, regardless of practice area, are inevitably asked about basic estate planning – including advance health care directives like "living wills" and medical powers of attorney. The Utah Legislature's adoption of the updated Uniform Health Care Decisions Act, effective in 2026, makes this easier than ever for you, your clients, and all Utahns through the new statutory form, mental health advance directives, remote witnessing, new capacity determination rules, and a new default agent priority list. Here's what you need to know.

History of Advance Health Care Directives

As medical technology has advanced, life-sustaining treatment has become advanced enough to indefinitely sustain the life of comatose, brain-dead, or otherwise incapacitated individuals. In the absence of evidence that an individual would not want to continue living, some states have prevented families from terminating the lives of incapacitated individuals with little to no hope of recovery, as illustrated in *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261 (1990).

As these situations became more common, legislators devised legal solutions known as "advance directives" and legislated them in waves. "Living wills," instructions regarding an individual's desires for life-sustaining treatment, were first conceived of in the late 1960s and implemented in various states in 1970s and 1980s. The health care power of attorney, which allows an individual to designate an agent to make health care decisions, generally took hold in the 1980s and 1990s. Out-of-hospital do-not-resuscitate (DNR) orders were something of a third wave in the 1990s. A slow fourth wave created priority lists of default decisionmakers with medical power of attorney, similar to the priority lists for intestacy. And finally, an ongoing fifth wave of legislative changes focuses on merging, simplifying, and inter-state standardizing of prior statutes that govern advance health care directives. For a summary of all these trends, see Charles P. Sabatino, *The Evolution of Health Care Advance Planning Law and Policy*, 88 The Milbank Quarterly 212 (2010).

In 1993, the Uniform Law Commission (ULC) published its first version of the Uniform Health-Care Decisions Acts (UHCDA), which works toward the fifth-wave goals of simplification and standardization. A single advance health care directive was contemplated with very flexible rules. Though it influenced many state statutes including Utah's, only six states explicitly adopted this first version of the UHCDA. Thirty years later, in July 2023, the ULC published an updated version of the UHCDA that has since been adopted by several state legislatures – including by Utah's, effective on January 1, 2026. Other states that have adopted the updated UHCDA include Nevada and Delaware, with other states pushing UHCDA bills in their legislatures.

In step with the general history of advance health care directives in the U.S., Utah's statutes expanded in breadth in earlier versions and are now moving in the direction of simplification under the UHCDA. Utah's original 1985 Personal Choice and Living Will Act was overhauled in the 2007 Advance Health Care Directive Act, which was renumbered in 2024 but was still effective through the end of 2025. *See* Utah Code Ann. §§ 75A-3-101 *et seq*. In 2026, the updated UHCDA became effective in Utah, making minor changes to refine and clarify the earlier law. *See id*. §§ 75A-9-101 *et seq*.

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Effects of Utah's New Legislation

Attorneys should first be aware that the updated UHCDA makes few material changes to the previous laws on advance health care directives in Utah, which in turn are markedly similar to the old UHCDA. The new legislation is not meant to disrupt the ordinary practices of estate planning attorneys; indeed, it contains a grandfathering provision for all valid "advance health care directive[s] created before January 1, 2026." *Id.* § 75A-9-128(1). Utah's statutes regarding Physician Orders for Life-Sustaining Treatment documents executed in close anticipation of major health problems, have merely been renumbered. Here are some important innovations introduced in the new UHCDA that have been highlighted by the American Bar Association.[1]

The New Optional Form

The most significant update to Utah attorneys is the new (optional) statutory form for advance health care directives. *See id.* § 75A-9-110. Utah's UHCDA's statutory form is written in plain language designed to be easily understood and to encourage more people to prepare advance health care directives. The statutory form contains a helpful general introduction and section introductions throughout the form, and much of the form is written in the first person. The new form sorts health care instructions into the categories of (1) life-sustaining treatment, (2) food and liquids, and (3) pain relief, with several flexible options for each category. The preset options contemplate whether these three things will be administered under fatal conditions, survivable conditions but without consciousness, or loss of ability to communicate and recognize others, as well as allowing for customized responses.

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Like the 2007 version, this statutory form does double duty by allowing the individual to express their health care instructions and appoint an agent to make health care decisions in a single document. But unlike its predecessors, the new form directs individuals to write their general goals and values as a guideline for decision-making when the individual's preferences may be unclear from specific directions alone. Preset questions regarding values are also included, and prompt individuals to answer to what degree they prioritize survival above physical inability, mental inability, or pain. The form questions additionally ask how important it is for agents to communicate with family and friends before making decisions. The new form also allows for more precise answers to be given regarding treatment, including organ donation to be limited to special uses. The requirements for witnesses are simplified, the revocation process is no longer listed on the form, and a few small directions are included for the agent who will use the form.

Mental Health Care Directives

The UHCDA now includes mental health care under the umbrella term of health care, allowing a typical advance directive to include both general and mental health instructions. However, the UHCDA also allows an individual to obtain an advance directive specifically for mental health, with different instructions, a different agent, and independent execution. *See id.* §§ 75A-9-108 to -109. An agent can only admit an individual to a mental health treatment facility if authorized in advance by the individual. An individualized mental health advance directive may be especially useful to Utahns with a personal or family history of certain psychiatric disorders.

Witnessing

A health care directive (using the statutory form or otherwise) still requires a disinterested adult to witness the individual's signature but does not require notarization. *See id.* sec. 75A-3-301(c). But similar to the ULC's Uniform Electronic Wills Act that Utah adopted in 2020 (Utah Code Sections 75-2-1401 *et seq.*), the UHCDA allows for remote witnessing. When executing a directive granting power of attorney for health care, a witness is now considered present if "using electronic means that allow for real time audio and visual transmission and communication in real time to the same extent as if the witness and the individual were physically present in the same location," or even if "able to speak to and hear each other in real time through audio connection" so long that the witness knows and is able to verify the individual's identity. *Id.* § 75A-9-107(5). The utility of these measures has extended far beyond the COVID-19 pandemic and has a place in the repertoire of modern attorneys.

Determining Capacity

Rules for determining capacity will not likely affect the formal estate planning process for attorneys and their clients, but it may be valuable for clients and attorneys to know beforehand in case of dispute. An individual is still presumed to have capacity to make health care decisions. However, capacity can now be determined by a court or by any "responsible health care professional," made under the "accepted standards of the profession" and noted in writing, but not by related individuals or cohabitants. *Id.* § 75A-9-103. The new statute has a much more elaborate process for dealing with capacity objections. Objections to incapacity can be overcome by a threat of imminent harm to an individual but otherwise are entitled to an expedited court determination requiring clear and convincing evidence to affirm incapacity. *Id.* §§ 75A-9-104 to -105. These additional rules help provide guidance to courts, preserve judicial resources, and protect the rights of the vulnerable.

Under the old statute, "health care decision making capacity" was defined as "an adult's ability to make an informed decision about receiving or refusing health care" which involved understanding consequences of health care decisions, the ability to rationally evaluate risks, and the "ability to communicate a decision." *codified* at Utah Code Ann. § 75A-3-101(14) (2024). The new statute expands capacity to explicitly include assisted communication, which protects against premature rulings of incapacity. Capacity is defined as being "willing and able to communicate a decision independently or with appropriate services, technological assistance, supported decision making, or other reasonable accommodation." *Id.* § 75A-9-102(1). The UHCDA also has individualized capacity definitions for health care instructions, health care decisions, and executing power of attorney, meaning that an individual may be deemed to have some forms of capacity and not others.

Default Surrogates

The new UHCDA revised the priority list of default surrogates (agents appointed in absence of a directive) and marginally expands their powers and duties, which aims to better anticipate the needs of Utahns without advance directives. The revised order in Utah Code Subsection 75A-9-111(2) is:

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(1) an adult identified by the individual but not in a power of attorney;

(2) a spouse, unless divorce, annulment, or separation have occurred;

(3) an adult child or parent;

(4) a cohabitant;

(5) an adult sibling;

(6) an adult grandparent or grandchild;

(7) a different adult who "has assisted the individual with supported decision making routinely during the preceding six months";

(8) an adult stepchild whom the individual parented;

(9) a different adult who has "exhibited special care and concern for the individual and is familiar with the individual's personal values"; or

(10) a physician.



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Important rules are given for when a physician may be able to do so. *See id.* § 75A-9-111(6). The new statutes also provide additional steps for when default surrogates disagree. *See id.* § 75A-9-112.

This revised order in the UHCDA prioritizes whoever an individual informally requests as an agent above any other person. The revision also tries to account for different family structures in modern society, including unmarried cohabitation and friendships more intimate than genetic relations. Finally, this new order does not prioritize certain individuals of the same degree of relation over one another, such as parents and children, or grandparents and grandchildren. Surrogates now also have moderately clearer guidelines, including an explicit "fiduciary duty" to the incapacitated individual (Utah Code Section 75A-9-116) and discretion to "apply for public or private health insurance and benefits on behalf of the individual" (Utah Code Section 75A-9-117(4)).

Practice Pointers

Despite the improvements in default surrogate appointments, the needs of clients will be most confidently achieved if attorneys help them execute advance directives. As with earlier amendments to Utah's advance directive laws, attorneys are encouraged to become familiar with advance directives before doing one for a client. *See* Maureen Henry, *Advance Health Care Planning in Utah*, 20 Utah B.J. 9 (July/Aug. 2007). In particular, attorneys should refrain from advising clients on what medical procedures and outcomes would be advisable, as this could verge on practicing medicine and almost certainly is beyond the expertise of even the most experienced attorneys. Attorneys should have clients reflect thoroughly on their health values before meeting with them, and have clients consult with a physician for any questions about how certain procedures like feeding tubes may affect their quality of life.

Finally, attorneys will benefit by preparing to use the new model form in 2026 and beyond. Using the same kind of form as other Utah attorneys can help maintain standardization for all involved, including physicians and hospitals interpreting these forms, and the model form incorporates input and knowledge from the ULC and countless subject matter experts. The flexibility and goal-based instructions offered by the new UHCDA form can help Utahns achieve the end-of-life circumstances that best align with their values.

1. For further reading, see Nina A. Kohn, The New Uniform Health Care Decisions Act: An Overview, AMERICAN BAR ASSOCIATION (Sept. 19, 2023), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol45/vol45issue1/new-health-care-decisions-act/.

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Modernizing the Judiciary's Language Access Program

by Jonathan Puente

Access to justice depends on communication. For the thousands of limited English proficient (LEP) litigants who appear in Utah courts each year, that communication runs through a court interpreter. Rule 3-306.01(8) of the Utah Code of Judicial Administration defines limited English proficiency as "the inability to understand or communicate in English at the level of comprehension and expression needed to participate effectively in legal proceedings." When interpretation services work well, they are invisible – a seamless bridge between the litigant and the judiciary. When services don't work well, the consequences can be serious: delayed proceedings, frustrated litigants, and outcomes shaped by a language barrier. But language access in Utah's judiciary is not merely a matter of good policy or administrative convenience. It is a constitutional guarantee. The Utah Constitution requires due process of law to all persons. Utah Const. art. I, § 7. Due process is difficult to achieve if an LEP litigant does not have access to a qualified interpreter. Several state courts have consistently recognized that denying adequate interpreter services can create a due process violation – rendering proceedings fundamentally unfair and potentially voiding their outcomes. *See, e.g.*, *Ling v. State*, 702 S.E.2d 881, 882–83 (Ga. 2010) (collecting cases). Language access is not a courtesy the judiciary extends to LEP participants. It is a constitutional right. Utah Code of Judicial Administration 3-306.04 covers civil cases when it states that

> if the appointing authority (judge, commissioner, referee, juvenile probation officer, or delegate thereof) determines that a party, witness, victim or person who will be bound by the legal proceeding has a primary language other than English and LEP, the appointing authority will appoint a certified or approved interpreter in all legal proceedings.

The Utah Judiciary's Language Access Program exists to fulfill that constitutional obligation, and the program takes that responsibility seriously. Over the past year, the Language Access Program has undergone the most significant structural change in its history. The program has centralized the coordination and the adoption of dedicated scheduling technology. The changes are a direct response to mounting demands for interpretation that had been building since the pandemic fundamentally altered how courts and interpreters operate.

A System Strained by New Realities

Before these reforms, interpreter coordination in Utah was organized by district. Each district maintained its own interpreter coordinator, responsible for scheduling interpreters within that district's courts. Coordinators had access only to their own district's calendars. If a coordinator in one district was struggling to fill an assignment, they had no way to know if a qualified interpreter was available in an adjacent district. Each coordinator operated, in effect, in a silo.

This model worked adequately when interpreter demand was predictable, and the market for qualified interpreters was stable. The 2020 pandemic changed both conditions simultaneously.

When Utah courts shifted to virtual proceedings during COVID-19, interpreters quickly discovered they could work remotely for court systems across the country. A Spanish interpreter based in Salt Lake City was suddenly just as accessible to a court in Florida or Texas as to one in Provo. This geographic expansion of the interpreter market created direct competition between Utah's courts and court systems nationwide – all competing for the same pool of qualified interpreter contractors.

The predictable result was an increased double-booking of interpreter contractors. It became easier for interpreters to accept assignments across multiple jurisdictions. When conflicts

JONATHAN PUENTE serves as the Director of the Judiciary's Office of Fairness and Accountability, which oversees the Judiciary's Language Access Program.



arose – as they inevitably did – Utah courts bore the consequences. Interpreters arrived late to assignments. Some left early to make it to an assignment elsewhere. This practice left judges and LEP litigants without a critical service, forcing costly continuances.

Compounding these challenges has been the exponential growth of cases requiring interpreter services. In 2021, district courts had 6,520 proceedings that required interpreters, and all court levels had a total of 17,362 proceedings requiring interpreters. In 2025, district courts had 18,618 proceedings that required interpreters, and all court levels had a total of 51,257 proceedings requiring interpreters. The caseload has expanded well beyond what the prior coordination model was designed to handle. Additionally, recent budget reductions required the Language Access Program to operate with fewer resources. Meeting a growing constitutional obligation with a reduced budget demanded a level of operational efficiency that the old model could not deliver. Modernization was not optional – it was necessary.

Our Response: Centralization and Technology

The program's response has two components: restructured coordination and new scheduling technology.

On the coordination side, the Language Access Program moved from a district-based model to a centralized one. Rather than fourteen part-time district coordinators each managing siloed calendars, the program now operates with three full-time interpreter coordinators who have access to interpreter scheduling across all districts simultaneously. These coordinators function as statewide dispatchers – aware in real time of where interpreters are needed, which interpreters are available, and how to deploy resources most effectively across the entire state.

When demand spikes in one district, coordinators can identify available interpreters elsewhere and redirect them. When a contractor becomes unavailable at the last minute, the coordination team quickly responds without the limitations of a single district's interpreter pool. Coordination that once happened in isolation now happens collaboratively, with a statewide view of resources and needs.

Alongside this structural change, the program has implemented a scheduling platform built for court interpreter management. The software provides coordinators with real-time visibility into interpreter availability across the state, integrates with court calendars, and supports the kind of rapid, flexible scheduling that the post-pandemic interpreter market demands. The result is an operation that does more with less – without compromising Utah's constitutional standard.

Serving Attorneys and Their Clients

The Language Access Program is committed to serving LEP litigants and attorneys; to that end, the program is actively working to grow its interpreter roster. The program has partnered with Utah State University to develop a court interpreter certification program. This initiative is designed to train and credential a new generation of court interpreters. The goal is to expand the pool of qualified professionals available to both the courts and attorneys. A larger, better-trained interpreter pool serves everyone – the judiciary, attorneys, and most importantly, LEP individuals who depend on these services to access the justice system. This robust roster of qualified, vetted interpreters available for hire should assist attorneys in their work. There is, however, an important scope distinction attorneys should remember. The judiciary's obligation – and the program's responsibility – covers interpreter services within the courtroom. If an attorney needs to meet with an LEP litigant before or after a proceeding, it must be very brief and only to expedite the proceeding; any meeting longer than a few minutes falls outside what the program provides. For longer attorney-client consultations, the attorney is responsible for securing and compensating an interpreter directly, and the contractor may charge accordingly.

The Larger Obligation

An LEP litigant who cannot meaningfully participate in their own proceeding has been denied something that Utah protects. That has consequences for the integrity of the proceeding and potentially for the attorneys involved. The reforms described here are designed to make that failure less likely. A centralized, technology-supported coordination model is better positioned to meet demand, respond



to market pressures, and deploy resources efficiently – even in a constrained budget environment.

Attorneys can support these efforts in practical ways: submitting interpreter requests well in advance and promptly communicating continuances or cancellations. Late cancellation notices tremendously impact the program's budget. The program depends on timely, accurate information from the legal community to function at its best. The program is committed to this work, and while the judiciary carries the obligation of providing language access, successful delivery of this service relies on successful communication with attorneys to help anticipate and coordinate these resources. The program is grateful for the partnership with the legal community in making this possible.

Language access is, at its core, about honoring the promise that no person shall be deprived of life, liberty, or property without due process of law. Everything we do in the Language Access Program is oriented toward that end: ensuring that every LEP litigant who walks into a Utah courtroom can be genuinely heard.



The Balance of Justice and Equity in Family Law: An Outsider's Perspective

by Meagan Rudd

As a practicing civil litigation attorney for more than twenty years, I have seen my fair share of courtrooms. I have written hundreds of motions and read probably just about as many laws to support those motions. I am a lover of rules, which has even led me to serve on the Supreme Court's Advisory Committee on the Rules of Civil Procedure. I have seen everything from disinterested judges to, dare I say, not terribly invested judges (I have been forever scarred by a very complex real estate dispute that hinged on a detailed reading of a lengthy contract and on our first day before the assigned judge, the judge opens with, "I don't do contracts!"), to fantastic judges that have clearly taken the time to carefully review both the law and the facts applicable to the case before it and written very well-thought-out opinions. But nothing quite prepared me for family law.

One of my law partners, of the rare breed with a background in finance, practices law involving complex financial issues, which over the years has morphed into handling complex and high net worth divorce cases. I have found myself occasionally getting roped into helping him on several of these and have found myself shocked at what I perceive to be a clear imbalance between how the family law sector treats the law versus equity. Years ago, on one of these highly contentious divorce cases, I had prepared several pre-trial motions including a motion in limine.

The gist of the motion in limine was this: Utah Rule of Civil Procedure 26(a)(4)(C)(i) requires that a party bearing the burden of proof disclose an expert testifying in their case in chief within fourteen days after the close of fact discovery. Indeed, pursuant to Rule 26(d)(4), "[i]f a party fails to disclose or to supplement timely a disclosure …, **that party may not use the undisclosed witness, document, or material at … trial** unless the failure is harmless or the party shows good cause for the failure." (emphasis added). Utah law is clear that if this deadline is not met, ***automatic*** and ***mandatory*** sanctions are invoked excluding the late expert designation. *ROA Gen., Inc. v. Chung Chu Dai*, 2014 UT App 124, ¶11, 327 P.3d 1233 (interpreting previous Utah Rule of Civil Procedure 37(h) language, which has since been taken from Rule 37 and added to Rule 26(d)(4)); *see also Erickson v. Erickson*, 2022 UT App 27, ¶ 26, 507 P.3d 824, "Utah law ***mandates*** that a trial court exclude an expert witness disclosed after expiration of the established deadlines …, unless the district court, in its discretion, determines that good cause excuses tardiness or that failure to disclose was harmless." (citation simplified) (emphasis added).

In this particular case, the opposing side had mislabeled and therefore untimely filed an expert report, designating said expert report as "rebuttal." In reality, their expert report contained a strange mixture of testifying in the party's case-in-chief and providing opposition to our expert, but by no means was the report a "rebuttal," which is clearly defined as a reply to an opposition report reserved for the party who originally submitted a witness testifying regarding issues under that party's burden of proof. Utah R. Civ. P. 26(a)(C)(iii). This untimely and improper designation led to the deprivation of the opportunity for our client to designate his own opposition expert, and, in our opinion, caused severe prejudice.

As trial began, we informed the judge that the motion in limine was ready to be heard. After informing the judge about the content of the motion, the judge quickly and summarily denied that the motion be heard and literally laughed out loud, "Well we all know family law judges don't follow the rules!" Shocked, numbing silence filled my brain as I tried to process what had just been said. Needless to say, we proceeded to at least get the contents on the record to aid in the future appeal.

MEAGAN RUDD, a founding shareholder of Rudd | Cooper, has over twenty-two years of practice in complex civil litigation, construction law, real estate matters, and contract law. She currently serves on the Supreme Court's Advisory Committee on the Rules of Civil Procedure.



Unfortunately, this experience has not been an isolated one as I have witnessed more and more family law trials. While never blatantly declaring anarchy as in this particular experience, I have seen several of those practicing in a family law setting disregard the law under the guise of the "equity" principle. While judges are statutorily given great discretion in family law settings, *see* Utah Code Ann. § 81-4-406(4) ("The court may include in the divorce decree any equitable orders relating to: (a) the parties … (b) a child of the parties; and (c) any property, debts, or obligations."), the rules and regulations governing our court system have been created and put in place for a reason.

Historically, courts of equity were created in England to counteract the strict application of common-law rules that otherwise would have led to injustice. *Equity Rules*, Fed. Jud. Ctr., https://www.fjc.gov/history/timeline/equity-rules (last visited Aug. 5, 2025). Similarly in our country, Article III of the Constitution was created to extend the judicial power to both types of cases: those in law and those in equity. U.S. Const. art. III, § 2, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority ….". Indeed, when setting out the scope for the rules of civil procedure, it clearly states, "These rules govern the procedure in the courts of the state of Utah **in all actions** of a civil nature, **whether cognizable at law or in equity**, … to achieve the just, speedy, and inexpensive determination of every action." Utah R. Civ. P. 1 (emphasis added).

My point in highlighting this experience isn't to persuade you that my position was correct, although what attorney doesn't jump at the opportunity to argue their perspective, but rather to illustrate the subtle yet slippery slope invading our family law courts and practitioners today. I fear that this increasingly equitable-heavy approach in family law is slowly tipping the scale away from the ideal balance our legal system should ultimately seek. By ignoring the rules of civil procedure under the guise of equity, it serves the opposite effect because true equity cannot be achieved without the procedural safeguards that are already built into the rules. For example, in the above scenario the improperly designated expert relied on unreliable methodology and improper legal basis for several of his conclusions. Without the proper opportunity to oppose the expert as the rules allow, the judge was not able to hear and analyze the improprieties in the report. This led to an outcome that, while made under the guise of equity, was far from equitable.

This problem isn't only limited to the judicial side of family law. As I work more closely with family-law attorneys I find many following the judiciary's lead in a lackadaisical approach to the rules of civil procedure, believing in the end that equity will make up for their weak lawyering. This article acts as a cautionary tale to all involved in the family law setting to reset their mind with regards to the applicability and importance of the rules of civil procedure and the overall benefit a closer following of the rules will provide our justice system. Lady Justice holding the scales of justice acts as the beacon of idealism that all law should strive for: a total balance of justice and equity, even (and I argue especially) in a family law setting.



The Unexpected Verdict on Retirement

by David W. Brown

I thought I was prepared for retirement, but I did not anticipate feeling lonely, discouraged, or even a little depressed. While the only issue we hear much about is financial planning for retirement, no one warns you that you might feel like you lost your identity overnight, or that your self-worth and self-esteem will take a beating. I realized after the fact that my ego was too dependent on my life as an attorney. In retrospect, I wish there had been a CLE or something to assist in the emotional transition into retirement.

This feeling brings to mind my farewell column as Assistant Sports Editor of the *Centre Daily Times* in February 1981. I wrote: "How do you say good-bye to a loved one? It's never easy – especially when you've spent the greater part of your life with that loved one.... As you might have guessed, giving up my career in sports – my original first love – was the hardest decision of my life."

If you simply replaced the word "sports" with "law," that almost ancient column would perfectly describe my current dilemma. If it was tough saying good-bye to my career in sports journalism, walking away from my nearly thirty-six-year career as an attorney is proving to be an even wilder emotional roller coaster.

The tone of this article is not meant to be negative, but instead to paint a realistic picture for practicing attorneys so you can better prepare for the emotional pitfalls of retirement. You can avoid some of my pitfalls simply by planning more effectively. To that end, I want to share a coping mechanism that has been a valuable exercise for me in this retirement process: taking a stroll down memory lane and reflecting on the journey.

The Symptoms of Withdrawal (What I Miss Most)

Some friends in the legal community counseled me that you can never retire from this profession, and I am beginning to think there is a little truth to it. Once you acquire a passion for litigating, it is in your blood. We eat, sleep, and drink our cases. I do not believe I ever had a multi-day trial in which I worked less than sixteen hours a day or was able to "shut off" my brain to get a decent night's rest. I will never again experience the thrill of delivering a closing argument, but the adrenaline rush that comes when you nail the closing is beyond words. The ultimate feeling is when a juror makes good eye contact with you or nods in approval on a key point. I also deeply miss the rush of being able to cross-examine a snitch and impeach them with credible evidence.

Beyond the adrenaline of the courtroom, I simply miss the daily routine of working. Believe it or not, each morning I miss checking for notices from the court or emails from counsel and clients. My phone almost never rings anymore, and I miss getting those calls. I miss the structure of meeting with new clients, learning the facts and circumstances of their case, and being able to formulate a plan of action. There was a unique satisfaction in developing a theme and then seeing the case worked to a successful conclusion.

After retiring, many athletes share a similar sentiment to what I am experiencing now: we miss the locker room. For attorneys, that locker room is the great association we share in court with our former colleagues. I miss the good-natured banter, support, friendship, laughter, camaraderie, and memories with fellow attorneys. For a solo practitioner like myself, organizations like the Utah Association of Criminal Defense Lawyers (UACDL) served as an invaluable extension of that locker room. Any time I had questions, needed an expert witness, or even wanted copies of others' pleadings and motions, UACDL came through for me.

A Therapeutic Stroll Down Memory Lane

It is hard to recall the vast majority of my cases or clients over such a long, wild, and crazy ride of a career. However, reflecting on many interesting cases, both wins and losses, has been a

DAVID W. BROWN retired after practicing law for over thirty-six years, the last thirty-four as a solo practitioner. He litigated a wide variety of cases, both civil and criminal.



valuable exercise for me in coping with this retirement process. In fact, I would encourage all attorneys to keep a written record of their trials – even the ones which turn out badly – to help process the transition. When I look back at my time as an old-fashioned general practitioner, the memories group themselves into a few unforgettable categories.

The Bizarre and The Wild

First, there are the unique absurdities you only experience in the legal profession. Before I even took the bar exam, I worked as a law clerk on one of the most bizarre intentional infliction of emotional distress cases ever. An elderly neighbor began trapping skunks, hanging them over a shared fence, and beating them, which sent an overwhelming odor all over a young couple's property. After this happened a few times, the couple began filming the skunk-beating incidents. The graphic video was shown to the jury, and you can imagine who won that trial.

I also served as a small claims judge for about seventeen years, where one of my most memorable cases involved an international bobsled team (if you couldn't guess, it occurred in Summit County). In my own practice, I once secured a dismissal in a rape case with an interesting twist: my client's retainer check bounced, and he tried to buy me off with a bottle of whiskey. True story.

Then there is the only time in my career when I walked out of a deposition. A defense attorney kept badgering my plaintiff about drug issues that clearly were not relevant. After repeated objections and counsel refusing to move on, my client's husband took matters into his own hands. He ran around the conference table to attack the defense attorney. Luckily, we stopped the husband before he punched the attorney. The good news: then the case settled.

The Agony of Defeat

Of course, the losses haunt an attorney forever. I represented a plaintiff in a personal injury case where the other driver was at fault in the car accident and actually admitted liability at trial. However, we somehow lost this slam-dunk case. I won't share the reasons here in public. Another defeat, which I have never gotten over, was a rape trial, after which the victim recanted her entire testimony. Unfortunately, the court denied the motion for a new trial, and my client went to prison.

The Thrill of Victory

But the highs are what make the stress worth it. When I opened my small office, I inherited a federal securities case involving a clearing broker from California. I learned an invaluable lesson from that case: even though I had no background in securities law, with enough time and effort I could get up to speed on any topic. With the help of an expert witness, we prevailed at trial and on appeal.

One of my favorite trials occurred just a few years ago. My client, who was out on parole, allegedly strangled three persons in one night, two of whom were youngsters. Two paramedics who examined the three alleged victims testified they saw no injuries. The potential prison time for my client made the pressure to win almost overwhelming, but the jury found him not guilty on all counts. It was one of those cases where queries to UACDL led me to an expert witness – a retired emergency room physician – who was instrumental throughout the extended case, giving me a victory I will never forget.

Why We Practice Law

The most rewarding case of my entire career was a pro bono divorce that lasted for many years, and it serves as the perfect anchor to my stroll down memory lane. A good friend referred the case to me, and I am so glad I accepted it. The client was possibly the most humble, resilient, and dedicated person I have ever met. She and her husband had raised a large family, but when their last child was born with a rare form of Down syndrome, her husband could not deal with it. He fled the country, giving up his six-figure job.

My client could not work outside the home because the new child required 24/7 care. She often went without a car and was forced to use public transportation to secure regular treatment at Primary Children's Medical Center. The child endured seven surgeries. To say that my client struggled mightily – financially, mentally, and physically – would be a gross understatement.

Based on these unfortunate circumstances, we secured a temporary order, but my client received very little child support or other assistance from him. Finally, when the child was eight years old, the case was resolved at a judicial settlement conference in 2024. At that stage, my client finally began receiving her child support and alimony.

She was incredibly patient throughout this case. She never gave up hope and exercised incredible faith. Her great attitude was inspiring to me and kept me going, and she was so very, very grateful for my help. For me, I was humbled time after time by this case, and I gained an appreciation for the small miracles we saw. It served as the ultimate reward, reminding me rather poignantly of why I began practicing law in the first place.

Is There Life After the Law?

As I mentioned earlier, retirement has not been exactly what I expected, but at this stage, I am actually excited about the future. Sure, there are lonely days and times when I feel guilty for not doing anything. After all, it is the first time since I was eighteen that I do not have a job. But I am learning that it is okay – almost therapeutic, even – to relax and sometimes just do nothing at all.

In many ways, it is a new beginning. I now have lots of time to read, including a bookcase full of unread books that will take me years to devour. My desire and passion for writing have been rekindled; I have written a few articles and have more in the works. Most importantly, I have begun spending more quality time with Cindy, my incredible wife for over fifty-two years. We tackle more household projects together than ever before, we watch our favorite mystery shows, and we teach Sunday school together. While I certainly miss serving and helping people through my law practice, we are finding new ways to do that. Cindy cooks extra meals, and I help deliver them to friends or widows in the neighborhood.

Two of my six children have followed in my career path. Only time will tell if they have my same love story to tell when they reach their golden years.

Not a Goodbye

For me, it has never been easy saying goodbye. It was not easy giving up sports journalism, but at that time I had no idea what my future career would be. Now that I have experienced my legal career, it is a good time to reflect on the last thirty-five-plus years. I have loved my life as an attorney.

As a solo practitioner, I have experienced many ups and downs that are different from those at large firms. I have struggled at times, but I have grown immensely. I have developed skills and a temperament I did not think were possible, and I have helped solve problems for hundreds of persons. I have made friends which will last for eternity.

The more I have pondered and reflected on this topic of retiring, I am left with a final impression: I am not saying good-bye. I am saying the exact opposite. I may no longer be working as a licensed attorney, but I will not somehow forget what I have learned and practiced for almost thirty-six years. I look forward to the next phase of my life, as I strive to continually implement and refine those skills. For me, this unique love story is still being written.



IADD – Five Years Later: Fulfilling the Promise of Appellate Justice

by Wendy M. Brown

Five years ago, the Utah Indigent Appellate Defense Division (IADD) formally began handling appeals in-house for indigent defendants across the state. In 2022, Debra M. Nelson, Ben Miller, and I co-authored an article in the *Utah Bar Journal* introducing our newly formed office to the legal community. Debra M. Nelson, Ben Miller, & Wendy M. Brown, *Introducing the Statewide Office for Indigent Appeals*, 35 Utah B.J. 31 (Jan./Feb. 2022). Today, looking back at our first five years of operation, we have an opportunity to celebrate how far Utah's public defense system has come, while candidly examining the new challenges generated by our own success.

The Trial-Level Awakening and the Legislative Response

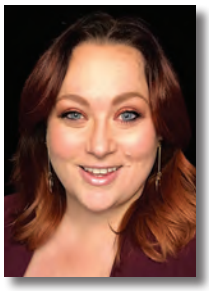
To understand the significance of IADD's work today, we must first look at where Utah's public defense system was a decade ago. In 2015, the Sixth Amendment Center released a comprehensive, eye-opening report on Utah's trial-level indigent defense services. Sixth Amendment Ctr., The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services (2015). The assessment revealed deep, systemic deficiencies, largely stemming from a lack of state oversight and a reliance on flat-fee contracts that inadvertently created financial disincentives to robust representation. *Id.* at 63–68. In many rural justice courts, a staggering percentage of defendants facing potential jail time on misdemeanors did so without counsel at all, while overwhelmed felony defenders faced workloads that resulted in the "constructive denial of counsel." *Id.* at 80.

At the time, lawsuits loomed over the state, highlighting these profound constitutional gaps. *See, e.g., Remick v. Utah*, No. 2:16-cv-00789-DN-DBP, slip op. (D. Utah Mar. 23, 2017) (order granting motion to dismiss). However, it was the proactive work of the Utah Legislature that truly turned the tide. Recognizing the need for a comprehensive, state-level solution, lawmakers championed the creation of the Utah Indigent Defense Commission (IDC) in 2016. Utah Code Ann. § 77-32-801. This landmark legislative action established critical state oversight and began funneling state appropriations to assist local governments, substantially improving trial-level defense across Utah. Utah Indigent Def. Comm'n, 2017 Annual Report.

The Appellate Blind Spot and the Birth of IADD

While the average person is aware that people accused of crimes have a right to counsel, the general public does not tend to have the same knowledge that a person convicted of a crime has a constitutional right to an appeal with the guarantee of effective assistance of counsel. And while the IDC made great strides at the trial level, appellate defense remained fractured. This was not a new revelation; as far back as 1994, a Supreme Court Task Force had warned of inconsistent appellate representation and recommended the creation of a statewide appellate defender's office. Utah Sup. Ct. Task Force on App. Representation of Indigent Defendants, Final Report (1994). A 2011 Judicial Council study echoed these same concerns. Utah Jud. Council Study Comm. on App. Representation of Indigent Crim. Defendants, Final Report (2011). For decades, indigent defendants – particularly those in Utah's rural counties – lacked capable and available appellate attorneys, and as a result saw their right to appeal often ignored.

WENDY M. BROWN is an appellate defense attorney who works as the Criminal Appeals Division Head for IADD.



Recognizing this critical blind spot, the Utah Legislature stepped forward once again. Lawmakers established IADD to handle appeals for indigent individuals in the state's third through sixth class counties. Utah Code Ann. §§ 78B-22-901 to -904. By 2021, we were fully operational and handling appeals in-house, bringing a team of specialized appellate advocates to twenty-four predominantly rural counties that previously lacked the resources to fund such constitutionally vital services. Nelson, Miller, & Brown, *supra*.

The Avenue to Appeal: Measurable Successes

The impact of providing dedicated appellate counsel to rural Utah has been profound. We have successfully identified and corrected critical trial-level errors and defended our clients' most important constitutional rights. *See, e.g., State v. Mclain*, 2026 UT App 4, 585 P.3d 707; *Cedar City v. McCraw*, 2025 UT App 123, 576 P.3d 1155; *State v. Abonza*, 2025 UT App 101, 574 P.3d 996; *State v. Correa*, 2024 UT App 69, 549 P.3d 679; *State v. Elkface*, 2023 UT App 24, 527 P.3d 820.

Moreover, when the legislature tasked our office in 2022 with handling child welfare and parental rights termination appeals, our specialized representation dramatically shifted the landscape. Prior to IADD taking these cases, the statewide reversal rate for these appeals was a mere 4%. Utah Indigent Def. Comm'n, 2024 Annual Report. Since our involvement, appellate decisions in favor of parents have increased by an astonishing 30%, ensuring that the permanent severing of family ties is subjected to the highest level of judicial scrutiny. *Id*.

Similarly, during the 2022 legislative session, the legislature expanded IADD's statutory responsibilities to include providing statewide appellate representation in cases filed under the Post-Conviction Remedies Act (PCRA). *Id*. PCRA cases are critically important, as they allow defendants to introduce new evidence not raised at trial and bring claims for ineffective assistance of counsel that could not be brought on direct appeal. *Id*. An attorney can only be appointed in these cases after a court has first screened a pro se petition and determined there are potential meritorious constitutional issues.

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In giving IADD this responsibility, the legislature had anticipated we would receive around three appointments per year. As it turned out, the unmet constitutional need was so staggering that we were appointed to thirty-nine cases in the combined 2023 and 2024 fiscal years alone. *Id*. Despite this overwhelming caseload, our specialized representation in this area is already securing vital constitutional corrections. *See, e.g., Washington v. State*, 2026 UT App 27, 587 P.3d 59, *cert. denied*, No. 20260327, 2026 WL 1959687 (Utah May 14, 2026); *Sanchez v. State*, 2025 UT App 78, 571 P.3d 816; *Murphy v. State*, No. 20240275-CA (Utah Ct. App. May 8, 2026) (order vacating and remanding).

The Renewed Problem: The Paradox of Progress

Yet, in solving the problem of access, we have uncovered a wellspring of unmet constitutional need. By establishing a reliable, specialized avenue for rural appeals, the volume of cases we are handling has ballooned well beyond initial projections.

"Only by ensuring that our office has the capacity to meet this ballooning caseload can we continue to fulfill the legislature's vision: an equitable, fair, and constitutionally sound justice system for every Utahn."

Since our founding, the number of constitutionally protected adult criminal appeals originating from Utah's third through sixth class counties has surged. When the trial courts fully reopened post-pandemic in fiscal year 2022, we were appointed on eighty-eight new adult criminal appeals. At that time, we effectively had only one full-time equivalent attorney dedicated to these cases. As a general rule, an experienced appellate defense attorney can sustainably produce one quality opening brief per month, meaning a single attorney can reasonably take on about twelve new appeals per year. That immediate post-pandemic surge therefore created a backlog of seventy-six cases right out of the gate.

Even though we have since expanded to four full-time equivalent attorneys dedicated to adult criminal appeals, the math remains daunting. A fully staffed team of four caps our maximum sustainable capacity at forty-eight adult criminal appeals annually; since 2021, we have never seen fewer than sixty-five appointments in a year. By the end of fiscal year 2026, that compounding, year-over-year deficit has left us fighting a staggering backlog of criminal appeals.

This structural shortfall is stretched even further by our expanded legislative mandates. In our first fully operational year, adult criminal appeals comprised 96% of our total caseload. Today, they make up barely half. The remainder of our capacity is consumed by an influx of child welfare and post-conviction cases.

These raw numbers only tell part of the story. Appellate practice in Utah carries unique, highly time-intensive procedural demands. For instance, Rule 23B motions for ineffective assistance of counsel require us to essentially run a mini-trial: we must independently investigate facts outside the trial record, retain investigators, and present new evidence to the court before the appeal can even proceed. Utah R. App. P. 23B. These structural complexities place immense, compounding demands on our attorneys' time. *See* Utah Indigent Def. Comm'n, 2023 Annual Report.

Looking Forward

The Utah Legislature deserves immense credit for confronting the systemic gaps of the past and establishing IADD. Because of their vision, a person's geographic location in Utah no longer dictates the quality of their appellate defense.

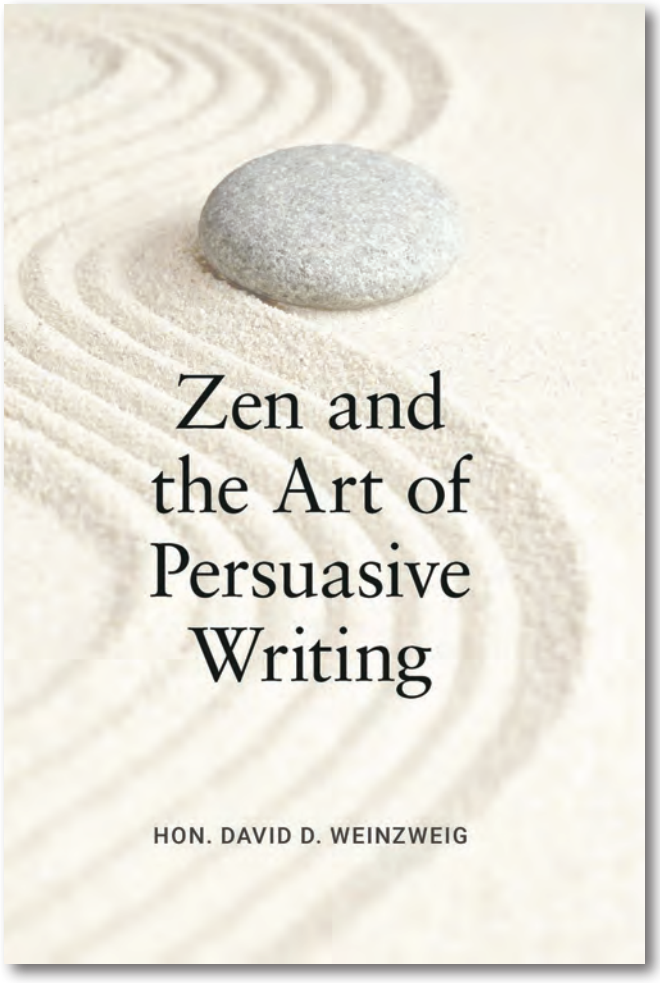
However, our current staffing levels reflect the expectations of our founding, not the operational reality of 2026. As trial courts have accelerated and the demand for indigent appellate services continues to grow, our small team is stretched to its absolute limits. We built an avenue for appellate justice in Utah's rural communities, and the citizens of Utah are rightfully using it.

To sustain this vital constitutional safeguard, the infrastructure of our appellate defense system must be permitted to grow in step with the demand it serves. Only by ensuring that our office has the capacity to meet this ballooning caseload can we continue to fulfill the legislature's vision: an equitable, fair, and constitutionally sound justice system for every Utahn.

Zen and the Art of Persuasive Writing

by Hon. David D. Weinzweig

Reviewed by Adam Alba



Lawyers and judges have spilled gallons of ink describing our epidemic of bad writing. The criticism is justified. After all, great prose does not come naturally to legal professionals who are "boring and ugly and serious." Legally Blonde (MGM 2001). But more than that, many of us are stuck in moldy traditions we've inherited from generations before, and still others insist that legal writing should be dense and abstract.

In his new book, *Zen and the Art of Persuasive Writing*, the Honorable Judge David D. Weinzweig offers lessons for lawyers at every stage. *See* Hon. David D. Weinzweig, Zen and the Art of Persuasive Writing (2025). Newer attorneys can find a good foundation for the craft, and the more seasoned attorneys, who like Latin and legalese, may be persuaded by the gentle correctives. His book includes quotes and examples based on mindfulness, cognitive science, and other disciplines, and it is a welcome contribution to the practice.

Why bother? Judge Weinzweig lays out the stakes: "Unclear writing countermands access to justice, wastes time and money and undermines the search for truth. It spawns lawsuits and longer negotiations. It also weakens the attorney-client relationship." *Id.* at 35.

The book organizes its advice around nine mantras: (1) be aware of the audience; (2) be less categorical; (3) be clear and concrete; (4) be concise; (5) be cohesive and coherent; (6) be compelling; (7) be credible; (8) be a reader and a writer; and (9) be meticulous and rewrite.

Despite his call to adhere to these mantras, I appreciated Judge Weinzweig's non-prescriptivist bent. As he puts it: "If you're coming here for absolute rules, you'll leave empty-handed. My only cause is that of communication." *Id.* at 21. Thus, one of the nine mantras is "Be Less Categorical," and he practices what he preaches. He offers principles and guidelines, not commandments. The mantras call for simplicity, less jargon, more clarity, concrete words, fewer syllables, and the cultivation of an honest reputation.

The strength of the advice is in the numerous before-and-after examples. Judge Weinzweig contrasts the weak "Pete filed a Motion to Exclude the Opinion Testimony of Dan's Damages

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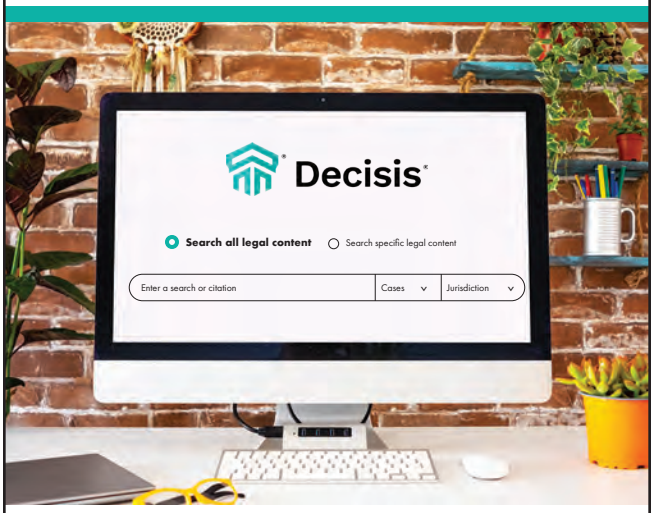
Expert Witness" with the strong "Pete moved to exclude Dan's damages expert." *Id.* at 54. A small edit with a big difference.

He targets intensifier adverbs, calling them "badverbs" and treating them as a tell of lazy prose. *Id.* at 72. He marshals brain-scan research to show that the passive voice is harder to understand and remember, and he pushes readers toward shorter transitions, arguing that "shorter transitions are easier to read than long ones. Writers who habitually grab for longer transitions are increasing the burden on readers, proliferating the sum of syllables required to learn the connection." He provides a handy table:

Long Transition	Short Transition
Consequently	So
Accordingly	Thus
Notwithstanding	Despite
Nevertheless	Still

Id. at 174.

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Decisis

His observations about paragraph structure track my own experience as a reader. He cites research showing that "readers are most likely to read the first sentence of a paragraph … and skim the rest …; they were less likely to read words located toward the end of a paragraph, on the right-hand side and further down the page." *Id.* at 183. That single insight should change how most of us arrange a brief or a motion.

The title promises more Eastern philosophy than the book delivers. That is not a fatal flaw, and I attribute the gap to marketing more than to substance. But when Judge Weinzweig ventures outside the legal canon, the results are memorable. He writes: "The Japanese have a word called *ma*, which celebrates empty or negative space as invisible energy, describing that space as necessary to breath, feel and connect. *Ma* teaches that words draw their power from silence and emphasis on what remains." *Id.* at 219. For lawyers who default to "more words = better argument," this is a useful corrective, along with his repeated advice to be simple and concise. *See also* PHILADELPHIA (TriStar 1993) ("Alright, explain this to me like I'm a two-year-old.").

Two passages near the end deserve attention. Judge Weinzweig reminds the reader that persuasion is a long game: "Persuasive writers earn a reputation for honesty, accuracy and responsiveness among colleagues and in the courts. A fine reputation is not earned in one day or one year; it is cultivated and preserved over the course of your career." WEINZWEIG, *supra*, at 251. This is wise counsel for a young lawyer, and a good check-in for the veteran.

He closes with borrowed wisdom from Stephen King: "If you want to be a writer, you must do two things above all others: read a lot and write a lot. If you don't have time to read, you don't have the time (or the tools) to write. Simple as that." *Id.* at 261.

If you can believe it, *Zen and the Art of Persuasive Writing* is the rare legal-writing book that is easy and fun to read. Judge Weinzweig writes with warmth, and he backs his advice with examples and research. My only real complaint is length. At 321 pages, the book occasionally fails to heed one of its own mantras to "be concise." But in the end, we learn that the recipe for good writing is not mysterious. Good writing is a talent that can be learned through practice and the application of simple tools, a skill that even a lawyer can master.

Referral Fees: Where Are We Now? (Hint: They Are Prohibited)

by Keith A. Call and Richard W. Poll

In 2014, I wrote a *Utah Bar Journal* article about referral fees. *See* Keith A. Call, *Referral Fees*, 27 Utah B.J. 40 (Sep/Oct 2014). It began when a lawyer friend in California sent me a nice piece of work. Because I knew I could not pay him a referral fee, I considered sending a movie gift card as a thank you. Then I did the research and learned that, under the rules then in force, even the gift card was a problem.

Over the past twelve years, the subject has gone through many twists and turns. The old rule disappeared. A replacement rule was unclear. A Utah ethics opinion concluded that referral fees are not automatically prohibited. While the ethics authorities were sorting things out, the Legislature enacted a statute under which some referral payments are a third-degree felony! And, just recently, the Utah Supreme Court adopted an amended rule that expressly prohibits referral fees.

The short version is this: After years of ambiguity, we now know that referral fees are unequivocally unethical and potentially criminal. Before paying anyone for sending a client your way, put down the checkbook and keep reading.

The Old Rule

When I wrote in 2014, the basic rule was easy enough to state. Rule 7.2 prohibited a lawyer from giving *anything of value* to a person for recommending the lawyer's services, subject to several narrow exceptions. Utah R. Prof'l Conduct 7.2(f) (repealed Aug. 14, 2020). Rule 1.5(e) allowed lawyers in different firms to divide a fee only if the division was proportional to their work or each lawyer assumed joint responsibility, the client agreed in writing, and the total fee was reasonable. Utah R. Prof'l Conduct 1.5(e) (2014).

The Ethics Advisory Opinion Committee (EAOC) had applied those rules broadly. A lawyer could not pay a per-client commission to a marketer, give employees gift cards for cases, provide free legal services in exchange for referrals, or disguise the payment through a creative discount arrangement. The lesson was simple: calling a referral fee something else did not improve it.

Then Came the Sandbox

In August 2020, as part of Utah's legal-regulatory reform and creation of the regulatory sandbox, the Supreme Court repealed the provision in Rule 7.2 that expressly prohibited giving something of value for a client referral. Rule 5.4 was also rewritten. Its text allowed a person to recommend or retain a lawyer for another, and it permitted fee sharing with a non-lawyer when the arrangement is reasonable, authorized under Standing Order No. 15 (which established the Sandbox), and disclosed in writing. Utah Sup. Ct. Standing Order No. 15 (Aug. 14, 2020); Utah R. Prof'l Conduct 5.4(b)-(c) & cmts. [3]-[4] (effective May 1, 2021). The Sandbox is set to expire on August 14, 2027, leaving uncertainty as to what will become permanent after the program ends.

Comment 3 went further. It said Rule 5.4(c) permits lawyers to pay for client referrals but says the arrangement must be authorized

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RICHARD W. POLL is an associate at Thorpe North & Western. His practice focuses on IP protection and litigation.



under Standing Order No. 15. Soon after the reform began, the Supreme Court announced that it was halting consideration and authorization of "bare referral fee arrangements" paid by lawyers to non-lawyers. Utah Supreme Court, Statement on Referral Fees (Dec. 10, 2020). However, the Supreme Court's December 10, 2020 statement was not an order, it was not signed by any justice, and it was not part of the Rules of Professional Conduct.

That combination left us with an odd map. The former black-letter prohibition was removed. A comment pointed toward Sandbox authorization, which expires in August 2027. And the Court's announcement suggested that bare non-lawyer referral fees were not authorized. This is not the sort of map I would use for a moonlight drive.

An Opinion That Stirred the Pot

In August 2025, the EAOC issued Opinion 25-02. The EAOC concluded that lawyers may pay referral fees to lawyers and non-lawyers, including current and former clients, so long as the arrangement complies with the Rules of Professional Conduct, including the duties of communication and confidentiality. The opinion reasoned that the Supreme Court removed the former prohibition and that a comment cannot create a prohibition that does not exist in the body of the rule. Utah State Bar Ethics Advisory Opinion Committee, Op. 25-02 (Aug. 13, 2025).

The opinion was important, but it came with warning labels. An EAOC opinion is advisory, and the Supreme Court retains final authority over lawyer regulation. Most importantly, Opinion 25-02 expressly declined to decide whether a referral payment might violate Utah's criminal anti-kickback statute and therefore amount to misconduct under Rule 8.4.

Prohibition Has Returned

In 2025, the Supreme Court's Advisory Committee on the Rule of Professional Conduct proposed an amendment to Rule 5.8 that would have stated plainly, "Referral fees are prohibited." Those proposals went through public-comment rounds in late 2025 and again in spring 2026. *See* https://legacy.utcourts.gov/utc/rules-comment/category/rpc05-08/ (last visited Sept. 24, 2026).

After receiving several comments, the Supreme Court recently approved amendments to the Rules of Professional Conduct that became effective on November 1, 2026. The proposed prohibition on referral fees was moved from proposed Rule 5.8 to current Rule 5.4(c), which states in clear, unambiguous terms, "Referral fees are prohibited." *See* https://legacy.utcourts.gov/utc/rules-approved/2026/10/21/rules-of-professional-conduct-effective-november-1-2026/.

For all the confusion and ambiguity that has reigned for the past several years, the rule is now clear. If you pay a referral fee, you are violating the Utah Rules of Professional Conduct.

Now for the Felony Part

Utah Code sections 76-17-201 and 76-17-202 also deserve every lawyer's attention. These statutes were first adopted in 2022 and were renumbered in 2025. They make it a third-degree felony to solicit or receive a kickback or bribe in return for referring a person for a good or service related to an insurance claim or a claim for damages. They likewise criminalize offering or paying a kickback or bribe to induce such a referral. Utah Code §§ 76-17-201 to -202 (2025).

The definition is intentionally roomy. A kickback or bribe includes direct or indirect remuneration, whether overt or covert and whether paid in cash or in kind. In other words, the movie gift card has already met the statute.

NEED ETHICS HELP?

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



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

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

There are exceptions. Among other things, the definition excludes qualifying fees shared between licensed lawyers for services provided in their capacity as lawyers, ordinary legal fees, payments for medical services, uncompensated referrals for medical treatment, and certain payments of liens or medical bills from settlement proceeds. The statute also permits some marketing to medical providers when the activity is not intended to induce the referral of a particular person.

But the core prohibition is broad. It appears to reach lawyers and non-lawyers alike, and it covers referrals connected to insurance claims or claims for damages. Personal injury practice is the obvious target of the statute, but the words "claim for damages" do not come with a personal-injury limitation. Until courts tell us otherwise, a lawyer should not assume the statute stops at automobile accidents and slips at the grocery store. Nor should a lawyer assume that every payment to another lawyer fits the fee-sharing exception.

Ethics Meets the Criminal Code

Rule 8.4 makes it professional misconduct to commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness. Utah R. Prof'l Conduct 8.4(b). Practitioners should be aware that a felony involving a kickback may also violate Rule 8.4.

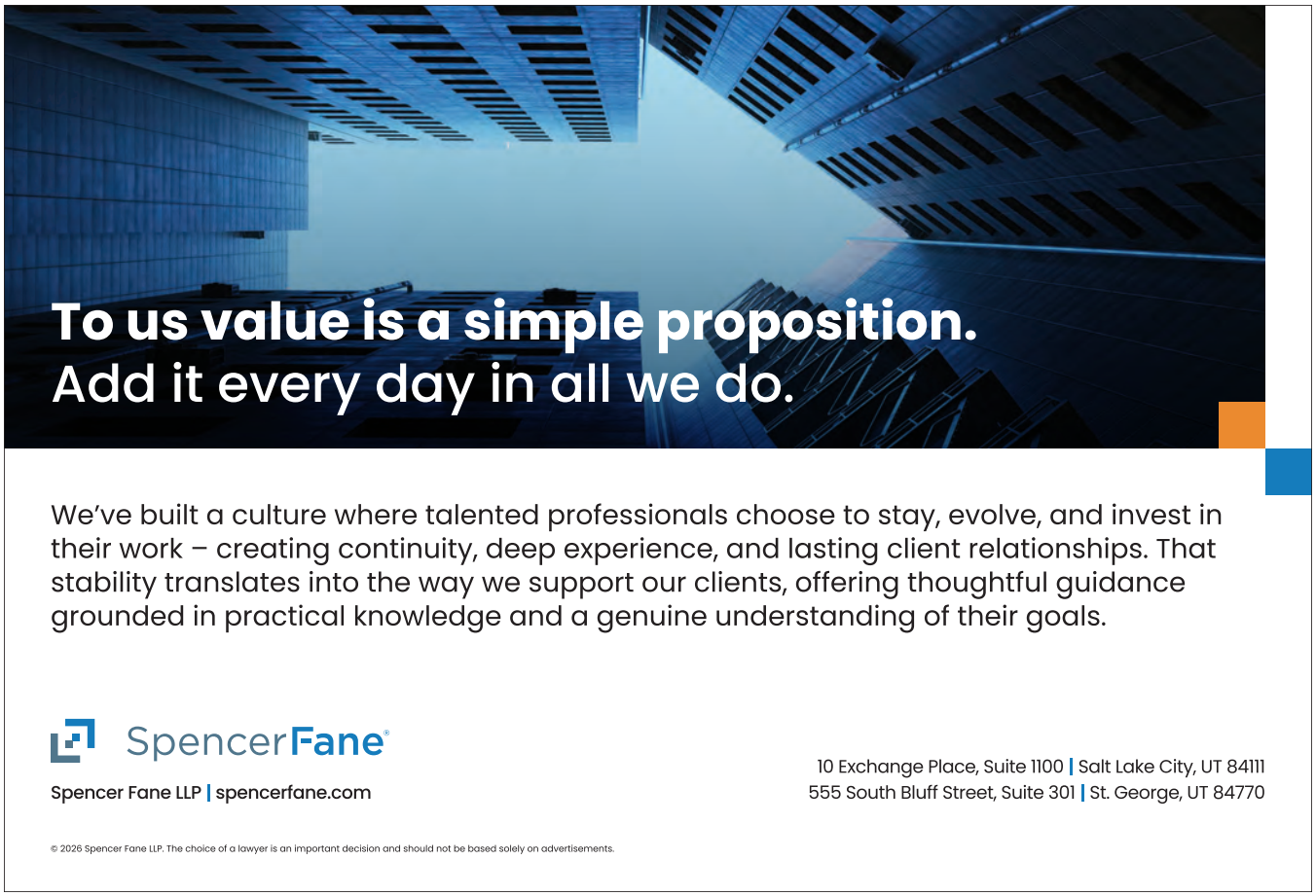
There are other ethical hazards too. A referral arrangement may implicate confidentiality, informed consent, the reasonableness of the total fee, professional independence, conflicts of interest, truthful advertising, supervision of marketers, and restrictions on assisting the unauthorized practice of law. Clearing one rule does not clear the field.

Conclusion

So where are we now? Under the new Rule 5.4(c), referral fees are prohibited. So do not pay them, directly or indirectly. It is that simple.

Stay tuned for more guidance on fee sharing, which is also addressed in the November 1, 2026 amendments to the rules.

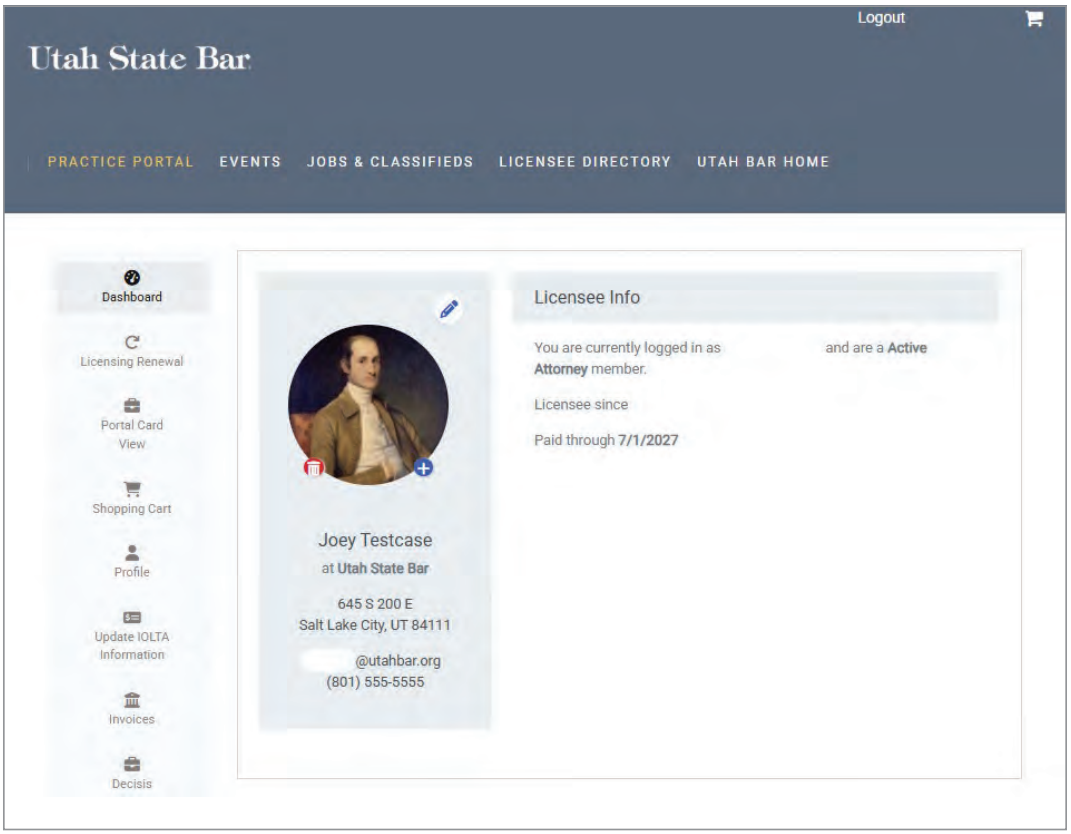
Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the authors.



Practice Portal Gets a Streamlined New Look

Utah State Bar licensees will notice a refreshed Practice Portal that makes it easier and faster to access frequently used tools and information. The updated portal matches the Bar website user interface and presents a new dashboard as the default view with a streamlined profile page and left-side navigation menu.

When licensees log in, they will see key account information, including their profile, status, Bar admission date, and paid-through date. The left-side navigation menu provides direct access to frequently used areas, including Events, Receipts, Decisis, and an easy way to update IOLTA information.



The new layout also improves the experience on phones and tablets. By organizing features into a simple menu rather than displaying numerous cards at once, the portal adapts more naturally to smaller screens and makes it easier for licensees to find what they need.

Licensees who prefer the previous card-based layout can still access it by selecting **Portal Card View** from the left-side menu. The traditional view includes cards for CLE information, recent appellate opinions, the event calendar, job postings, and other resources from Bar partners, such as ALPS, Tybera, and Lexis+AI.

The update gives licensees a choice: use the streamlined menu for quick access to a specific function or switch to the card view to browse the broader collection of resources, social media updates, and rules for public comment.

The Bar will continue working to make its online resources easier and more convenient to access from any device.

Your Recommendations are Welcome.

Please share your experience using the new portal and submit your suggestions via email to onlinesupport@utahbar.org.

IN MEMORIAM

The January/February 2027 issue of the *Utah Bar Journal* will include an in memoriam list of Utah legal professionals who passed away during 2026. If you are aware of any current or former members of the Utah State Bar, including paralegals and judges, whose deaths occurred during 2026, please let us know. Email their name(s) and, if possible, a link to their obituary to: BarJournal@utahbar.org.

To be included in the list, names must be received by December 11, 2026.



Notice of Bar Commission Election

Second Division, Third Division, and Fifth through Eighth Divisions

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

- One representative from the Second Division (Davis, Morgan, and Weber Counties);
- Three representatives from the Third Division (Salt Lake, Summit, and Tooele Counties); and
- One representative from the Fifth through Eighth Divisions (Beaver, Iron, Washington, Sanpete, Sevier, Piute, Wayne, Garfield, Kane, Carbon, Emery, Grand, San Juan, Duchesne, Daggett, and Uintah Counties).

Bar Commissioners serve a three-year term. Terms will begin in July 2027.

To be eligible for the office of Commissioner, the nominee must be a licensee of the Utah State Bar (Bar) in good standing with a business mailing address within the requisite division, as shown by the records of the Bar. Applicants must be nominated by a written petition of ten or more members of the Bar in good standing whose business mailing addresses are in the division from which the election is to be held.

Nominating petitions are available at https://www.utahbar.org/bar-operations/election-information/. Completed petitions must be submitted to Christy Abad (cabad@utahbar.org), Executive Assistant, no later than February 1, 2027 by 5:00 p.m.

2027 Spring Convention Awards Nominations

The Board of Bar Commissioners is seeking applications for three Bar awards to be given at the 2027 Spring Convention. These awards honor publicly those whose professionalism, public service, and public dedication have significantly enhanced the administration of justice, the delivery of legal services, and the improvement of the profession.

Please submit your nomination for a 2027 Spring Convention Award no later than Friday, January 15, 2027. Use the Award Form located at https://www.utahbar.org/awards/ to propose your candidate in the following categories:

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

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

Moving Forward Together: Eighth Annual Access to Justice Summit Builds Connections Across Utah

The Utah Law & Justice Center welcomed 135 participants on September 18 for the Eighth Annual Access to Justice Summit. The day-long gathering brought together nonprofit organizations, legal aid providers, courts, attorneys, law schools, and community partners committed to helping Utahns access legal information, assistance, and representation.

Hosted by the Utah State Bar's Access to Justice Office, this year's summit continued the theme **"Moving Forward Together,"** with a 2026 focus on **"Building a Better Utah."** The day emphasized something at the heart of access-to-justice work: No single organization can close Utah's justice gap alone. Progress depends on organizations knowing one another, understanding the services available throughout the state, and building relationships that make it easier to connect Utahns with the right help.

That collaboration is particularly important in a state where an estimated 89% of civil defendants represent themselves in court, according to a 2023 report by the Utah State Courts' Self-Help Center and Law Library.

Second Chances and Removing Barriers

The summit opened following a warm welcome from the Bar's Executive Director Elizabeth Wright and a video message of support from Lt. Gov. Deidre Henderson. A fireside-style interview followed, featuring Noella Sudbury, founder and CEO of Rasa Legal, and Destiny Garcia, executive director of Clean Slate Utah, moderated by Access to Justice Commission Co-Chair Amy Sorenson. Their conversation focused on their personal experiences with criminal-record expungement, second chances, and the barriers people can encounter while trying to navigate the justice system. It also underscored how outreach, collaboration, and technology can help organizations reach more people and make legal processes more accessible.

The remainder of the day was designed to turn that spirit of collaboration into practical connections. Tabletop discussions gave participants opportunities to exchange ideas on language access, rural outreach, services for noncitizens, fundraising, mediation, data and impact, community justice advocates, barriers to pro bono service, and even storytelling with zero-budget marketing.

One Minute. Thirty-Three Organizations.

One of the most anticipated traditions of the Access to Justice Summit – the **One-Minute Blitz** – was bigger than ever this year. A record **thirty-three organizations** stepped up to the microphone with just sixty seconds to tell the audience who they are, whom they serve, and what they do. The challenge encourages participants to leave the standard organizational introduction behind and find memorable, creative ways to explain their work.

And there is more than bragging rights on the line. Three participating organizations receive $1,000 grants. Summit attendees vote to select two recipients, while a third is chosen at random, ensuring that every organization taking the stage has an opportunity to receive support. This year, **Community Justice Advocates of Utah** and **Timpanogos Legal Center** received the top audience votes, while **Defy Ventures** was selected through the random drawing.

The blitz may be lighthearted, but its purpose is substantive. In little more than half an hour, participants can learn about dozens of organizations and services operating throughout Utah – knowledge they can take back to their own organizations when a client needs assistance they cannot provide themselves.

Learning From Each Other

The afternoon featured two rounds of breakout sessions designed to give attendees practical information and ideas they could take back to their organizations.

AI & ATJ: Practical Applications, Best Practices and Responsible Implementation featured moderator Victoria Tomoko Carrington with panelists Tatiana Christensen, Brandon Scott Pritchard, and Kristen Clarke Kellems. The discussion explored optimistic, practical, and realistic uses of artificial intelligence to help close the access-to-justice gap, along with considerations for responsible implementation.

Legislative Advocacy 101 brought a legislative perspective to the summit, helping participants better understand advocacy and the policymaking process. Access to Justice Office Director Megan Connelly moderated a panel that included: Rep. Grant J. Miller, Legal Aid Society of Salt Lake Executive Director Stewart P. Ralphs, Scholnick Thorne Holland Founder Lauren I. Scholnick, and Utah Community Action Chief Operating Officer Sahil Oberoi.

Statewide Debt Collection and Eviction Court brought together representatives from the judiciary, the Bar, and Utah Community Action, along with **Senate Majority Leader Kirk Cullimore**, for a discussion addressing eviction prevention, housing stability, mediation, and resources for self-represented Utahns. Other participating panelists included: Moderator Janine Liebert, Judge Charles Stormont, Judge Rita Cornish, Heather Lester of Utah Community Action, and Kimberly Farnsworth of the Access to Justice Office.

Recognizing Impact

The summit also provided an opportunity to recognize outstanding contributions to access to justice. **Utah Dispute Resolution** received the **Legal Services Impact Award,** honoring its work serving Utah communities over the last three decades.

More broadly, the summit demonstrated the breadth of Utah's access-to-justice network. The people gathered represented organizations with different missions, expertise, and communities, but a shared goal: ***making it easier for Utahns to find meaningful help when they encounter the legal system.***

That network matters. A person facing an eviction may also need mediation, financial assistance, or help understanding court forms. Someone seeking to clear a criminal record may need employment or reentry resources. A rural resident may face entirely different obstacles to obtaining legal assistance than someone living along the Wasatch Front.

The summit creates a place for the people addressing those needs to meet one another before the next referral, phone call, or client arrives.

Thank You to Our Sponsors

The summit was made possible through the generous support of **Snell & Wilmer, the Utah Bar Foundation, Kirkland & Ellis, Parr Brown Gee & Loveless, and Foley & Lardner LLP.**

The Utah Bar Foundation, a longtime supporter of the summit, also helped participants travel from communities including Moab and Logan – and from as far away as New Mexico – through travel assistance scholarships. Their support helps make possible not simply a one-day event, but the connections and collaborations that continue long after participants leave the summit.

That may ultimately be the most important measure of the summit's success. Utah's access-to-justice organizations do different work, in different communities and for people facing different challenges. But for one day, people came together to learn what others are doing, share what is working, and strengthen a network designed to help Utahns find the legal assistance and support they need.

Moving forward together was more than the summit's theme. It is how the work gets done.

*AI assisted with consolidating information for this article.



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
Hayley Baker
Amanda Bloxham
Sarah Box
Daniel Brown
Marco Brown
Tori Camejo
Joey Carlson
Heather Carter-Jenkins
Brent Chipman
Courtney Cooper
Rasheedah Corbitt
Kent Cottam
Hannah Gates
Thomas Greenwald
Laural Hanks
Dillon Harrington
Brittani Harris
Joe Henderson
Challin Hollaway
Gabrielle Jones
Casey Kener
Karrie Ketchum
Nima Kian
Brady Kronmiller
John Kunkler
Kelli Larson
Benjamin Lawrence
Amy Livingston
Christopher Martinez
Sydney Mateus
Cassie Medura
Susan Morandy
Rachel Namba
Jenifer Percy
Dillon Petrovich
Sarah Potter
Stewart Ralphs
Clay Randle
Anthony Rippa
Heather Rupp
Alison Satterlee
Leslie Staples
Paula Storey
Kaelyn Studebaker
Sade Turner
Sherri Walton
Jessie West
James Whiting
Malisa Whiting
Mark Wiser
Scott Wiser
Matthew Wood
Daniel Young

Family Justice Center

Jennifer Arganbright
Kadyn Ballard
Hannah Barnes
Holly Biesinger
Kyra Boone
Kenny Brown
Ginny Butler
Nathan Buttars
Carlee Cannon
Yiwei Chen
Erin Cranor
Shandi Erickson
Cherylann Felt
Karissa Gillespie
Athelia Graham
Michael Harrison
Christy Hoffmann
Luke Hooper
Loren Paul Husselbee
Brighton Ikaika Jensen
Brooklyn Jensen
Steven Johnson
Allie King
Brennan Lethco
Samuel McVey
Victor Moxley
Brandon Pritchard
Daniel Richards
Hailey Russell
Thomas Scribner
Alisen Setoki
Spencer Shields
April Subashe
K. Rochelle Sumsion
Holly Tripp
Rachel Whipple
Jane Wise

Guardianship Signature Program

Allison Barger
Brant Christiansen
Katie Cox
Rob Denton
Leslie Francis
Layne Huff
Jan McCosh
Langdon Owen
Amanda Reynolds

NOMAS

Hannah Barnes
Lynn Heward
Sarah McCarthy
Olivia McQuarrie
Daniel Ruskin
Tiffany Shimada
Chris Wade
Suzanne Young

Private Guardian ad Litem

Jessica Couser
Jacob Ong

Pro Bono Initiative

Flynn Beckham
Amanda Bloxham
Alexander Chang
Jascha Clark
Julie Coomer
Dan Crook
McKaela Dangerfield
Connor Flinders
Alyssa Florack-Hess
Karin Fojtik
Peter Gessel
Lauren Harvey
Esther Johnson
Haley Kendall
Dino Lauricella
Jan McCosh
Michelle McCully
Cait McKee
Emily McKenzie
Andy Miller
John Morrison
Dawson Oler
Breeze Parker
Anna Paseman
Leonor Perretta
Clayton Preece
Stewart Ralphs
Ian Robertson
Brian Rothschild
Lauren Scholnick
Sean Sigillito
Richard Snow
Andrew Somers
Austin Sork
Stephen Tensmeyer
Nicholle Pitt White
Leilani Whitmer
Oliver Wood

Pro Se Debt Collection Calendar

Miriam Allred
Mark Baer
Alex Chang
Ted Cundick
KC Decker
Denise George
Steven Gray
Russell Griggs
Hong Her
Carolyn Howe
Matt Jaynes
Michael Menssen
Thomas Newman
Gerald Parrott
Justin Pitcher
Nathanael Player
Cami Schiel
Atira Schulte
George Sutton
Dylan Thomas
Angela Willoughby

Talk to a Lawyer Legal Clinic

Maureen Minson
Lewis Reece
Lane Wood

Timpanogos Legal Center

Steve Averett
Amirali Barker
Bryan Baron
Lindsey Brandt
Ken Brown
Nate Buttars
Sophia Chima
David Duncan
Mackenzie Heinrichs
Christy Hoffman
Brighton Jensen
Allie King
Gardner Lange
Emily McKenzie
Maureen Minson
Niki Motlagh
Brandon Pritchard
Thomas Scribner
JC Sessions
Erin Strahm
April Subashe

Utah Legal Services Pro Bono Case

Brent Brindley
Marcia Durkin
Chris Evans
Jeremy Eveland
Michael Gibbons
Naomi Hilton
Andrew Houlin
Layne Huff
Stefan Lenhardt
Grady McNett
William Morrison
Celia Pace
Bryan Payne
Ryan Simpson
Ted Stokes

SAVE THE DATE FOR THE YOUNG LAWYERS DIVISION 2026 WINTER GALA

@ THE UTAH MUSEUM OF FINE ARTS



11.13.2026

6-10 P.M.

COCKTAIL ATTIRE

JOIN US FOR AN ELEGANT EVENING AT THE YOUNG LAWYERS WINTER GALA, HOSTED AT THE UTAH MUSEUM OF FINE ARTS, WHERE PROFESSIONAL CONNECTION, CELEBRATION, AND CULTURE COME TOGETHER IN A TRULY INSPIRING SETTING.

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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 1-521(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 September 24, 2026, the chair of the Ethics and Discipline Committee of the Utah Supreme Court entered an Order of Discipline: Public Reprimand against Darwin L. Overson for violating Rule 1.15(a) (safekeeping property), Rule 1.15(c) (safekeeping property), and Rule 8.1(b) (Bar admission and disciplinary matters) of the Utah Rules of Professional Conduct.

In summary:

The OPC received a non-sufficient funds (NSF) notification from a bank that Mr. Overson's trust account did not have sufficient funds to cover a transaction. The OPC sent a letter requesting an explanation for the deficiency. Mr. Overson explained that the representation took less work than originally anticipated, and he agreed to refund part of the fee. The client grew impatient while Mr. Overson was in trial and submitted a dispute to his credit card company, but Mr. Overson was unaware of the notice of the dispute. Mr. Overson issued a refund, and the client attempted to withdraw his dispute. However, the credit card company processed the dispute. The dispute was withdrawn a day after the NSF was issued.



During the OPC's investigation, the OPC sent two letters requesting an explanation of Mr. Overson's billing practices and how he determined when funds should be withdrawn from the IOLTA account. Mr. Overson did not respond to the letters. Mr. Overson responded to the OPC's Notice, but he did not do so until just prior to the Screening Panel Hearing. Mr. Overson's response and his testimony at the screening panel hearing indicated that he was careless with how he handled trust funds and failed to implement adequate accounting procedures. There was little or no potential injury to the client.

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

DISCIPLINE PROCESS INFORMATION OFFICE

801-257-5518 | DisciplineInfo@UtahBar.org

No-Cost Therapy for Utah Bar Licensees

The Utah State Bar has partnered with Tava Health to offer active licensees no-cost therapy through Tava's intuitive online platform.

How it works

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- Attend sessions through convenient and confidential online video.
- Pay nothing – the cost of your first 6 sessions is completely covered.
- Available to all active licensees, including: attorneys, licensed paralegal practitioners, and paralegals.



tava

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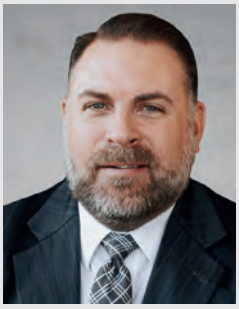
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Message from the Chair

by Elizabeth Hill

It is my honor to serve as Chair of the Paralegal Division for the 2026–2027 year. I am incredibly proud of our division for receiving the Section of the Year Award at the summer convention. This recognition is a testament to the exceptional work of paralegals throughout the State of Utah – not only in the invaluable support they provide to attorneys and their clients but also through the countless hours our members devote to serving their communities.

Our members generously volunteer their time to programs such as Wills for Heroes, provide the Heather Finch Scholarship, and support organizations including And Justice for All and Legal Aid. These efforts reflect the professionalism, dedication, and commitment to service that define Utah's paralegal community.

The Paralegal Division was established thirty years ago in 1996 and is now comprised of more than 200 members residing throughout Utah, from Logan to St. George. Since its formation, the division has worked to enhance and advance the paralegal profession in Utah by providing high-quality continuing legal education, networking opportunities, professional development, and community service opportunities.

Our members also have access to many of the benefits available to members of the Utah State Bar, including mental health services through Tava and employee discounts through Beneplace. I encourage all division members to take advantage of the many services and resources available to you.

We also encourage attorneys and law firms throughout the state to support their paralegals, legal assistants, and Licensed Paralegal Practitioners in becoming members of the Paralegal Division. Membership provides valuable opportunities for professional development, education, networking, and service, all of which help legal professionals continue to perform at their highest level and contribute to meaningful results for their clients. Information about becoming a member or renewing an existing membership is available on the Paralegal Division's website at paralegals.utahbar.org.

Mentorship Program

Last year, we were excited to launch our Mentorship Program, and we are equally excited to continue expanding this valuable resource for our members. The program provides an opportunity for paralegals to connect with colleagues in their respective areas of practice, share knowledge and experience, and support one another throughout their careers.

If you are interested in serving as a mentor or participating as a mentee, please complete the appropriate form on our website. We have received wonderful feedback from participants and look forward to seeing the program continue to grow in the coming years. Kymberly May, our Mentorship Committee Chair, has done an exceptional job connecting members with mentors and mentees in their respective fields.

Education and Community Service

Our Education and Community Service Committees are also working hard to bring members exceptional continuing legal education programs and meaningful community service opportunities.

This year, we are offering additional Brown Bag CLEs to make fulfilling your CLE requirements more convenient and accessible. We are also working to reduce the cost of the Paralegal Luncheon and Annual Meeting so that more of our members can participate in these events.

We welcome your input. If there is a particular topic, speaker, or educational program you believe would benefit our members, please reach out and let us know. Your ideas and feedback help us make the division stronger and more responsive to the needs of our members.

ELIZABETH HILL is a family law paralegal with LOVS and currently serves as Chair of the Paralegal Division of the Utah State Bar.



Stay Connected

To stay connected with the Paralegal Division, please follow us on LinkedIn, Facebook, and Instagram (@utahparalegaldivision) and X (@utahparalegals). We regularly share information about upcoming events, educational opportunities, community service projects, and other news relevant to Utah's paralegal community.

While we share much of our information through social media, we also communicate important updates and announcements by email. Please make sure your email address is current so that you do not miss important communications from the division. If you are not receiving our emails, your office's email system may be blocking them. You may wish to consider providing a personal email address to ensure that you receive all division communications.

Thank You to Our Board

I would also like to recognize this year's Board of Directors. Each member of our board is a dedicated paralegal volunteer who has committed significant time and effort to continuing the exceptional work established by the boards that came before us. Their willingness to serve and contribute to the division is greatly appreciated.

The Paralegal Division would not be where it is today without the dedication and hard work of our past and present board members.

Finally, I am grateful for the opportunity to serve as Chair of the Paralegal Division. I look forward to working with our members throughout the coming year as we continue to strengthen our profession, serve our communities, and support one another.

If you have suggestions, ideas, or feedback for the division, please feel free to contact us at utahparalegaldivision@gmail.com.

Let's make this anniversary year one to remember!

2026–2027 Board of Directors

Elizabeth Hill, Chair

Linda Echeverria, Chair-Elect

Jessika Allsop, Secretary

Kristy Brown, Finance Officer

Jennifer Peterson, Parliamentarian

Alba Monge-Rosa and **Coryne Lake,** Education Committee Co-Chairs

Tally Van Ry, Community Service Committee Chair

Leslie Bullard and **Geysa Peeler,** Membership Committee Co-Chairs

Frances Helsten, Communications/Social Media Committee Chair

Greg Wayment, Marketing/Publications Committee Chair

Kymberly May, Mentorship Committee Chair

Jacob Clark, Immediate Past Chair

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

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

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

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

Classified Ads

RATES & DEADLINES

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

To place an ad: Go to https://services.utahbar.org/Jobs-Classifieds/Post-a-Classified-Ad and follow the instructions. Payment is required when ordering the ad. If you need assistance with this process call 801-297-7022 or email BarJournal@utahbar.org.

Classified Advertising Policy: It shall be the policy of the Utah State Bar that no advertisement should indicate any preference, limitation, specification, or discrimination based on color, handicap, religion, sex, national origin, or age. The publisher may, at its discretion, reject ads deemed inappropriate for publication, and reserves the right to request an ad be revised prior to publication. For display advertising rates and information, please call 801-910-0085.

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.

Get the Word Out!

If you need to get a message out to the members of the Bar…



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LOCATION OF ESTATE PLANNING DOCUMENTS

If you have any information about, or a copy of, a trust created by Dorothy Smith Leifer (who died March 8, 1997) for the benefit of her surviving husband, Donald Leifer (who died October 2, 2021), please contact Langdon Owen at Cohne Kinghorn, P.C. lowen@ck.law, (801) 363-4300 who represents Edward Leifer, the executor of the estate of Donald Leifer. Such trust was originally created in Utah as the C. DeWitt and Dorothy Smith Family Trust on May 1, 1979 and was later amended, restated, and renamed the Dorothy U. Smith Family Trust. At one time, the trustees of that trust had been Christine Decker and Donald Leifer until Ms. Decker resigned as trustee.

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