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THE COFFEE HOUSE

A Publication of the Wyoming Trial Lawyers Association

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PRESIDENT'S COLUMN

MARK MACY | WTLA PRESIDENT



Protecting Judicial Independence in Wyoming

As the chill of Fall settles across Wyoming, so too does a concerning chill in the relationship between our branches of government. In my 35 years as a Wyoming lawyer, I have never seen such an aggressive effort by the legislative branch to exert pressure on the independence of our judiciary.

Our judges, like all public servants, take an oath to uphold the Wyoming Constitution. Their role is not to bend with political winds, but to interpret the law fairly and impartially. That means that sometimes, even well-reasoned and thoughtful decisions will be unpopular. As lawyers, we've all won and lost cases based on judicial interpretation. We may not always agree with the out-

come, but we've never had to question whether a judge ruled out of fear of political retaliation.

That is what is at stake now.

I want to commend our Legislative Committee for being proactive. WTLA presented a thoughtful, organized response to proposed changes considered by Joint Judiciary Committee, including draft legislation requiring judicial appointments be subject to Senate confirmation. Wyoming does not need to inject partisan politics into the selection of our judges.

Our current system works.

The Judicial Nominating Commission provides a fair, balanced, and apolitical process that ensures qualified judges

are selected based on merit—not ideology. Every client who walks into a Wyoming courtroom deserves the assurance that their case will be decided by law and facts, not by the current “temperature” of public opinion or political allegiance.

We must stand firm. We must protect the process that has served Wyoming well for generations.

Let's keep politics out of the judiciary—and keep justice where it belongs: in independent courts. ☐

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FROM THE EXECUTIVE DIRECTOR

MARCIA SHANOR | WTLA EXECUTIVE DIRECTOR



What Can You Do?

It is fall in Wyoming, my favorite time of year. The colors are vibrant and today there is snow topping the Wind River Canyon walls. The air is crisp, apples are bright red and ready for harvest—and it is football season. In my family, you must be a football fan. You will be watching, cheering, talking scores and plays, and if you are lucky, there can be games sched-

uled all day Saturday and Sunday!

This past weekend, I listened to an interview with a young player who started the season with a new team. His goal is to be an integral part of a successful season. He said, “*I’m learning the playbook, getting to know my teammates, figuring out where I can help, and earning my place.*” He also spoke about leadership and the need to lead from wherever you are on the team.

That struck me. Joining a team, whether it’s an NFL franchise or the Wyoming Trial Lawyers Association, means showing up ready to contribute. Every team needs its rookies, its veterans, its strategists, and its motivators. The magic happens when everyone plays their role.

So, what can you do for WTLA?

You can show up. Attend a CLE or the convention. Ask or answer a question on

the listserv. Bring in a new member. Lend your experience when legislative alerts go out. Mentor a younger lawyer. Offer to present at a seminar. Join the Board or serve on a committee.

These may seem like small plays, but together, they’re how we win the big games—protecting the justice system and standing up for Wyoming people.

Like any great team, our success depends on every player giving their best. Whether you’re a new member just learning the playbook, or a long-time member with years of experience, WTLA needs your voice, your ideas, your leadership, and your energy.

Let’s have a winning season. 🏈



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HOW JUDICIAL PERFORMANCE EVALUATIONS STRENGTHEN PUBLIC CONFIDENCE AND SUPPORT THE RULE OF LAW

BY DONA PLAYTON

Judicial independence and public accountability are twin pillars of a constitutional democracy. As courts adjudicate increasingly contentious and high-profile legal disputes, confidence in the judiciary is both vital and vulnerable. In Wyoming, these issues have come to the forefront through legislative efforts proposing to amend the state constitution and the judicial nomination process. Recent proposals would require Senate confirmation for Wyoming Supreme Court justices and establish partisan elections for justices and state judges.ⁱ Efforts to replace Wyoming's long-standing merit-based selection process risk eroding the very independence that protects the courts from becoming tools of shifting political agendas.

The erosion of public trust in the judiciary is not unique to Wyoming—it is part of a national reckoning over the credibility of American institutions. Many now question whether judges decide cases based on law or ideology, and some view the legal profession itself as partisan or self-protective.ⁱⁱ At its core, judicial performance evaluation (JPE) systems exist to strengthen the courts by ensuring that judges are evaluated on how they perform their duties—fairness, integrity, professionalism, and respect for all court users—rather than whether their decisions are popular or politically aligned. A fair, transparent, and accessible JPE can help educate the public about how judges are assessed, dispel myths about bias, and strengthen faith in the rule of law.

The Case for Modernization

Judicial Performance Evaluation programs were first developed in the 1980s.ⁱⁱⁱ Since the first JPE program in Alaska, twenty other states, including Wyoming, have implemented official JPE programs.^{iv} While JPE programs provided a strong foundation for judicial accountability, recent developments and research highlight several persistent challenges that hinder the effectiveness and legitimacy of many existing JPE programs. These include declining public trust in courts, overly limited and unreliable sources of input, and the lack of resources for professional development and improvement.

Much has changed in the decades since JPE programs were first introduced. Today's judges face expanded responsibilities, including managing high-volume dockets, responding to self-represented litigants, addressing mental and behavioral health issues, and incorporating new technologies. At the same time, the public now demands greater transparency, access, and simplicity in legal processes. JPE programs must keep pace with these developments to remain legitimate in the eyes of both the legal profession and the public.

A Blueprint for Success: Key Insights from the Institute for the Advancement of the American Legal System (IAALS)^v

The recently released IAALS *Judicial Performance Evaluation 2.0* report provides a blueprint for states seeking to strengthen their JPE systems in ways that promote both judicial independence and accountability.^{vi} These recommendations reinforce the notion that JPEs

should not be limited to retention decisions; they must also serve as instruments for judicial learning, system-wide improvement, and civic engagement.^{vii} To address these challenges, IAALS recommends modernizing JPE programs to emphasize impartiality, transparency, consistency, accountability, efficiency, and integrity, while avoiding political bias by concentrating on the judging *process* rather than case outcomes.

ADDRESSING THE INTERESTS OF CORE CONSTITUENTS

Judges: Professional Development and Institutional Support

Judicial participation and constructive evaluative data are crucial for a successful JPE. Low survey response rates and off-topic comments often limit judicial enthusiasm for JPE.^{viii} However, when constructively designed and implemented, JPEs offer judges an opportunity to receive structured feedback beyond appellate review. Feedback generated through evaluation, coupled with continuing education and mentoring, supports judicial confidence, reduces professional isolation, and encourages reflective practice. Research confirms that judges who report higher levels of self-efficacy and preparedness tend to perform better in case management and time to disposition—a key metric of judicial effectiveness.^{ix} JPE programs also offer judges a platform for clarifying the values and standards of the judiciary. When implemented as part of a supportive ecosystem—with professional development resources rather than punitive consequences, judicial evaluations can reinforce ethical behavior, bolster



morale, and reaffirm the judiciary's commitment to excellence.

Legal Professionals: Enhancing Consistency and Courtroom Practice

Attorneys and court staff benefit from JPE programs that standardize judicial performance expectations across jurisdictions. Legal professionals rely on consistency, clarity, and professionalism from the bench to effectively represent their clients. Evaluation programs can reinforce these qualities by identifying areas for judicial improvement, informing retention decisions, and creating data that can guide resource allocation and judicial training initiatives. Moreover, when attorney perspectives are incorporated into the evaluative process through structured, confidential surveys, lawyers gain a more direct role in shaping the quality of the judiciary. This fosters a more collaborative and mutually reinforcing relationship between the bench and the bar.

The Public: Procedural Fairness, Access, and Transparency

Public trust in the courts is essential to the legitimacy of the judicial system. Though the public places high value on fairness in procedure, clarity in communication, and respectful treatment in court, they often encounter barriers—procedural complexity, limited information, cost, and language access—that obscure their understanding and hinder engagement with the courts.^x

JPE programs can help close this gap

by aligning judicial practice with public expectations. When conducted transparently, JPEs demonstrate how judges are evaluated, how that information is used, and how performance connects to broader goals of accountability and judicial excellence. In doing so, they promote not only public confidence but also civic education. Providing accessible summaries of judicial evaluations ahead of retention elections, for example, allows voters to make informed decisions based on criteria unrelated to political affiliation or individual rulings.^{xi}

Public Engagement and Access to Judicial Performance Information

JPE programs were originally developed to address a gap in public knowledge about judges standing for retention.^{xii} As states adopted merit-based judicial selection systems, they sought to balance independence and accountability through retention elections, uncontested elections in which voters decide whether to keep a judge in office.^{xiii} Over time, however, states recognized that voters often lacked sufficient information to cast an informed ballot.^{xiv} Many relied on anecdotal advice from lawyers, made decisions based on superficial characteristics such as name or gender, or simply skipped the judicial portion of the ballot. To help voters make informed choices, nonpartisan commissions began evaluating judges on qualities such as legal ability, integrity, impartiality, communication, and administrative effectiveness.^{xv} These commissions issue reports

summarizing performance findings and recommending whether a judge meets established standards, offering voters objective, nonpolitical information about judicial performance.

Surveys of court users are a vital part of this process.^{xvi} While data such as case filings and docket management offer useful benchmarks, they cannot capture the human experience of fairness in the courtroom. Surveys of attorneys, jurors, litigants, and court staff reveal whether participants feel heard, respected, and treated with dignity—key aspects of procedural fairness that form the foundation of judicial legitimacy and public trust.

Including the perspectives of self-represented litigants is particularly important. Studies show that at least one party is self-represented in roughly three-quarters of state civil and domestic relations cases, a dramatic increase from just a few decades ago.^{xvii} Because these individuals navigate the court system without legal counsel, their experiences provide essential insight into how judges communicate, ensure understanding, and maintain fairness. Incorporating their feedback helps JPE programs reflect the realities of today's courts and reinforces the judiciary's commitment to accessibility, transparency, and public confidence.^{xviii} However, sustaining meaningful evaluation requires not only commitment but also investment.

INVESTING IN JUDICIAL PERFORMANCE AND PUBLIC TRUST

A well-functioning Judicial Performance Evaluation program is an investment in the strength and integrity of the judicial branch. Reliable evaluations require dedicated funding to ensure that data are collected systematically, feedback is analyzed thoughtfully, and results are used to promote continuous improvement.^{xix} Providing adequate resources allows JPE programs to operate with transparency, independence, and credibility—qualities that enhance both judicial performance and public trust. By supporting a modern, well-resourced JPE system, policymakers can help ensure that Wyoming's judiciary remains effective, accountable, and worthy of the confidence it must inspire to uphold the rule of law.

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CHARTING A PATH FORWARD FOR THE WYOMING JUDICIAL BRANCH

THE HONORABLE LYNNE BOOMGAARDEN,
CHIEF JUSTICE OF THE WYOMING SUPREME COURT

While “strategic plan” may not be the most riveting phrase in the English language, I assure you, its substance reflects the very real and practical work of strengthening Wyoming’s courts and our relationships with the legal community and the people of Wyoming. I am pleased to share highlights of the Wyoming Judicial Branch’s 2025–2027 Strategic Plan.

The plan rests on four pillars: excellence and innovation, public trust and accountability, predictable funding, and accessible justice. None of these pillars stands alone. They succeed only through collaboration, especially with members of the Wyoming State Bar and groups like the Wyoming Trial Lawyers Association.

One area where our paths naturally intersect is judicial selection. Although not explicitly mentioned in the Strategic Plan, it is integrated into our goals. Recruiting, mentoring, and developing high-quality judicial officers remains vital. This requires us to work closely with the Bar to encourage strong applicants to step forward. Our judicial system is only as strong as the people who serve within it.

Another focus is judicial performance. The plan prioritizes the development and implementation of an improved judicial evaluation tool. Though we plan to consult multiple justice system participants, we know lawyers interact with judges daily in ways others do not. Consequently, your observations, shared honestly and constructively, will help us recognize where we are doing well and where improvement is needed.

An open and candid Bench-Bar relationship is fundamental to a strong justice system. We can only achieve our goals if communication flows both ways. The plan outlines steps to improve communication, both within the Judicial Branch and the wider legal community, as well as with the public. However, paper goals mean nothing without your voices. Consider this an invitation. How can we make our interactions more effective? What traditions should we maintain or reinstate, and what practices should we reconsider? I encourage you to share your thoughts with your local bar leadership, contact the Administrative Office of the Courts, or connect with us at upcoming Bench-Bar meetings.

As part of this effort, we will continue working with the Bar through CLE programs, joint committees, and outreach on access-to-justice initiatives, including rural practice support and resources for self-represented litigants. If you know of an opportunity to collaborate, please let me know.

Our mission remains simple: to provide justice through the timely, fair,

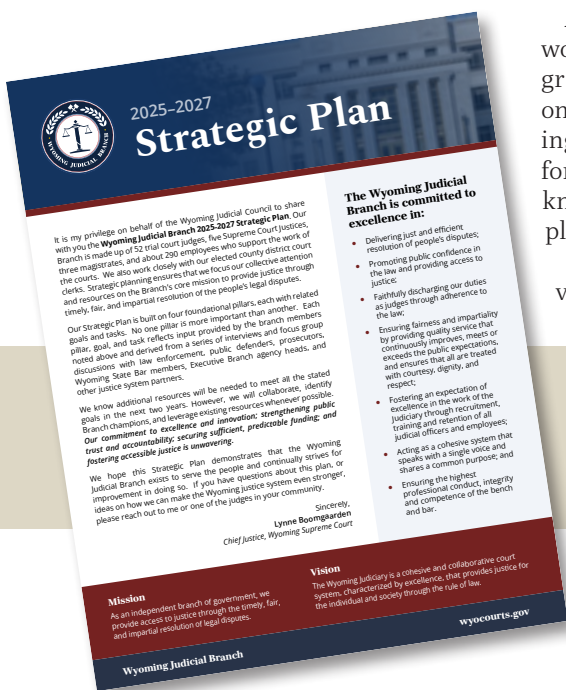


and impartial resolution of disputes. But fulfilling that mission is anything but simple. It requires innovation, honesty, and collaboration.

The Strategic Plan is not the end of the conversation, but the beginning. I welcome your ideas and critiques. Let’s continue to build on the trust and respect that make Wyoming’s bench and bar a strong, united force for justice.

The Wyoming Judicial Branch 2025–2027 [Strategic Plan is available at Wyocourts.gov](#). Please give it a read. 📖

The plan rests on four pillars: excellence and innovation, public trust and accountability, predictable funding, and accessible justice. None of these pillars stands alone. They succeed only through collaboration, especially with members of the Wyoming State Bar and groups like the Wyoming Trial Lawyers Association.



Gerry Spence

Legendary Trial Lawyer and Founding Member of the Wyoming Trial Lawyers Association

Gerry Spence, the Wyoming trial lawyer whose fringed buckskin jackets, mane of blond hair, and homespun eloquence made him one of the most celebrated and successful courtroom advocates in American history, died August 13 at the age of 96.

Over more than six decades of practice, Gerry became an unyielding champion of the powerless and a formidable adversary of corporate and governmental authority. He never lost a criminal trial and had not lost a civil case since 1969 — a record that remains among the most extraordinary in modern American legal history.

With jurors, he mixed the cadence of a Wyoming storyteller with a tactician's precision. "I never represent a client I don't love," he often said. "The jury can tell if you don't."

Early Life and Education

Gerry was born Jan. 8, 1929, in Laramie, Wyoming. He grew up in Sheridan and Laramie, where the rhythms of small-town life and the self-reliance of the rural West shaped his sensibilities.

At 16, he joined the Merchant Marine during the final year of World War II, sailing on supply vessels and getting his first view of the world beyond Wyoming. After returning home, he attended the University of Wyoming College of Law, graduating first in his class in 1952.

Prosecutor, Politician, and a Change in Course

Gerry began his legal career as an insurance defense attorney, representing corporations and insurers. He also served as a prosecutor, where he learned the mechanics of criminal litigation from the state's side of the aisle.

In 1962, he ran unsuccessfully for Wyoming's at-large congressional seat as a Republican. The experience left him wary of electoral politics and convinced him that his battles would be fought more effectively in the courtroom than on the campaign trail.

By the late 1960s, he shifted exclusively to representing plaintiffs and criminal defendants, aligning his practice with his conscience. His law firm moved from Casper to Jackson in 1978 and continues today as The Spence Law Firm, LLC. The firm's mission remains unaltered through the work of each of the trial lawyers that lead his firm.

Landmark Cases

Gerry's national profile soared with the Silkwood case, in which he won a \$10.5 million verdict against the Kerr-McGee Corporation on behalf of the estate of Karen

Silkwood, the nuclear plant worker and union activist whose mysterious 1974 death became the subject of a federal investigation and the Oscar-nominated film *Silkwood*.

Gerry won a \$26.5 million verdict against Penthouse Magazine for a story about Kim Pring, former Miss Wyoming. Gerry won a \$52 million verdict against McDonald Corp.'s on a handshake deal between a small ice-cream manufacturer and the fast-food giant.

Gerry won the acquittal of Rock Springs, Wyoming, public safety director Ed Cantrell in a murder trial that riveted the state.

He defended Imelda Marcos, the former first lady of the Philippines, against racketeering and fraud charges in New York federal court. The trial ended in Mrs. Marcos's acquittal, with jurors citing Gerry's ability to humanize a polarizing figure.

Gerry represented Randy Weaver, the Idaho survivalist charged with murder and other crimes after the deadly Ruby Ridge standoff with federal agents. He secured acquittals on the most serious charges, turning the trial into a touchstone for debates over government overreach and civil liberties.

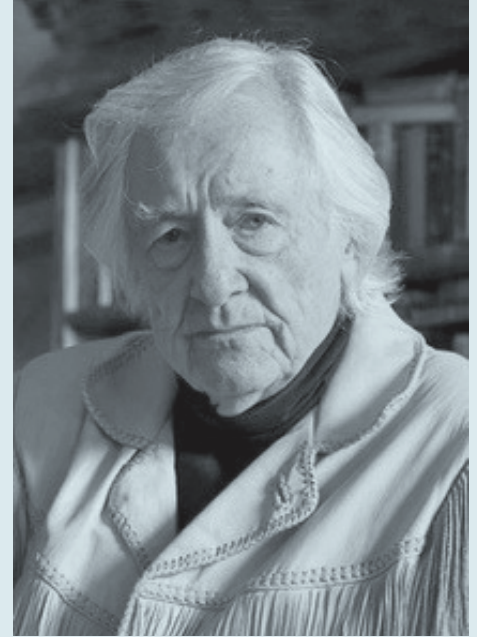
He represented Detroit trial lawyer Geoffrey Fieger, accused of illegally funneling campaign contributions to Democratic presidential candidate John Edwards in violation of federal election law. Gerry dismantled the prosecution's case, winning acquittals on all counts.

He also won multimillion-dollar verdicts in product liability suits, including cases over unsafe vehicles, insurance fraud, and industrial accidents, often framing his arguments as moral battles against corporate neglect.

While in his 80's, his last trial involved the representation of two innocent yet convicted men in Iowa.

Beyond the Courtroom

Gerry was a prolific author, publishing more than two dozen books over four decades. His works spanned trial strategy, memoir, social critique, visual art and poetry. They included his memoir *The Making of a Country Lawyer*; the bestselling



How to Argue and Win Every Time; *From Freedom to Slavery: The Rebirth of Tyranny in America*; *Bloodthirsty Bitches and Pious Pimps of Power*, a critique of media and political corruption; *Gunning for Justice*; *Murder and Madness*; *Trial by Fire* — an inside look at his major cases; and photography books reflecting his parallel career as an accomplished visual artist.

His writing blended legal insight with philosophy, urging lawyers to ground their advocacy in truth and human empathy, and sought to make courtroom skills accessible to ordinary readers.

In the 1990s, he became a familiar face on CNBC as a legal commentator, offering candid, plain-spoken analysis of trials such as the O.J. Simpson murder case.

Philosophy and Legacy

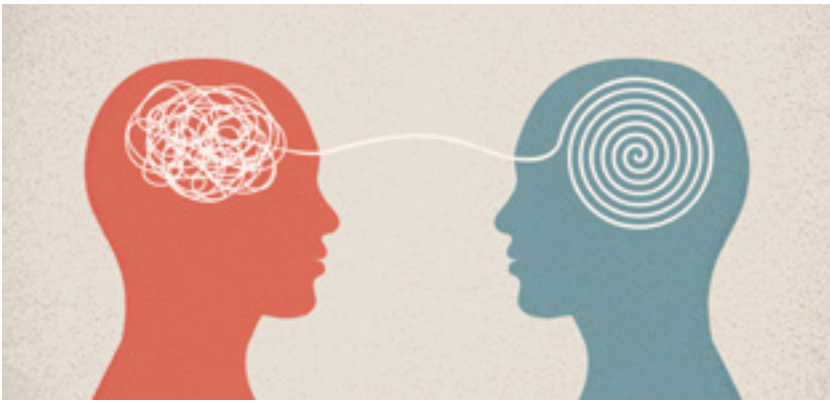
For Gerry, trials were moral reckonings, not simply contests of skill. His fringed buckskin jackets, he insisted, were not affectations but a reflection of who he was and where he came from. "I want justice," he told one jury, "and if justice is done, we have all won."

Gerry continued to prolifically write, paint, photograph, and teach trial lawyers from across the nation, and enjoy time with his beautiful wife of 57 years, LaNelle "Imaging" Spence.

His legacy — in the juries he persuaded, the students he trained, and the clients whose lives he altered — was summed up in a lesson he gave to young lawyers: "When you stand for the power-less," he said, "you stand for all of us."

"Lawyers should be chosen because they can demonstrate a history rich in human traits, the ability to care, the courage to fight, the will to win, a concern for the human condition, a passion for justice and simple uncompromising honesty. These are the traits of the lawyer."

— Gerry Spence



ONE YEAR IN: TREATMENT COURTS UNDER JUDICIAL ADMINISTRATION

BY KURT ZUNKER

In February 2023, the Wyoming Legislature enacted Senate File 0023 to shift administration and oversight of Wyoming's treatment courts from the Department of Health to the Judicial Branch, with the transition taking effect on July 1, 2024. One year into that change, twenty programs operating across fifteen counties now work within a single, court-managed framework. The aim has been practical rather than ideological: align program operations with courtroom decision-making, standardize expectations statewide, and build the data and training infrastructure needed to evaluate outcomes. This article takes stock of recent developments—updated standards, peer review, performance measurement, case-management enhancements, and the launch of mental health diversion—and it looks ahead to the next phase as the Branch works to move past the transition and into continuous support and improvement.

WHY JUDICIAL ADMINISTRATION?

Moving treatment courts under the administration of the Judicial Branch is not a simple rebrand. Rather, it establishes an organizational framework that underscores the judiciary's role and responsibility in these courts—providing leadership and ensuring that the established standards of care are implemented with fidelity. Bringing program operations under the Branch allows it to set clear statewide expectations, reduce county-to-county

variation, and connect daily practice to treatment court best practices standards. It also creates a defined line of accountability. The same entity that is responsible for courtroom outcomes can now establish best practice standards, require training, collect comparable data, and provide technical assistance when teams face predictable challenges, such as limited local treatment capacity or inconsistent responses to relapse. The intent is a system that is more consistent, more measurable, and easier for local teams to improve over time.

STANDARDS: A COMMON BLUEPRINT, UPDATED

The Branch's first order of business was to update the Wyoming Treatment Court Standards. The new standards draw on decades of research in criminology and behavioral health and apply that evidence to the daily practices of Wyoming adult treatment courts. The standards set expectations for screening and assessment, case planning, judicial interaction, incentives and sanctions, substance use testing, and coordination with treatment providers. They aim for statewide consistency while allowing room for local problem-solving, so a court in a larger county and a court serving a very remote community can both meet the same goals with the resources they have available. After adoption, the Branch established an annual training cycle to allow teams to learn the

standards together, refresh their skills, and calibrate their practices. For lawyers, this means clearer eligibility decisions, more predictable responses to progress or relapse, and a common vocabulary across counties.

PEER REVIEW: PEERS HELPING PEERS IMPROVE

With the standards in place, the Branch launched peer review in 2025. Teams from one program spend two days with another program to observe staff meetings and status hearings, examine case files and policies, and compare practice to the standards. Each visit concludes with a written summary of strengths and targeted recommendations, with timelines and a follow-up plan. The process is collegial and practical, designed to help courts implement concrete changes that improve consistency, participant engagement, and measurable outcomes, while also ensuring compliance with national and Wyoming Best Practice Standards.

CASE MANAGEMENT: THE DATA BACKBONE

The Wyoming Treatment Court Case Management System (WYOCSTMS) is the engine that will turn daily work into usable information. Over the past year, the Branch has begun standardizing core data fields, aligning local entry practices, and expanding basic reports, with training rolling out in phases. The goal is to develop a system that enables programs to consistently monitor enrollment, graduations, terminations, testing activity, and service delivery in a consistent way, while also producing statewide views to inform policy and funding.

PERFORMANCE MEASUREMENTS: MEASURING WHAT MATTERS

With standards in place, peer review underway, and the case-management backbone developing, the next task is to measure results in a clear and comparable way. The Judicial Council's Behavioral Health Committee has convened a working group of Treatment Court Program Coordinators to draft a statewide set of performance measures. The group is focused on measures to gain objective insights into performance, enabling better decision-making, identifying inefficiencies, and tracking progress towards programmatic goals. Examples under consideration include recidivism during and

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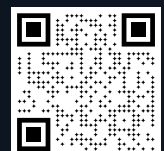


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SCAN ME



NEW LEGISLATION PROTECTS CHILDREN AND THE INTEGRITY OF THE COURTS

BY LORETTA HOWIESON KALLAS

“The fear and trauma associated with a child’s testimony... have two serious identifiable consequences: They may cause psychological injury to the child, and they may so overwhelm the child as to prevent the possibility of effective testimony, thereby undermining the truth-finding function of the trial itself.”

Coy v. Iowa, 487 U.S. 1012, 1032 (1988) (Blackmun, J., dissenting)

This spring the Wyoming Legislature passed Wyoming Statute §7-11-409, Testimony from child witnesses; accommodations, effective July 15, 2025. While some would note that these accommodations have been available since the United States Supreme Court issued *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed. 666 (1990), Wyoming Courts have been reticent to apply these accommodations for child victims and witnesses. This new legislation clarifies and provides legal authority of the courts to protect these children while they are in our legal system.

The primary issue of concern for this legislation and presentation of remote testimony, in general, is a person’s 6th Amendment of the United States Constitution and Article 1, §10 of the Wyoming Constitution right to confrontation of witnesses against them. These considerations apply solely to criminal defendants by the clear language of the Confrontation Clause. See *Matter of TJH*, 485 P.3d 408, 412-413 (Wyo. 2021). “A defendant’s right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where the denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.” *Craig*, 497 U.S. at 848. When the important public policy is a child’s welfare, however, the consideration must be if it is the defendant’s presence that is the cause of the child witness’s trauma. *Id.* at 8556. “Finally, the trial court must find that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis*, i.e., more than ‘mere nervousness or excitement or some reluctance to testify.’” *Id.*

The Wyoming Supreme Court summarized *Craig* as follows: “the presentation of witness testimony by video conference is not permissible unless: 1) it is necessary to further an important public policy; and 2) the reliability of the testimony is otherwise assured.” *Bush v. State*, 193 P.3d 203, 215 (Wyo. 2008). *Bush* did not involve a child witness but, rather, an older gentleman who was hospitalized at the time of the trial. The trial court assessed that the witness’s condition was serious and severe and prevented him from traveling to appear in person for court for an excessive period of time. With presentation of video conferencing testimony the trial court assessed that the reliability of the witness’s testimony was assured by the jurors’ ability to assess his body language and demeanor and the public interest served was judicial economy. Mental health has also been found to be “serious and severe and not temporary” to support a basis for remote, video testimony in *Kramer v. State*, 277 P.3d 88, 94 (Wyo. 2012).

In contrast, though, is *Bowser v. State*, 205 P.3d 1018 (Wyo. 2009), wherein *Bowser*’s conviction was reversed due to a violation of his right to confrontation of a child witness. *Bowser* focused on the requirement to show more than *de minimis* distress and did not address remote testimony but, rather, a videotaped deposition pursuant to Wyoming Statute §7-11-408. The prosecution had filed a motion to allow the testimony and, further, had plead concerns that the child witness was susceptible to intimidation from the defendant and was receiving ongoing psychological care to cope with trauma associated with the case. In short, the State argued that the victim was likely to be so intimidated as to

be unable to testify against the defendant in open court; however, it presented no testimony, affidavits or evidence to support these assertions. Further complicating matters was the fact that the defendant was seated in a fashion that he was unable to observe the witness in any fashion during the deposition. The deposition was all that was presented at trial in relation to the victim’s testimony. The *Bowser* Court found that the trial court was not presented any evidence to support a finding of emotional distress by the child witness and made no findings to that effect. Due to the failure to apply *Craig* and failure to accurately apply Wyo. Stat. §7-11-408, *Bowser* was denied his constitutional right to a fair trial.

The new Wyoming Statute § 7-11-409(a) is restricted to prosecutions for incest, sexual assault and sexual abuse of a minor. Notably, it does not apply to child abuse, solicitation of a minor or child exploitation cases. It does require that the trial court conduct a hearing on the issue; thus, it will generally be instituted by the motion of a party, presumably the prosecution. At the hearing the trial court must make a finding that the child testifying in the courtroom will cause the child to suffer more than *de minimis* emotional distress and that remote testimony is necessary to protect the welfare of the child. It further provides that the trial court may exclude the defendant from being physically present in the same room as the child witness if the defendant’s physical presence is substantially likely to cause substantial emotional distress and that emotional distress is likely to impair the child’s ability to communicate. Only after making these findings may the trial court permit the child witness to testify by way of 2-way closed circuit television or similar technology (like TEAMS), however, the defendant must still be observable to the child on the monitor unless the defendant affirmatively waives this right.

Subsection (v) appears to contemplate a potential option for removal of the defendant, rather than the child, from the courtroom; however, such action should be strongly cautioned against. Removal of the defendant from the presence of the jury could inherently create prejudice to the jury. Regardless of whether the child or the defendant are separated from the courtroom; however, the legislation makes it clear that the defendant must have ready, instantaneous access to his counsel at all times and be afforded

any breaks necessary to insure effective communication with counsel.

Subsection (vi) further provides application of *Craig* to address the intimidation and emotional distress that may be inherent to the presence of a jury in impairing a child witness's ability to testify and provides for the same provisions as the defendant himself.

Wyoming Statute § 7-11-409(b) addresses all the same crimes charged against the defendant as (a) but also includes human trafficking and violent felonies and provides for the court, on its own motion or the motion of any party, to provide reasonable accommodations to the child to include the child will: (1) be addressed in an age-appropriate manner for all questions and oaths presented; (2) be free from nuisance or harassing tactics in the proceeding; (3) have a person that contributes to the child's well-being in the child's proximity and eye sight; (4) have sufficient breaks in the proceedings to allow for the comfort of the child; and (5) have a certified therapeutic dog, an item used for psychological comfort, or both, present in the room with the child.

These accommodations may actually seem to some as more controversial than remote testimony. The first two listed accommodations relate more to civility and trial practice, specifically, recognizing that everyone should use age-appropriate words with simple, straight forward questions and be cordial to the child witness. The appropriate breaks provision is also common and, frankly, should be an accommodation generally provided to all witnesses. In review of case studies and case law across the country, however, the "support" person may come as a surprise to many practitioners. One may envision this meaning a person sitting in the child's proximity and, possibly, holding the child's hand but, in certain circumstances, this has actually resulted in other jurisdictions to the child sitting on



the support person's lap. A therapeutic dog or security item, such as a blanket or toy, is likely less controversial but potentially distracting to the jury.

One comment noted, however, is that this provision, which mirrors other state statutes, contemplates the trial court providing these accommodations on its own motion. This often occurs *in the midst of testimony* after the court has observed the child in distress. Both prosecutors and defense counsel should, therefore, be weary and anticipate these accommodations whenever possible. Studies stress the importance of insuring that it is not the court providing comfort to the child directly, due to the potential prejudicial inferences from the bench to the jury, and note the emotional impact on the jury if the distress of the child is so significant that the court intervenes mid testimony.


These accommodations—both by remote testimony and within the courtroom—have been available across the country for well over twenty years. There are numerous studies available to look into for support for this legislation. For example, the *effects of the courtroom environment on children's memory and anxiety*, Nathanson, R. & Sawitz, K, Journal of Psychiatry & Law, 31(1), 67-98 (2003) involved a study of eighty-one children who were involved in an identical staged event. Two weeks after the event, researchers interviewed fifty percent of the children in a

private room and the other fifty percent in a mock courtroom setting. They identified scientifically significant detriments in recall for those children in the courtroom setting but, more concernedly, identified significantly different stress responses in the children.


In order to facilitate these accommodations for child witnesses without violation of a defendant's constitutional rights; then, it is imperative that a party, generally the prosecutor, proactively address these matters with the trial court. There is no obligation to "test out" the child's ability to testify before requesting accommodation; however, the moving party must present credible testimony, affidavit or evidence to support the requisite burden of proof. Remember this must be more than *de minimis* distress and it must directly relate to the experience of testifying in court—due to the presence of the defendant and/or the jury—and must be substantially likely to cause emotional distress and that emotional distress is likely to impair the child's ability to testify. Other state's cases would imply that this evidence need not come from an "expert" like a counselor or medical provider, but, rather, can be substantiated by a parent or social worker.


Finally, there are also rare provisions by which trial depositions may be permitted in lieu of any of these measures in accord with Wyoming Statute § 7-11-408; however, based upon Wyoming precedent that will be strictly construed.


Ultimately, it is doubtful that any judicial officer or trial practitioner has a goal to traumatize or harm the children involved in our legal system. While it is imperative that criminal defendants have fair and just trials in accord with their constitutional rights, this new legislation may give more substantial guideposts for all Wyoming trial lawyers. ◉


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VERDICTS AND SETTLEMENTS

CASE TYPE: Wyoming Governmental Claims Act

CASE

Settled pre-litigation

VERDICT OR SETTLEMENT

\$250,000.00

FACTS

A Wyoming high school student suffered cardiac arrest and serious injuries after being allowed to use a fractal burning machine—an electrical device capable of emitting deadly levels of voltage—during woodshop class. Teachers gave the student permission to retrieve and operate the machine without supervision, training, or safety equipment. The machine lacked basic safeguards such as insulated handles, and no protective gear was provided. The student was electrocuted when he attempted to use the device, which had been set up in an unsupervised classroom.

INJURIES

Cardiac arrest, significant burns, pain and suffering.

PLAINTIFF'S AGE

16 years old

MEDICAL BILLS

\$194,510.73 (past meds).

PLAINTIFF'S ATTORNEYS

Emily S. Madden and Jason A. Neville, The Spence Law Firm LLC / Lawyers & Advocates for Wyoming (L.A.W.) (pro bono)

DEFENDANT'S ATTORNEY

Scott Kolpitcke, Copenhaver, Kitchen & Kolpitcke, LLC

CASE TYPE: Vehicle / Pedestrian

CASE

Confidential

COURT

Confidential

JUDGE

Confidential

CASE NUMBER

Confidential

VERDICT OR SETTLEMENT

\$400,000

FACTS

Client was at a recreational park and

unloading hiking gear from the back of her vehicle when a vehicle that had parallel parked behind her rolled into her and pinned her knees/thighs between the two cars. The driver heard the screams and jumped into the car and reversed it, unpinning the client. He had failed to put his car in park. The client sustained crushing injuries to one of her knees, and soft tissue injuries up and down her legs. There was no police report, and the driver of the vehicle later claimed not to have remembered much about the incident, so liability was disputed. Thankfully, the parties had exchanged insurance information at the scene. The Defendant's insurance company offered \$30,000 pre-suit, and then hid the existence of an umbrella policy for years during litigation, only disclosing it a week before mediation.

INJURIES

Client sustained a crushing injury to her knee, resulting in traumatic patellofemoral arthritis, although there were indications of pre-existing/chronic chondral defects. She also sustained soft tissue injuries to her legs and back, but those resolved relatively quickly after the incident.

PLAINTIFF'S AGE

35

WORK

Nurse, but no lost wages claim, because she continued and continues to work.

MEDICAL BILLS

\$35,000 in past medical expenses, and \$100,000-\$250,000 in futures (depending on whether total knee replacement would be undergone).

LOST WAGES

N/A

PLAINTIFF'S ATTORNEYS

Doug Bailey and Andy Bailey

DEFENDANT'S ATTORNEYS

Confidential

PLAINTIFF'S EXPERTS

Treating providers, Dr. Rachel Frank (orthopedic surgeon), Beverly Parrott (physical therapist), and Dr. Bradley Poppie, DPT, CLCP (rehabilitation and functional capacity expert, and life care planner).

CASE TYPE: Business Torts/ Breach of Duty of Loyalty/ Conversion/Constructive Fraud/ Civil Conspiracy

CASE

Cannon Oil & Gas Well Service, Inc., et al. v. Allen Meredith, Mountain West Energy Services, LLC, et al.

COURT

Third Judicial District Court, Sweetwater County

JUDGE

Hon. Richard Lavery

CASE NUMBER

2023-CV-0000110

VERDICT OR SETTLEMENT

\$3.9 million Jury Verdict (including amounts against Allen Meredith, Andrew Meredith, David Mansfield, and Mountain West Energy Services), \$60,000 punitive damages plus attorney's fees and costs to be determined (Punitive Damages against Allen Meredith, Andrew Meredith, and Mountain West Energy Services).

FACTS

For over 40 years, Rob Cannon built Cannon Oil & Gas Well Service, Inc. into one of Sweetwater County's most successful oilfield service companies. After Rob's tragic death in a plane crash in October 2021, his family sought to sell the company to a suitable buyer who would continue his vision and retain existing employees. Allen Meredith—Rob's nephew, a 38-year Cannon employee, and General Manager—initially agreed to assist with the sale and was also considered a potential buyer.

Unbeknownst to the family, Allen, his son Andrew, their companies, and former key employee David Mansfield secretly created a competing business, Mountain West Energy Services, while Allen was still employed at Cannon. Using Cannon's resources, equipment, vehicles, and personnel, they positioned their company to compete directly with Cannon. In March 2022, Allen abruptly resigned, convened a meeting with Cannon's workforce, misrepresented the company's future, and offered immediate employment with the new venture. Approximately 80% of Cannon's

employees defected that week.

As a result, Cannon—once a thriving business—was effectively gutted overnight. The company was left with diminished value, significant equipment losses, and no longer functioned as a going concern.

Following a two-week trial, the jury found in favor of Cannon Oil & Gas on claims of breach of the duty of loyalty, constructive fraud, conversion and civil conspiracy to commit the same.

INJURIES

Economic harm to Cannon Oil & Gas through diversion of assets, loss of business value, and reputational injury.

PLAINTIFF'S ATTORNEYS

Tom Fleener, Fleener Petersen, LLC.; Kelsey D. Fleener, The Spence Law Firm LLC; Jason M. Tangeman, Nicholas & Tangeman.

DEFENDANT'S ATTORNEYS

Sean W. Scoggin and Carl W. Edelman, Williams, Porter, Day, & Neville, P.C.; Anna Reeves-Olson and Jordan Haack, Long Reimer Winegar, LLP; George Santini, Ross & Santini, and Michael Newman, Hampton & Newman.

PLAINTIFF'S EXPERTS

Tom Scarlett (Equipment valuation), Troy Walker and Robert Karren (Pipe valuation).

CASE TYPE: Premises Liability

CASE

Shopper v. Safeway Stores, Inc. et al.

VERDICT OR SETTLEMENT

Confidential Settlement

FACTS

Around 7:55 a.m., on June 18, 2022, there was a strawberry on the floor of an aisle in a Cheyenne Safeway, far from the produce department. The Shopper (49) stepped and slipped upon the strawberry, and fell hard to the floor, where she remained for 15 minutes. A Safeway manager called an ambulance after assuring Shopper that Safeway would pay her medical expenses, a promise corroborated by EMT records: "According to Safeway management all billing is supposed to be sent to Safeway."

A Safeway employee and, as requested by a Safeway employee, the Shopper's husband, picked her up from the floor

and placed her in a wheelchair, and wheeled her to the front entrance, to await the EMT. Extensive medical intervention followed, culminating in lumbar fusion.

CLAIMS

Premises liability, breach of contract/estoppel and negligent misrepresentation vs. Safeway. Claims against the manager would have included negligent misrepresentation. *Cf. Verschoor v. Mountain West Farm Bureau Mut. Ins. Co.*, 907 P.2d 1293, 1298-30 (Wyo. 1995) (where employer's insurance agent promised that treatment and rehabilitation would be covered, promissory estoppel and negligent misrepresentation claims available).

INJURIES

The Shopper-Plaintiff initially reported knee pain, then pain in her left hip and thigh, but continued working as a forklift operator at a Cheyenne area warehouse. After conservative treatment, she was referred for lumbar fusion surgery. A posterior spinal fusion via interbody approach, L4-5, was performed, in March 2023, nine months

Continued on page 33



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WINNING A BREACH OF FIDUCIARY DUTY FOR MISMANAGEMENT OF A PENSION FUND AND NOT CREATING UNNECESSARY TAXES

BY JANCI L. BAXTER, JD/MBA/CPA/CVA/CFF/MAFF/CFE

Winning a lawsuit for breach of Fiduciary Duty for Mismanagement of a Pension Fund is only part of the battle. This article looks at when a beneficiary reaches a settlement or receives an award for the mismanagement or fraudulent taking of pension or Individual Retirement Accounts (IRA). “Sometimes a word here or there in your documents can make a big difference.”¹

The general rule regarding taxability of amounts received from settlement of lawsuits and other legal remedies starts with Internal Revenue Code (IRC) Section 61. This section states all income is taxable from whatever source derived, unless exempted by another section of the code.² Settlement proceeds by that definition is income. In order to not have the proceeds taxed, you have to find a deduction.

IRC Section 104 explains that gross income does not include damages received on account of personal physical injuries and physical injuries.³ Loss of money from a pension plan or retirement account is not considered personal physical injury. Besides the IRC, reviews of revenue rulings and private letter rulings provide sources of exemptions.

There are extensive rules and regulations on pension plans, other retirement plans and individual retirement accounts. Retirement plans offer many tax benefits.⁴ Those tax benefits come with rules. Very broadly the income on retirement accounts is not taxed until the money is distributed to the plan beneficiary.⁵ The beneficiary can make decisions and has some discretion on when to take money out. They can work with their tax advisor to reduce taxability on those distributions in some cases.

Proceeds from a settlement for pension mismanagement usually comes in a one-time lump sum or over a few years. Unless an exemption can be found, the beneficiary will pay income tax on the amount received in the year it is received. One of the benefits of a pension plan is that the income that is earned is tax free until such time as the beneficiary takes a

distribution.

For tax year 2025, the top tax rate remains 37% for individual single taxpayers with incomes greater than \$626,350 (\$751,600 for married couples filing jointly). If the beneficiary is married and files a joint return, for taxable income greater than \$751,600 the marginal tax rate is 37%. That does not include state income tax. Settlement proceeds are included in taxable income unless there is an exemption. Since 2016, attorney fees are not deductible, not even as an itemized deduction. If by some way, the settlement funds can be put back in a retirement fund and taken out over several years or after the beneficiary is no longer working and has less taxable income, the tax savings can be great. A lump sum receipt often puts the taxpayer in a higher tax rate.⁶ If the beneficiary can take the money out over many years or when their income is lower, the tax savings can be substantial.

The Internal Revenue Code places a limit on the amount of contributions that can be made to a retirement fund. Excess contributions to a retirement plan, including pension plans, are subject to a 10% penalty. The limit varies by the type of plan. For 2025, the IRA limit is \$7,000. The 401(k)-plan limit is \$23,500.⁷

One alternative to having all settlement proceeds taxed immediately is Restorative Payments. The IRS has issued guidance on restorative payments. The IRS has determined that in certain circumstances, the settlement payment can be a restorative payment. The IRS issued a revenue rule 2002-45 to address restorative payments.

Section 415(c) generally limits the amount of contributions and other additions under a qualified defined contribution plan with respect to a participant for any year.⁸

Section 4972(a) imposes a 10 percent excise tax on the amount of the nondeductible contributions made to any “qualified employer plan,” including a plan qualified under § 401(a) or 403(a).⁹

A payment made to a qualified defined contribution plan is not treated as a contribution to the plan, and accordingly is not subject to the Code provisions described above, if the payment is made to restore losses to the plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of a fiduciary duty under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and plan participants who are similarly situated are treated similarly with respect to the payment. For purposes of this revenue ruling, these payments are referred to as “restorative payments.”¹⁰

The determination of whether a payment to a qualified defined contribution plan is treated as a restorative payment, rather than as a contribution, is based on all of the relevant facts and circumstances. As a general rule, payments to a defined contribution plan are restorative payments for purposes of this revenue ruling only if the payments are made in order to restore some or all of the plan’s losses due to an action (or a failure to act) that creates a reasonable risk of liability for breach of fiduciary duty.

In contrast, payments made to a plan to make up for losses due to market fluctuations and that are not attributable to a fiduciary breach are generally treated as contributions and not as restorative payments. In no case will amounts paid in excess of the amount lost (including appropriate adjustments to reflect lost earnings) be considered restorative payments. Furthermore, payments that result in different treatment for similarly situated plan participants are not restorative payments. The failure to allocate a share of the payment to the account of a fiduciary responsible for the losses does not result in different treatment for similarly situated participants.¹¹

According to Revenue Ruling 2002-45, payments to a defined contribution plan should be treated as contributions if they merely replenish a participant’s account

after investment losses. Conversely, payments made to restore account losses due to an action (or failure to act) that creates a reasonable risk of liability are restorative payments.¹² Revenue Ruling 2002-45 limits the amount of a restorative payment to the amount of loss that occurred as a result of the breach of fiduciary duty. Thus, the IRS ruled that any interest on Amount D would not be considered a restorative payment.¹³

In a series of private letter rulings, IRA owners received awards or settled claims against securities firms for losses sustained by their IRAs. The IRS allowed the IRA owners to put the settlement proceeds into their IRAs as restorative payments.¹⁴ The IRS also waived the 60-day deadline for doing so.¹⁵ In PLR 200724040 (June 15, 2007), the IRS ruled that the beneficiary could put the net amount of the award, after attorneys' fees and expenses, into her IRA as a restorative payment.¹⁶ In PLRs 200850054 (Dec. 12, 2008) and 200852054 (Dec. 26, 2008), the IRS ruled that the IRA owner could only restore the compensatory damages (less a pro rata portion of the attorneys' fees and expenses) but not the punitive damages.¹⁷

If an attorney receives settlement proceeds into their trust account, the attorney should write the check to the retirement account not the individual. Beneficiaries receiving settlements should begin working with their financial advisor early in the process. It should be anticipated that the restorative payment will need to go through at least a couple layers of compliance at the investment company receiving the check. They will also likely need a letter from the attorney or other professional stating that the proceeds going into the account are compensatory and that none is from punitive damages, interest, and that attorney fees have been deducted. The process at the outset may seem daunting and tax law is not simple but the tax savings can be substantial depending on the award. ■

notes

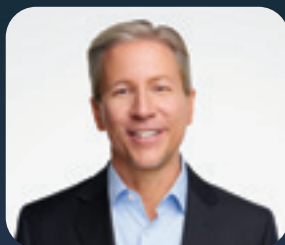
- 1 Wood, Robert W., "Recover IRA or Pension Damages, but What About Taxes?", Forbes.com, published June 28, 2021, updated July 2, 2021.
- 2 IRS Website, "Tax implications of settlements and judgments."
- 3 Ibid.

- 4 Wood, Robert W., "Recover IRA or Pension Damages, but What About Taxes?", Forbes.com, published June 28, 2021, updated July 2, 2021.
- 5 The taxability of retirement plans is beyond the scope of this article.
- 6 This does not include the increase in Capital Gains rates or Net Investment Tax Credit.
- 7 Contribution limits for all types of retirement and pension plans including "catch up" contributions is beyond the scope of this article.
- 8 Rev Rul 2002-45.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 Wood, Robert W., "Recover IRA or Pension Damages, but What About Taxes?", Forbes.com, published June 28, 2021, updated July 2, 2021.
- 13 Ibid.
- 14 Steiner, Bruce D., *Restorative Payments, Trusts & Estates*, June 2011, page 33. See also PLR 200705031 (Feb. 2, 2007); PLR 200719017 (May 11, 2007).
- 15 Ibid at p. 34.
- 16 Ibid.
- 17 Ibid.

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From the earliest days of our nation, lawyers have played a central role in shaping government, law, and society. Of the 56 signers of the Declaration of Independence, 25 were attorneys. At the Constitutional Convention, 35 of the 55 delegates had legal training, and more than half of the Presidents of the United States have been lawyers. Around the world, legal professionals such as Nelson Mandela and Mahatma Gandhi have left undeniable marks on society and the rule of law.

Wyoming is no exception. When our state held its constitutional convention, many of the 49 delegates were lawyers or had legal training. Among the 33 individuals who have served as Governor, at least nine were attorneys. Yet today, the presence of lawyers in Wyoming's political system is dwindling. Five years ago, 12 lawyers served in the Wyoming Legislature; today, only four actively licensed attorneys remain, along with a handful of retired lawyers.

Why lawyers matter.

The law is more than a profession; it is the backbone of society. It sets boundaries for behavior, ensures fairness, and protects individual rights against the overreach of institutions or powerful actors. But laws do not enforce themselves. They require knowledgeable, ethical, and committed individuals to interpret, apply, and adapt them to evolving circumstances. Among the most crucial of these individuals are lawyers.

Lawyers bring a unique skill set to public service. They are trained to analyze complex information, anticipate unintended consequences, and advocate persuasively. When they step beyond courtrooms and law offices to engage in politics and community service, they enrich public debate, improve policymaking, and promote trust in governance.

In Wyoming, this role is particularly significant. Our state's small population, rural landscape, and limited legislative sessions mean that every voice in policymaking counts. A lawyer's ability to understand complex legal frameworks and communicate nuanced ideas is vital to maintaining both effective government and public confidence.

The skills lawyers bring to public service.

Lawyers, especially trial attorneys, excel at navigating complexity. Politics, like law, is filled with intricate systems, statutes, regulations, constitutional provisions, judicial precedents, and administrative codes. For those outside the legal field, these frameworks may appear overwhelming or contradictory. Lawyers, however, are trained to read, interpret, and apply these rules. These skills transition naturally into legislative work. When lawyers enter politics, they can:

- **Analyze proposed legislation:** Lawyers can identify potential conflicts with existing laws, constitutional constraints,

or unintended consequences.

- **Ensure enforceability:** They evaluate whether new laws can realistically be applied and enforced.
- **Clarify language:** Legal professionals can simplify and clarify legislative text, making it more accessible to both lawmakers and the public.
- **Advocate effectively:** Lawyers are accustomed to crafting persuasive arguments, whether in the courtroom, public hearings, or debates.

Beyond legislatures, lawyers contribute to government at every level. On city councils, school boards, nonprofit boards, and advisory committees, lawyers help ensure that decisions comply with governing rules, protect vulnerable populations, and further organizational missions. Their presence strengthens both legality and accountability in community decision-making.

Trial lawyers can act as advocates for the public.

As trial lawyers, we are accustomed to serving as zealous advocates for our clients. This advocacy experience is a necessary part of public service. Lawyers learn to evaluate complex facts, anticipate counterarguments, and communicate persuasively. These are all skills that are equally valuable in political and community leadership.

Consider the role of lawyers in public debate. Policy discussions often involve competing interests, vague legal language, and high stakes for citizens. Lawyers are trained to dissect these issues, identify risks, and propose workable solutions. In doing so, they not only advocate for justice but also help communities understand the practical implications of laws and policies.

Moreover, lawyers are uniquely positioned to amplify voices that might otherwise be unheard. They frequently advocate for tenants facing eviction, victims of violence and neglect, individuals navigating bureaucratic systems, small business owners confronting complex regulations, or nonprofits facing legal hurdles. By representing those who lack resources or knowledge, lawyers strengthen civic engagement, reinforce fairness, and uphold the legitimacy of legislative processes.

Lawyers have been involved in shaping government throughout history.

The influence of lawyers on American government is deep and enduring. Colonial lawyers like John Adams, James Otis, Alexander Hamilton, and Patrick Henry played pivotal roles in articulating grievances against British rule. Their legal expertise allowed them to frame opposition not merely as political disagreement but as a matter of law and justice.

After independence, lawyers continued to shape the foundations of our nation. Thomas Jefferson relied heavily on legal principles to draft the Declaration of Independence. James Madison, Alexander Hamilton, and others crafted the Constitution and the Federalist Papers, creating a framework that balanced powers, safeguarded liberties, and established mechanisms for resolving disputes. Without the insight, reasoning, and advocacy of legally trained individuals, it is difficult to imagine that the United States could have developed such a resilient system of government.

Wyoming itself reflects this tradition. Early state leaders recognized the value of legal expertise in governance. Lawyers served as delegates, governors, and legislators, ensuring that our state constitution and laws protected both rights and responsibilities. Yet, the decline in lawyer participation today signals a potential gap in leadership expertise—one that merits attention.

Why more lawyers do not participate in politics.

Despite the clear benefits, fewer Wyoming lawyers are participating in public service than in the past. Several factors contribute to this trend:

- **Cost of living and logistics:** Cheyenne, where the legislative session takes place, presents financial challenges for lawyers who must maintain private practices or families elsewhere.
- **Professional obligations:** Law practice demands significant time and attention. Stepping away for extended periods can strain clients, firms, and staff.
- **Political toxicity:** While lawyers generally do not shy away from adversarial situations, the toxic nature of politics can be off-putting. Lawyers, accustomed to professional decorum, may also hesitate to risk reputational harm.
- **Demographics:** Wyoming's legal community is aging, and fewer young lawyers are entering political roles.

While these obstacles are real, they are not insurmountable and we should do more to facilitate and encourage lawyers getting involved.

Lawyers protect individual rights and ensure fairness.

The presence of lawyers in public life is not merely symbolic, it safeguards the principles that underpin democratic governance. In legislative debates, lawyer-legislators can ensure that policies respect constitutional limits and protect individual rights. For example:

- **Privacy concerns:** Lawyers can scrutinize security measures or surveillance proposals for potential overreach.
- **Procedural fairness:** Legal expertise ensures that municipal decisions follow proper procedures and respect due process.

At the community level, lawyers serve as protectors of justice. By advocating for individuals and organizations navigating complex legal landscapes, they maintain access to fair treatment and preserve confidence in public institutions. This dual role at both state and local levels demonstrates the tangible value lawyers bring to public service.

Wyoming needs more advocates.

Wyoming, like the United States at large, needs advocates. Our republic thrives when citizens with legal training step forward to participate in governance, whether on boards, city councils, or in the state legislature. For lawyers, public service is not just a duty, it is an extension of the advocacy work they already perform every day.

To the next generation of Wyoming lawyers: do not be intimidated by age, experience, or perceived barriers. Our state was founded by individuals who, like you, were willing to step forward despite uncertainty. Even small steps—serving on a board, volunteering for legislative committees, or assisting nonprofits—can have an outsized impact.

Participation is a skill as much as it is a responsibility. By engaging, lawyers help ensure that laws are clear, just, and effective. They give voice to those who may otherwise be unheard. They uphold fairness, strengthen communities, and protect individual liberties. In doing so, they carry forward a proud tradition that stretches from the founding of our nation to the founding of our state.

Wyoming's future depends on committed, thoughtful, and principled advocates. Lawyers have the training, perspective, and experience to lead. Our state, our communities, and our democracy are stronger when we answer the call. If not us, then who? 🗳️

WTLA HONORS THREE AWARD RECIPIENTS



A highlight of the 2025 WTLA Annual Convention was the presentation of awards. Three recipients received awards including the Lifetime Achievement award, Rising Star award, and Member of the Year award.

Mark Macy had the privilege of presenting **E. James Burke**, former Chief Justice of the Wyoming Supreme Court, with the WTLA **Lifetime Achievement Award**. The award—recently renamed the Alan K. Simpson Lifetime Achievement Award—honors individuals whose careers have made a lasting impact on the pursuit of justice in Wyoming. Justice Burke’s distinguished service includes nearly 14 years on the Wyoming Supreme Court (four as Chief Justice) and prior work as a district judge. Throughout his career, he championed initiatives like the Access to Justice Commission, People’s Law School, and “You Be the Judge,” all aimed at increasing public understanding and accessibility of the legal system. He also co-founded the Ewing T. Kerr Inns of Court and served as WTLA President from 1980–81, along with representing Wyoming as a Governor for the American Association for Justice.

In his remarks, Macy praised Burke’s integrity, leadership, and decades of dedication to strengthening Wyoming’s justice system. Accepting the award, Burke reflected on the importance of civic engagement and the role of an informed public in supporting a

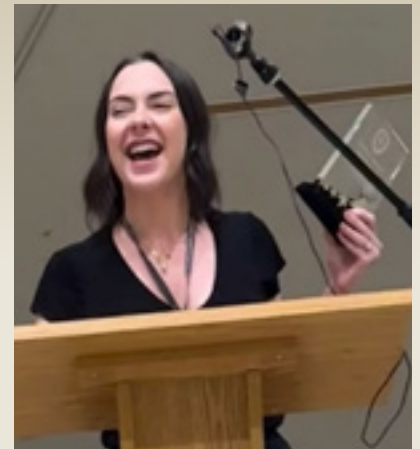
functioning democracy. He expressed deep appreciation for WTLA and acknowledged the unwavering support of his wife, Linda. This honor joins a long list of accolades recognizing Burke’s contributions, including the Wyoming State Bar President’s Award, the Thomas G. Gorman Excellence in Professionalism Award, and the Lehman Award for Judicial Excellence.

Rachel Berkness of Cheyenne received the 2025 **Rising Star Award**. To be eligible for the Rising Star award, the recipient must be a WTLA member who has practiced law for ten or fewer years and has demonstrated the skills, ethics and dedication embodied in the WTLA Mission.

Rachel has always had a passion for plaintiff’s work. After several years in public service, she returned to the plaintiff’s bar in 2021 to continue fighting the good fight with Freeburg Law. Although Alex Freeburg of Jackson was unable to attend the luncheon, WTLA President Sarah Kellogg shared remarks he prepared.

In his comments, Alex said that when he was looking for a brief writer, he got a “force of nature.” But, as Alex is quick to point out, calling her a “force of nature” isn’t quite right because it implies her success is effortless. That does a disservice to her incredible work ethic. Her achievements are the result of hard work and dedication. When the cause and client call for it, she works nights and weekends—she puts in the work.

Alex also stated: “They say a good manager’s job is to hire brilliant people and then get out of their way. With Rachel, that has never been more true. Alex sees his primary role today as being her advance scout—to find the most challenging, the most complex, the most impactful cases and put them on her desk. Because that’s where they have the best chance of success.”



In her acceptance of the award, Rachel put a smile on everyone’s faces by doing what she loves: performing. She sang We Are The Champions to the joy of all attendees.

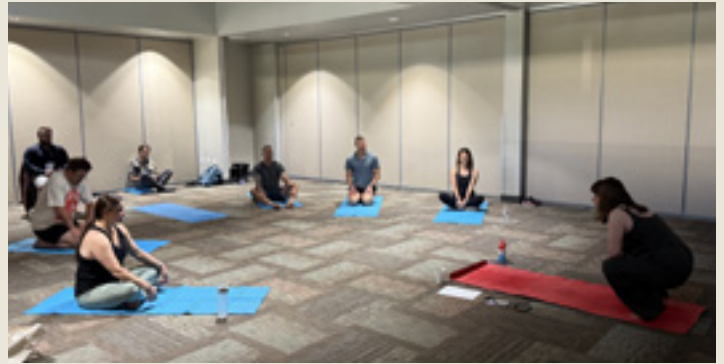


Members are the heart of WTLA, and the Member of the Year Award honors one whose contributions truly stand out. Each year, this award recognizes a member who has gone above and beyond. Someone who has generously invested their time, energy, and expertise to support WTLA’s mission. This year, WTLA proudly recognized **Michael Lutz** of Pinedale as our **Member of the Year**.

Michael Lutz has been with the Spence Law Firm since 2013. Bryan Ulmer had the privilege of presenting Michael with the award alongside his wife, and three daughters. In her nomination, Sarah Kellogg highlighted many reasons why Michael was deserving of this honor. She noted his generous volunteer work authoring an amicus brief addressing the constitutionality of the Wyoming Governmental Claims Act caps. Although the brief was not accepted by the Court, it reflected significant time and effort and demonstrated his deep commitment to justice. Sarah also praised Michael for volunteering to present multiple CLE sessions for WTLA and for speaking at the annual convention.

RECAP OF THE WTLA ANNUAL CONVENTION

WTLA hosted the 2025 Annual Convention at the Lander Convention Center on June 11-13. The event was a great success, with attendees enjoying engaging sessions and valuable networking opportunities.



A	B	
C	D	E
F	G	

A: Convention Chair Mark Macy introduces renowned speaker Larry Pozner.

B: The final Friday of Convention began with a yoga and mindfulness session led by Devon O'Connell.

C: Thank you to Courtney Barber with Independent Life for sponsoring a wonderful Women's Caucus Happy Hour featuring great swag and delicious refreshments.

D: Convention attendees had the opportunity to purchase Larry Pozner's book and receive a signed copy in person.

E: Colin Simpson auctioned a rare bottle of whiskey distilled personally for his father, Senator Alan Simpson benefitting the WTLA Foundation.

F: An important and insightful panel on the Merit Selection Process featured Senator Tara Nethercott, P. Craig Silva, Former Representative Dan Kirkbride, Khale Lenhart, and Former Chief Justice Marilyn Kite, moderated by Devon O'Connell.

G: Michael Kelly presented on Metaphor and Empowerment in Argument.

CRIMINAL LAW SUMMARIES



BY BAILEY LAZZARI

Herrera v. State, 2025 WY 62, 569 P.3d 772 (Wyo. 2025)

The Wyoming Supreme Court reversed a district court's denial of a sentence reduction motion, holding that a judge's oral promise created a binding commitment despite the generally discretionary nature of such reductions.

David Herrera pled guilty to aggravated robbery with a deadly weapon and received a five-to-eight-year sentence. The district court recommended his participation in the Youthful Offender Transition Program (YOTP). At sentencing, the judge told Herrera: "succeed in the youthful offender, and you will get a sentence reduction so that you're back on the street the minimum amount of time." The written judgment stated: "IT IS FURTHER RECOMMENDED that [HERRERA] be placed in the Youthful Offender Transition Program . . . this order is made with the expectation that if Defendant completes the 'Youthful Offender Transition Program' he will be returned before this Court for reduction of sentence which would suspend the remaining term, under supervised probation."

After Herrera completed the program, he filed for sentence reduction. The State objected, and a new district judge denied the motion without a hearing or explanation.

The Wyoming Supreme Court concluded the district court abused its discretion when it denied Herrera's request. Although granting sentence reductions after YOTP completion is generally discretionary, the Court distinguished

between the written judgment's "expectation" language and the oral pronouncement's definitive promise. The judge's statement that Herrera "will get a sentence reduction" constituted an express commitment that subsequent judges were obligated to honor.

The decision demonstrates that while sentence reductions remain discretionary, judges must carefully consider their language when discussing potential future relief, as express commitments can override general discretionary authority.

United States v. Guzman, 149 F.4th 1132 (10th Cir. 2025)

The Tenth Circuit affirmed the denial of a suppression motion, holding that a defendant lacked a reasonable expectation of privacy in a camper trailer when his presence on the property violated posted city notices prohibiting occupancy.

Jeffrey Cannon owned property that had two buildings which the City of Albuquerque had deemed "substandard." The City ordered the buildings vacated, secured the building entrances, and posted notices on the doors which stated that no person shall reside in this structure or on this property or remain on the property past daylight hours. After the City took action, Cannon allowed a friend to park a trailer on the property.

When officers accompanied a city code enforcement supervisor to inspect the property for compliance, they found Raul Guzman living in the unlocked trailer. Upon opening the trailer door, they discovered him inside and seized a revolver in plain sight. Guzman was arrested on an outstanding warrant and was charged with being a felon in possession of a firearm.

Guzman argued the officers violated the Fourth Amendment by opening the trailer door, seizing him, and searching the trailer. The district court denied his suppression motion.

The Tenth Circuit affirmed, concluding that Guzman did not have standing to challenge the search and seizure. In determining whether an individual has standing, the individual must identify: (1) a subjective expectation of privacy in the property searched and (2) that society would recognize that expectation of privacy as objectively reasonable.

While Guzman could show that he had

a subjective expectation of privacy (he had permission from the property owner to stay there), he could not show that society would recognize that expectation of privacy as reasonable. A person lacks an objectively reasonable expectation of privacy in a place in which his presence is "wrongful." Guzman read the posted signs that informed him it was unlawful to reside on the property, making his presence wrongful regardless of the owner's permission.

The court rejected Guzman's argument that the notices applied only to the buildings, noting the language specifically prohibited residing "on this property" generally. This case demonstrates that municipal housing code violations can defeat Fourth Amendment standing even when the property owner consents to the defendant's presence.

United States v. Norton, 130 F.4th 824 (10th Cir. 2025)

The Tenth Circuit affirmed the suppression of DNA evidence, holding that Franks v. Delaware applies to off-duty police officers who are actually involved in an investigation, even without an official investigatory role.

An off-duty law enforcement officer, Chief Clarence Romero, was a witness to a law enforcement interaction with members of a motorcycle gang. When task force officers arrived, Chief Romero told them he believed female gang member Aundrea Perez had taken something from defendant Shawn Norton. The off-duty officer asked questions of other witnesses at the scene, which were relied upon by investigating officers.

Chief Romero and his wife initially told officers they saw an interaction between Norton and Perez, but did not see if the female removed anything from Norton's jacket. Days later, Chief Romero told FBI Agent Acee that he saw the female remove something from Norton's jacket and put it in her purse. Agent Acee relied on this statement in his affidavit of probable cause to obtain a warrant for Norton's DNA sample.

Norton moved to suppress, arguing a *Franks* violation because the off-duty officer provided false information that was put in the affidavit. *Franks v. Delaware* requires the exclusion of evidence obtained through a search warrant that was issued only because an affiant recklessly or intentionally included false

information in the search warrant affidavit. *Franks* applies not only to the affiant, but also to statements made by other government employees that deliberately or recklessly provide false or misleading information that is relied upon by the affiant.

The court found this applied to the off-duty officer because while he was off-

duty, he was still actually involved in the investigation: law enforcement began investigating whether the female had a weapon based solely on his report; before task force officers arrived, he began assessing the motorcyclists to determine whether any were armed and dangerous; he investigated whether cameras were located; and other officers relied

on his law enforcement experience, with Agent Acee specifically seeking him out because he was a law enforcement officer.

The court concluded that an off-duty police officer without an official role may be bound by *Franks* if actually involved in the investigation. ☐

CIVIL CASE SPOTLIGHT



BY JACOB N. LEWIS

Ellis v. Hiser, 2025 WY 87
(Aug. 5, 2025)

The Legal Equivalent to ‘That’s a You Problem’

OVERTURNED: “Fail,” as applied in Wyoming’s savings statute Wyo. Stat. Ann. § 1-3-118 (2025), does *not* include a plaintiff’s voluntary dismissal of their action.

In *Hugus v. Reeder*, the Wyoming Supreme Court held that a voluntary dismissal constitutes a “failure otherwise than upon the merits,” thereby triggering the savings statute and giving a plaintiff one additional year to refile. 2022 WY 13 (Wyo. 2022).

This year, the Court revisited the *Hugus* ruling in *Ellis v. Hiser*. Ms. Ellis filed her original complaint against Dr. Hiser for wrongful death and medical malpractice within the two-year statute of limitations but never perfected service under Rule 4 of the Wyoming Rules of Civil Procedure. She then voluntarily dismissed the complaint intending to rely on Wyo-

ming’s savings statute in conjunction with *Hugus* to extend the limitations period.

The Court rejected that reading of the statute, including the indefinite extension of timelines, delays, and unnecessary gamesmanship. After a succinct discussion of *stare decisis* and a survey of surrounding jurisdictions, the Court concluded that a plaintiff has not fallen short, failed, or lapsed in their action when they voluntarily dismiss it as a matter of choice. For that reason, the Court overturned *Hugus*.

Justice Fenn, joined by Chief Justice Boomgaarden, dissented by arguing that the principle of *stare decisis* prohibits overturning precedent unless plainly necessary and the law is no longer workable or poorly reasoned. Justice Fenn argued that the majority’s decision stems from a frustration with district court judges failing to manage their dockets and dismiss cases that had not been properly served under the Rules. Ultimately, the dissent believes the majority decision is “results-oriented” and that *Hugus* is not poorly reasoned or unworkable.

Schwinn v. Schwinn, 2025 WY 83
(July 24, 2025)

Family Feud: Thanksgiving may be awkward.

In 1984, following the death of their father, six siblings formed a partnership to manage the inherited estate. The terms of the partnership as set out in the Partnership Agreement required the partnership to continue for five years uninterrupted and as long as it held any non-cash assets. The Agreement also explicitly prohibited dissolution of the partnership during the initial five years of its existence.

In 2004, two of the sisters began the process of disassociating from the partnership to force dissolution and a winding up of the partnership. Lengthy delay and litigation ensued, and eventually the district court held a bench trial in 2024 to determine the scope of the Agreement and the validity of each of the parties various contractual and fiduciary claims. Ultimately, the issue was whether the dissociating sisters had done so wrongfully. The key question was whether the partnership was an at-will partnership or a term-partnership—a distinction dispositive to each of the issues in the case. The district court found that the terms of the Agreement created a partnership set for a “particular undertaking” which had not yet been complete and, therefore, the sisters had wrongfully dissociated. The partnership was not dissolved and need not wind up.

Justice Fenn wrote the opinion reversing the district court, applying traditional principals of contract interpretation in determining whether the partnership was an at-will or a term partnership necessary for a particular undertaking. After pointing out that partnerships are presumed to be at-will, the Court applied (without adopting) the law from other states where partnerships created to manage, operate, or hold real property indefinitely are partnerships at-will as opposed to partnerships created for a particular undertaking. Under the Uniform Partnership Act of 1997, holding non-cash assets is neither time limited nor a particular venture.

On that basis, the Court reversed the district court’s decision that the partnership was not at-will. As such, the Court simultaneously reversed the district court on its rulings that the sisters wrongfully dissociated, that the partnership was not dissolved, and that the partnership need not begin the process of winding up. ☐

UPCOMING WTLA EVENTS

WEDNESDAY, NOVEMBER 12TH

Noon via Zoom

Parenting Plans in the Real World: What Works and What Doesn't

Approved for 1 Hour of CLE with the Wyoming State Bar – FREE FOR WTLA MEMBERS

Gain practical insight into creating parenting plans that work. This panel featuring: Claire Fuller, Rennie Phillips, Jennifer Reece, and Jennifer Striegel covers effective strategies, common pitfalls, and real-world solutions to help families succeed.

WEDNESDAY, DECEMBER 3RD

Noon via Zoom

What to Produce and Present, if anything, as a Criminal Defense Attorney Part One

Approved for 1 Hour of CLE with the Wyoming State Bar – FREE FOR WTLA MEMBERS

Join Devon Petersen for part one of a two part series. This program will review the rules and case law governing defense pretrial disclosures, clarify common areas of confusion, and provide practical strategies for making high-stakes disclosure decisions that can impact trial outcomes.

THURSDAY, DECEMBER 4TH

Noon via Zoom

Step Into Your True Potential: Seven Simple Practices to Thrive as a Trial Lawyer and Human Being

Approved for 1 Hour of Ethics with the Wyoming State Bar – FREE FOR WTLA MEMBERS

Join Tyson Logan for a CLE on Mindfulness and Wellness Practices that actually work in Trial (and Life).

WEDNESDAY, DECEMBER 10TH

Noon via Zoom

What to Produce and Present, if anything, as a Criminal Defense Attorney Part Two

Approved for 1 Hour of CLE with the Wyoming State Bar – FREE FOR WTLA MEMBERS

Join Devon Petersen for part two of a two part series. This program will explore the strategic considerations of presenting a defense case at trial, including whether to offer evidence, the risks and benefits of calling the defendant to testify, and practical guidance for making informed trial decisions.

FRIDAY, DECEMBER 12TH

8:30 AM via Zoom

Civil Practice in Action: Wrapping Up Advocacy, Evidence, and Ethics

Pending Approval for 7 Hours of CLE including 1 Hour of Ethics by the Wyoming State Bar – DISCOUNTED FOR WTLA MEMBERS

Celebrate the season with a full-day CLE wrapping up advocacy, evidence, and ethics in civil practice—unwrapping key courtroom skills while staying true to the Rules of Professional Conduct.

FRIDAY, JANUARY 30TH

8:30 AM LIVE in Casper, WY or via Zoom

Hands-On Trial Skills: A Criminal Law Workshop

Approved for 7 Hours of CLE including 1 Hour of Ethics by the Wyoming State Bar – DISCOUNTED FOR WTLA MEMBERS

Get in the action and build your courtroom confidence. This interactive, in-person workshop focuses on practicing key trial skills through exercises, guided demonstrations, and immediate faculty feedback.



EVENT
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June 17-19, 2026 WTLA's 2026 Annual Convention – Little America, Cheyenne, WY

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JUDICIAL PERFORMANCE EVAL.

Continued from page 5

CONCLUSION

By improving the quality and accessibility of information about judges' performance—and by fostering greater transparency and civic understanding—Wyoming can strengthen both the integrity of its merit selection system and the public's confidence in an impartial, competent, and independent judiciary. A modernized JPE program offers a practical, nonpartisan path forward—one that affirms Wyoming's commitment to judicial excellence and to the rule of law. ❶

notes

- ⁱ State of Wyoming, 68th Legislature, HJ0006-Election of Judges and Justices, <https://www.wyoleg.gov/Legislation/2025/HJ0006>. See Wyoming Constitution Art. 5, § 4, 2024, <https://codes.findlaw.com/wy/wyoming-constitution/wy-const-art-5-sect-4/>. See generally Clair McFarland, *Wyoming Lawmakers Scrap Plan To Have Senate Confirm State Justices*, COWBOY STATE DAILY (Aug. 12, 2025), <https://cowboystatedaily.com/2025/08/12/wyoming-lawmakers-scrap-plan-to-have-senate-confirm-state-justices/>; Andrew Graham, *Citing Court*

Losses, Freedom Caucus Turns Attention to Wyoming Judges, WYOFILE (May 12, 2025), <https://wyofile.com/citing-court-losses-freedom-caucus-turns-attention-to-wyoming-judges/>.

- ⁱⁱ See Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RESEARCH CENTER (Sept. 3, 2025), <https://www.pewresearch.org/short-reads/2025/09/03/favorable-views-of-supreme-court-remain-near-historic-low/> ("Overall, 86% of Americans say the justices should not bring their political views into decision-making; just 12% say they should. Equal majorities of Democrats and Republicans (87% each) say the justices should not bring personal politics into decisions.").
- ⁱⁱⁱ AMERICAN BAR ASSOCIATION, BLACK LETTER GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE (1985).
- ^{iv} Jordan M. Singer, *Judicial Performance Evaluation in the States*, *THE IAALS JPE 2.0 Pre-Convening White Paper*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. 3 (May 2022), https://iaals.du.edu/sites/default/files/documents/publications/jpe_20_whitepaper.pdf.
- ^v IAALS, the Institute for the Advancement of the American Legal System, is a national independent research center based at the University of Denver.
- ^{vi} Danielle Kalil, *JPE 2.0 Recommendations for Modernizing Judicial Performance Evaluation*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (May 2025), https://iaals.du.edu/sites/default/files/documents/publications/jpe_recommendations.pdf.
- ^{vii} *Id.* at 2. See David C. Brody, *The Use of Judicial Performance Evaluation to Enhance Judicial Accountability, Judicial Independence, and Public Trust*, 86 DENV. U. L. REV. 115, 131-145 (2008).
- ^{viii} *IAALS JPE 2.0 Pre-Convening White Paper*, *supra* note iv, at 22.
- ^{ix} Joseph A. Hamm, et al., *Self-efficacy, Prosocial Impact, and Self-Legitimacy as Psychological Predictors of Judicial Officer Performance*, 84 PUB. ADMIN. REV. 710 (2023).
- ^x *IAALS JPE 2.0 Pre-Convening White Paper*, *supra* note iv, at 10 ("Self-represented litigants experience the court differently than do attorneys (or those represented by attorneys), and their input is instrumental in JPE as a judge's performance arguably takes on even greater urgency for those who do not have an advocate on their behalf.").
- ^{xi} See, e.g., the Colorado Office of Judicial Performance Evaluation offers accessible platforms featuring user-friendly information about state judges and how to understand and interpret evaluation results, <https://judicialperformance.colorado.gov/judicial-evaluations>.
- ^{xii} *IAALS JPE 2.0 Pre-Convening White Paper*, *supra* note iv, at 3.
- ^{xiii} *Id.* at 2.
- ^{xiv} *Id.* at 3.
- ^{xv} *Id.* at 4.
- ^{xvi} *Id.* at 8-9.
- ^{xvii} *Id.* at 10, citing CIVIL JUSTICE INITIATIVE, *THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS* 31, (2015), FAMILY JUSTICE INITIATIVE, *THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURTS* 29 (2018).
- ^{xviii} *Id.*
- ^{xix} *Id.* at 29, discussing the difficulties of funding mechanisms and the administrative costs of JPE Programs.

Dona Playton is the Dyekman Professor of Law at the University of Wyoming College of Law. Her work focuses on access to justice, family law legal reforms, and dispute resolution.

CHANCERY: FOCUSED, FAST, & FAIR BUSINESS & TRUST DISPUTE RESOLUTION

BY JUDGE BURNINGHAM

When it comes to business and trust dispute resolution, litigants have a choice between forums. This choice, made at the time of contracting or filing, requires evaluating the options available for the particular dispute. Options include private arbitration (which is confidential, but can be costly), federal court (where jurisdiction may or may not lie), state general jurisdiction courts (which have a strong local connection, but may lack the time to prioritize the case), or the Wyoming Chancery Court (which remains unfamiliar to some commercial litigators but is increasingly gaining traction).

Each forum offers different strengths, but for business and trust litigants, Chancery Court offers an especially compelling option.

In 2019, the Wyoming Legislature created the new court to meet the demands of modern business and trust litigation. The Wyoming Chancery Court opened its doors in December 2021, and the first full-time judge took the bench on January 1, 2025. Since its launch, the court has grown steadily in caseload, with an increasing number of litigants turning to it for business and trust dispute resolution.

The New Chancery Court Judge: An Introduction by the State Court Administrator

The enactment of chancery court legislation brought exciting new opportunities for the people and businesses in Wyoming. In addition to these new opportunities, one of the most valuable assets Chancery Court brought to the Wyoming Judicial Branch was Benjamin Burningham. Now serving as the first Chancery Court Judge in the State, Judge Burningham brings with him an extraordinary record of legal accomplishment, public service, and steady leadership that has earned him deep respect across the legal community.

A graduate of The George Washington University Law School, Judge Burningham distinguished himself academically, graduating near the top of his class while serving as a law clerk to the Honorable Orrin G. Hatch on the U.S. Senate Judiciary Committee. He began his legal career in Washington, D.C., practicing with Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC. In 2015, Judge Burningham returned to his western roots and joined the Attorney General's Office, ultimately serving as Chief of the Consumer Protection Unit. In that role, he led high-profile, multistate investigations and enforcement actions, including litigation against Purdue Pharma and Google, while providing counsel, testimony, and training on consumer and antitrust law. His experience in the Consumer Protection Division has positioned him well to the complex litigation seen in Chancery Court.

Recognizing his talents, in 2021, the Wyoming Judicial Branch convinced Judge Burningham to accept the challenge of forming Wyoming's newly created Chancery Court. Tasked with constructing the court quickly, he successfully launched critical systems and processes, ensuring the court's timely opening. His success in that role led to his appointment as Chief Legal Officer for the Administrative Office of the Courts, where he provided broad-ranging legal counsel, supervised the Legal Division, and supported major initiatives including the transition of treatment courts to the Judicial Branch and the launch of a mental health diversion pilot program in Campbell County. Not only did Judge Burningham serve as Chief Legal Officer, he continued to maintain his role as Director of Chancery Court where he managed the Chancery Court docket, researched complex legal issues related to Chancery Court litigation, acted as magistrate to the Chancery Court, and drafted orders and opinions for the Court. Nobody in the State knows more, or has more experience, with the work of the Chancery Court.

Colleagues describe Judge Burningham as calm, thoughtful, and principled. He is praised for his ability to distill complex legal questions into clear, practical guidance and for his temperament—steady, compassionate, and respectful in every circumstance. Sean Larson from Hathaway and Kunz notes, "In my experience, Judge Burningham has been inquisitive and thorough. He is focused on taking a deep dive into legal and factual issues in each case given his special experience in

these areas. The quick turnaround, fast schedule, and required mediation/resolution steps allow parties to guide matters toward a more efficient endgame."

As he assumes his role on the Chancery Court bench, Judge Burningham brings with him not only exceptional intellect and experience, but also the qualities of integrity, humility, and service that define the judiciary at its best.¹

The Job to Be Done

Harvard Business School's Clayton Christensen observed that customers don't simply "buy" products or services; they "hire" those products or services to get a job done.² This "Jobs-to-Be-Done" theory applies just as well to courts. When business or trust litigants select a forum, they hire that forum to do a job: resolve a dispute accurately, efficiently, and fairly.

The Wyoming Chancery Court was built to do that job—and to do it well. Specializing in business and trust law allows the court to develop subject matter expertise, effectively manage cases, quickly resolve matters, and issue consistent and predictable rulings. The court's value proposition is simple: Focused, Fast, and Fair Business and Trust Dispute Resolution.

Focused

The Wyoming Chancery Court has jurisdiction over actions seeking equitable or declaratory relief and actions seeking monetary relief over \$50,000 exclusive of punitive or exemplary damages, interest, and costs and attorney fees.³ The underlying cause of action must fall within a list of twenty-two enumerated case types, ranging from uniform trust code-matters, inter-business disputes (including breach of contract, UCC, and transactions involving financial institutions), and intra-business disputes (such as fiduciary duty, employment agreements, shareholder derivative actions, internal affairs, and dissolution).⁴ The court may also exercise supplemental jurisdiction over related claims when necessary to grant complete relief.⁵

Fast

The Chancery Court's focus promotes speedy resolution that matches the pace of modern business.

By statute and rule, the court aims to resolve most cases within 150 days of entry of the scheduling order,⁶ which is typically issued within 14 days after a defendant appears.⁷

In practice, the new court has delivered. Since opening, the court has resolved cases in an average of 116 days from fil-

ing. In 2025, the court decided substantive motions on average within about 10 days of the close of briefing or oral argument, when held. So far in 2025, the court has already resolved 36 cases.

The Chancery Court has achieved this speed through early and customized case management, tailored discovery, limited motions practice, and regular settlement efforts. By design, most cases are resolved on the pleadings or by settlement, eliminating the need for the cost and time of a drawn-out trial.

Time is money for business litigants. The longer a case lingers, the more it costs. Beyond direct litigation costs, prolonged litigation imposes other costs by diverting attention from productive work. The Chancery Court is designed to allow businesses to resolve disputes and return to what they do best—serving customers.

Fair

Specialization not only promotes speed—it promotes fairness. The theory of a modern business court like the Wyoming Chancery Court is that a court that hears the same types of cases involving similar legal issues, factual disputes, parties, and attorneys will naturally become increasingly expeditious and consistent in dispos-

ing of these cases. That consistency builds predictability. Together, predictability and certainty encourage economic activity and investment.

The Chancery Court furthers the twin virtues of predictability and certainty by publishing its decisions on the Wyoming Judicial Branch website, Westlaw, and Lexis.⁸ The growing body of business law decisions enables practitioners to assess risk, advise clients, and predict outcomes.

A Court That Serves Wyoming

Chancery Court serves Wyoming's businesses and trust industry. It offers a forum where their disputes can be resolved quickly, predictably, and cost-effectively. This is particularly valuable for small and mid-sized businesses that may lack the resources to endure prolonged litigation. By reducing the time and expense of dispute resolution, the court helps businesses move forward.

More broadly, the court enhances Wyoming's competitiveness. Wyoming is one of 27 states with a modern business court, and more states are joining the movement.⁹ In today's competitive marketplace, businesses consider the availability of specialized forums when deciding where to incorporate, invest, or expand. The Chancery

Court helps Wyoming remain attractive by offering a forum designed for resolving business disputes.

The Chancery Court also serves the wider Wyoming court system by providing a pressure release valve for overburdened District Courts. With the consent of all parties, an action may be removed from District Court to Chancery Court.¹⁰ Alternatively, District Court judges may assign District Court cases to the Chancery Court judge upon the consent of the parties and the judge.¹¹ By handling complex business and trust matters on a dedicated docket, the Chancery Court also frees up judicial resources in general jurisdiction courts, allowing those courts to focus on criminal, domestic, juvenile, and other high-priority matters.

Growing Acceptance

Given these benefits, the Chancery Court's early years have shown growing acceptance by the Wyoming bar. In 2021, just two firms from one county used the court. By 2022, that number grew to 13 firms from five Wyoming counties and two states. By 2023, 47 firms from 10 Wyoming counties and six states had litigated in Chancery Court.

Continued on page 34

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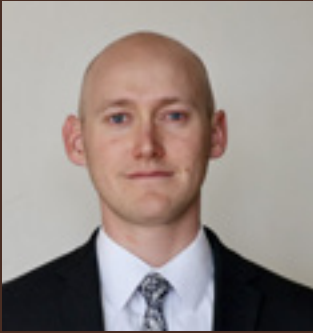


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MEET THE 2025-26 WTLA STUDENT CHAPTER OFFICERS



ISAAC MELINE
President

Isaac Meline is a 3L at the University of Wyoming, College of Law. He grew up in Utah and is a proud husband and father with a growing family of three. During his time in school, Isaac has loved competing in and supporting the Annual Honorable Robert R. Rose Jr. Voir Dire Competition. When not reading for classes, he enjoys spending time with his family, physical fitness, and backcountry hunting. He plans to move to Alaska in the spring to sit for the July 2026 bar and will be working at Cruz Law, LLC in Anchorage.



MICHAEL HAMMER
Vice-President

Michael Hammer is a third-year law student at the University of Wyoming College of Law, focusing on Environmental and Natural Resources law with a particular interest in water issues. His experience in the Wyoming Trial Lawyers Association's voir dire competition helped expose communication skills he has since applied while externing with the Ninth Judicial District Court in Teton County, providing legal aid in Uganda, and working in a clinic with the Wyoming Attorney General's Office.



CARSON LOUGEE
Treasurer

Carson is a 3L from Casper, WY and is passionate about civil litigation. He is excited by the general practice model of Wyoming law firms as he enjoys constantly learning new things and facing new challenges and legal puzzles to solve. Between running in the mountains and studying for midterms, Carson can be found chasing his 2-year-old son around the house while carrying his 5-month-old baby girl with his awesome wife Julia.



RYAN BAITER
Secretary

Ryan is a 2L at UW and has a broad interest in litigation spanning both criminal defense and civil matters such as torts and contracts. Ryan enjoys taking on challenges and views law school as an opportunity to push himself and grow as a student and future litigator. When he finds the time, he enjoys getting away from studies and fly fishing the Laramie Plains Lakes, duck hunting the nearby ponds, and hiking/backpacking the surrounding mountains.

2025 ROBERT R. ROSE VOIR DIRE COMPETITION: INSPIRING EXCELLENCE IN TRIAL ADVOCACY



The 15th Annual Robert R. Rose Voir Dire Competition, held on September 20 at the University of Wyoming College of Law, showcased the talent of future trial lawyers and the commitment of WTLA members.



Thank you to our finals judges: Justice Boomgaarden (L), Judge Sharpe (C), and Bob Rose (R).



Congratulations to our 2025 Voir Dire Competition winners: Bailey Dempsey (L) and Whitney Garza (R).



The final round was highly competitive, featuring finalists Molly Novak (L), Ryan Fogg (LC), Bailey Dempsey (RC), and Whitney Garza (R).



Kelly Rudd and Gary Shockey lead one of several Friday afternoon voir dire workshops, where students practiced the skills needed for Saturday's competition rounds.

TREATMENT COURTS

Continued from page 8

after participation, participant retention, and more nuanced sobriety indicators. The draft framework also contemplates tracking the services participants actually receive. The intent is practical—treatment court teams should be able to see trends, adjust responses, and verify whether changes are working. Attorneys gain a shared language for case discussions, and policymakers gain reliable information for funding and oversight.

RURAL REALITIES: DESIGNING FOR DISTANCE

Wyoming's geography shapes how treatment courts work. Many programs draw participants from large areas, with long drives, winter closures, and limited public transportation. Provider networks can be limited, and specialty services are sometimes available only in neighboring counties or by telehealth. The statewide framework is seeking solutions meant to address these facts. Courts adjust status hearings to reduce unnecessary trips, cluster services on the same day when possible, and set drug testing windows that balance accountability with travel time and work schedules. Local program coordinators work with probation and treatment providers to cover gaps when a counselor is out or a group is full. The case-management work described helps because consistent data entry can show where attendance drops when the weather turns, when testing hours are too narrow, or when a phase plan is not realistic for people who work shifts. None of this changes expectations for honesty, engagement, and public safety. It does acknowledge that a well-run rural court looks different from a well-run court in a larger county, and that success depends on steady problem-solving with the partners on the ground.

CERTIFICATION: ENSURING CONSISTENCY AND QUALITY

Over the next few years, the Branch will work toward a certification process for treatment courts with a practical, supportive focus. The purpose is to confirm that programs are working within the Wyoming Treatment Court Standards, using validated tools, and capturing the core data. Certification will be phased in, built around reasonable timelines, and aligned with existing workflows. The process will emphasize coaching, sample

checklists, and templates, with technical assistance available when needed. Site reviews will highlight both strengths and opportunities, and follow-up will focus on solutions that align with local capacity. The intent is to create a steady framework that helps courts maintain fidelity, demonstrate consistency to stakeholders, and improve outcomes without adding unnecessary burden.

DIVERSION: A PARALLEL TRACK FOR SERIOUS MENTAL ILLNESS

Since the transfer, the Branch has supported the launch of behavioral health diversion for non-violent misdemeanor offenders with serious mental illness. The pilot began in Campbell County in December 2024, followed by Laramie County on January 31, 2025, and Natrona County on February 10, 2025. Diversion is designed to connect eligible participants to clinical care and community supports while charges are held in abeyance. Participants enter through screening and referral, receive clinical evaluations and risk assessments, and are monitored for treatment engagement and compliance. The aim is practical: to stabilize health, reduce repeat crises and bookings, and more effectively resolve cases. If the pilots perform as hoped, they may also reduce costs for counties and the state by lowering jail days, emergency room use, transport and booking cycles, and other repeat contact expenses.

FUNDING AND GOVERNANCE

In the last biennium, the Legislature appropriated \$6,927,739 to support treatment courts. Funding came from the general fund, tobacco settlement dollars and court fees. While the Legislature sets the appropriation, the Wyoming Judicial Council, through its Behavioral Health Committee, manages eligibility and awards to qualified programs. The state follows a two-year funding cycle, with the next application scheduled for release in October 2025. The goal is straightforward—programs know the criteria in advance, decisions are consistent statewide, and courts can plan staffing and services with more predictability. Central administration also helps align budgets with the standards and the performance work described above, while preserving local discretion on how to meet those standards using the resources available in each community.

EARLY LESSONS FROM THE FIRST YEAR

The first year under judicial administration suggests a few practical themes. Peer review has helped by focusing on practice and by turning observations into clear next steps. The growing use of case-management tools shows how much hinges on clean data entry and simple, shared definitions, which in turn make staffing conversations more focused and status hearings more predictable. Regular training has been useful when it is tied to everyday tasks, such as how to structure a staffing, how to document a sanction, and how to record a service, so teams can return to court and use what they learned immediately.

PRACTICAL IMPLICATIONS FOR THE BAR AND SUCCESS

For practicing lawyers, judicial administration makes treatment courts easier to understand and navigate. Standards and expectations are clearer, which helps in early case assessments and plea discussions. Defense counsel can prepare clients with specific information about phases, incentives and sanctions, and the cadence of status hearings. Prosecutors can frame recommendations around the same benchmarks the team is using. Judges and coordinators are working from shared definitions and growing datasets, so questions about progress, relapse, or dosage can be resolved with reference to the record. Diversion adds another option when the conduct is closely tied to serious mental illness and the person is a good fit for treatment and supervision. Across all models, the most effective advocacy has been straightforward and timely. Bring concerns about access to services, transportation, medication, or documentation to staffing early, confirm the plan in the record, and follow up at the next review. The more the team stays aligned with the standards and the facts in the file, the more predictable the process is for everyone involved.

Success is not a single number. It looks like teams applying the same standards in the same way from hearing to hearing, participants knowing what is expected and why, and phase movement that tracks actual progress rather than the calendar. It shows up in steadier retention, longer stretches of sobriety before discharge, fewer missed hearings, and fewer new charges during participation and in the year after. At the program level, success means coordinators can pull the same

reports and use them to adjust testing, incentives, sanctions, and service referrals without guesswork. As certification and performance measures come online, the picture should become clearer, allowing courts to demonstrate results to their communities while continuing to refine practice.

THE ROAD AHEAD

The near term is about finishing what has been started and doing it in a way that helps local teams. The working group of program coordinators will complete draft performance measures for review by the Behavioral Health Committee, and once approved, those measures will be built into the Wyoming Treatment Court Case Management System, so every court is looking at the same information. Peer review will continue on a steady schedule so programs get regular feedback they can use. Certification will be phased in with clear timelines and simple documentation so coordinators can meet the requirements through routine practice rather than extra paperwork. The Branch will keep training practical and tied to daily tasks, and it will provide help when courts need support with data entry or community treatment capacity. The Branch's diversion efforts

will be assessed against the same principles and expanded only where results and local resources support growth. The Branch is exploring options to share periodic, high-level summaries, as appropriate, so judges, lawyers, and county partners can see what the system is delivering and where additional work may be needed.

COUNTY PARTNERSHIPS AND CAPACITY

None of this work happens in a vacuum. County governments, law enforcement, probation, public defenders, prosecutors, and treatment providers are the day-to-day partners who make the model possible. Wyoming's geography and provider networks are uneven, so the statewide framework is meant to support local problem solving rather than dictate a single script. When transportation, housing, or treatment capacity limits a response, courts look for workable alternatives that still track the standards. Over time, the shared data should help counties, and the state target resources where they will

make the biggest difference.

CONCLUSION: A COLLABORATIVE PATH FORWARD

The first year under judicial administration has been about building a common framework and putting practical tools in place. Standards are set, peer review has begun, performance measures are in development, the case-management system is improving, certification is on the way, and diversion is being tested where local conditions are ripe. None of it works without steady collaboration among judges, attorneys, coordinators, probation, counties and treatment providers. As the framework matures, the Branch will keep listening to local teams, adjusting timelines and training to fit real workloads, and focusing on changes that show up in court and in people's lives. For the bar, the invitation is simple. Engage early, bring concrete feedback, and help keep the work grounded in what you see at counsel table. ☐

Kurt Zunker joined the Wyoming Judicial Branch in September 2024 after 22 years directing Laramie County's Treatment Court programs. A Cheyenne native, he earned a B.S. in Criminal Justice from the University of Wyoming and an M.S. in Criminal Justice and Correctional Rehabilitation from the University of Cincinnati. He has completed more than 300 hours of specialized treatment court training.

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BACK TO THE BASICS OF GRAMMAR AND PUNCTUATION

BY EMILY S. MADDEN

Somewhere between drafting discovery responses and rewriting opening statements at 2 a.m., lawyers tend to forget that grammar and punctuation are tools of persuasion, not just technicalities. They signal precision, control, and credibility, which are the very qualities we ask judges and juries to trust. Yet for many of us, the last formal grammar lesson we had ended well before law school. And it shows.

Misplaced commas and wandering apostrophes sneak into our briefs. Hyphens moonlight as em dashes. Entire clauses hang in confusion, waiting for a semicolon that never comes. Fortunately, fixing these things doesn't require diagramming sentences or re-learning the eight parts of speech. It's simply about brushing up on the basics that can make a big difference in how your writing is read, and how your argument is received.

1. The Rule That Everyone Gets Wrong: Possessive Nouns

If there's one rule guaranteed to trip up even the most seasoned lawyer, it's how to form the possessive noun. And every December when "The Jones's Holiday Card" starts showing up in our mailboxes, we see exactly who remembers how. Fortunately, the rules are easy, they've just been forgotten.

If a noun is singular, you form the possessive by adding 's, no matter what letter the word ends with. For example:

- Not this: Ms. Burns' closing argument was powerful. ✗
- But this: Ms. Burns's closing argument was powerful. ✓
- And this: Emily's dog is the cutest thing in the world. ✓

Yes, "Burns's" looks awkward, and yes, you pronounce the extra s ("Burns-ez"). That's fine, because it's grammatically correct.

There are, of course, a few exceptions to this general rule:

- Its never takes an apostrophe when showing possession. (If you mean "it is," then use *it's*).
- Absolute possessives like *yours*, *hers*, and *theirs* already show ownership and don't need one.
- Biblical or classical names that end with a -zes or -eez sound typically take only the apostrophe: *Jesus' teachings*, *Moses' lifetime*.
- Corporate or plural-style names stay true to their base form: *General Motors' board of directors*.

For plural nouns already ending in s, simply add an apostrophe:

- Not this: Where are the dogs's bones? ✗
- But this: The plaintiffs' case was dismissed. ✓

- And this: The witnesses' statements were transcribed by the court reporter. ✓

For plural nouns not ending in s, add an 's:

- Not this: The childrens' toys are on the floor. ✗
- But this: The children's injuries were severe. ✓
- And this: The men's locker room is being renovated. ✓

For plural possessives, it's always best to pluralize first and then form the possessive. For example: Mary and John Jones → The Joneses → The Joneses'. Once you've got that down, you'll write with confidence and mail your holiday cards without fear.

2. The Rule Everyone Should Know: Edit Out Sexist Language

Bryan Garner reminds us that using gender-neutral language isn't about political correctness, it's about credibility. Chief Judge Judith Kaye of the New York Court of Appeals put it more bluntly, predicting that gendered writing "will one day be immediately recognized as archaic and ludicrous." I agree. It's hard to believe that in 2025 we're still invoking "the reasonable man" as our legal yardstick. Whenever I see that phrase and others like it in briefs and opinions written in this century, I want to believe it says less about precedent and more about proofreading. So next time you're proofreading, please consider the following:

A. Avoid expressions that suggest men are the only people on earth.

- Not this: reasonable man ✗
- But this: reasonable person ✓

B. Avoid gender-based descriptions and titles when there are neutral substitutes.

- Not this: workmen ✗
- But this: workers ✓

C. Omit unnecessary gendered pronouns.

- Not this: The average citizen enjoys his time on the jury. ✗
- But this: The average citizen enjoys jury duty. ✓

If you must use a pronoun, alternate between feminine and masculine where context allows. For example, refer to judges as women and lawyers as men. The goal isn't to sanitize our writing, it's to make it accurate, inclusive, and credible. When our words reflect the world we live in, our arguments carry more weight.

3. Dashes, Hyphens, and the Fine Art of Line Management

If apostrophes are the most misused punctuation mark, dashes are the most misunderstood. Somewhere along the way, lawyers started treating hyphens, en dashes, and em dashes as interchangeable, leaving it to Microsoft Word's autocorrect to decide which one wins. But each has a distinct purpose and knowing how to use them is one of those subtle shifts that instantly makes your writing look sharper and more deliberate.

A. The em dash is for emphasis. The em dash (—) is the longest of the three, roughly the width of the letter "m." It's the most dramatic, and it should be treated that way. Use em dashes to set off or emphasize material that you want the reader to notice, without breaking the sentence entirely. For example:

Example: Marriott effectively posits that Plaintiffs' presumptively convenient choice of forum—which is in Marriott's own legal backyard and entitled to the greatest level of defer-

ence—should be rejected in favor of India.

Some consider the em dash to be a telltale sign of AI authorship. But when I see an em dash, I accuse the author only of being guilty of good grammar and excellent taste in punctuation. If you want to separate yourself from the AI-generated rumors, be sure to use the em dash correctly: for emphasis, and without spaces on either side.

The em dash should be compared to parentheses, which do the opposite. Parentheses minimize and tell the reader they can skip the enclosed information if they want.

Example: These include, among others, the opinion rules (Rules 701 and 702), the firsthand- or personal-knowledge rule (Rule 602), and the rule requiring authentication of documents (Rule 901).

In short, parentheses make information quieter; em dashes make it louder.

B. The en-dash is for ranges and relationships between equals. The en dash (–) is shorter than an em-dash but longer than a hyphen; it's roughly the width of an “n.” You use it to indicate ranges for dates and pages, as well as connecting two terms of equal weight. For example:

- This: [ECF No. 21, at 7–10]. ✓
- Not This: [ECF No. 21, at 7–10]. ✗
- This: The American Civil War (1861–1865) ✓
- Not This: The American Civil War (1861-1865) ✗
- This: The attorney–client privilege is governed by state law. ✓

Most lawyers skip using proper dashes because they don't know where to find the right ones. Fortunately, both the em

dash and en dash are hiding in plain sight. In Microsoft Word, you can locate both of them under the “Special Characters” tab of “Advanced Symbols.” And if you're a shortcut person, use the following:

- Mac: Em dash — Shift + Option + Hyphen | En dash – Option + Hyphen
- PC: Em dash — Alt + 0151 | En dash – Alt + 0150

C. The hyphen is for statutes, prefixes, and compound modifiers and numbers.

The humble hyphen (-) is the workhorse of legal punctuation. It's the shortest and most commonly used line, appearing in statutes (*Wyo. Stat. Ann.* § 1-2-345), compound numbers (*twenty-one*), and prefixes (*ex-husband*). Those uses are usually right. Where lawyers tend to stumble is with the hyphen's other job: gluing words together to avoid confusion. Use hyphens for compound adjectives that come before a noun or pronoun:

- A third-year associate is handling the case. ✓
- A well-reasoned brief persuaded the court. ✓

If the same phrase follows the noun, drop the hyphen: *The associate is in her third year.* And if you're unsure whether to use a hyphen, a good test is to ask whether removing the hyphen would cause confusion or a double take. If the answer is yes, keep it. After all, a *man-eating shark* is very different from a *man eating shark*.

4. Only You Can Prevent Modifier Confusion.

The word *only* is small but mighty, and one of the most fre-

Continued on page 36

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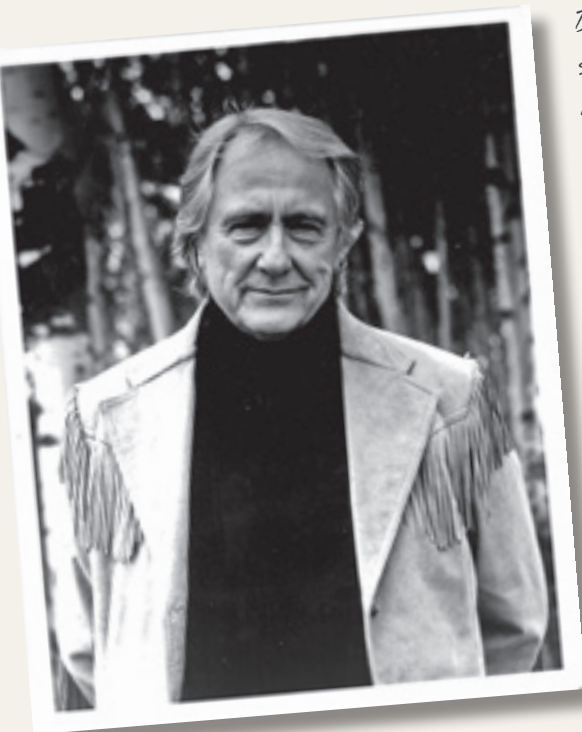
Gerald Leonard Spence

A Tribute to the Great Man

By Kent Spence

My Dad, Gerry Spence, was a charismatic, living legend, who had a mammoth impact on me, my family, his friends, the general public and Trial Lawyers nationally and worldwide. This tribute is not about his famous cases, more than 25 books he wrote, trial schools he created or powerful speeches he gave. We all have access to that.

As a human being, Dad was different and personal to everyone who had an experience with him, whether close or from a distance. He knew how to love. He loved his dear wife Imaging, his kids and grandkids, friends and clients. At his core he was authentic, courageous and vulnerable. Gerry taught to take risks and go beyond our fears—the little voice inside telling us, “you can’t do that, they will reject you, think you’re strange and you will lose your credibility”. He taught that being honest, real, and vulnerable is where the true power of connection resides and for that we will be trusted and embraced.



Dad always said that only when we open up to others first and share who we really are will others open up with us and show us who they really are. This is the essence of who

Gerry was. This also is at the core of “The Gerry Spence Method” of trying cases—at every stage of trial.

Using his vulnerable risk-taking method in voir dire lets us connect with jurors from the start of the trial, because only when we show the jury who we really are will they open up to us as to who they really are. This forms a group or Tribe with the jury and us, and we as the lawyer become the leader or Chief. He said that you must always be honest with the jury because even the smallest secrecy or dishonesty will ruin your credibility which can never be recovered.

As a son of Gerry for 71 years, and a law partner who tried cases with him, he was both the greatest influence in my life and one of the most difficult people in my life. We had a lot of fun in the great outdoors, family gatherings, one-on-one and in trial. Yet, it wasn’t always easy being his son. He liked to challenge the status quo and call B. S. when he felt it. He said we should listen to “our guts”, our intuition. He always wanted to dig deeper: “Yes, but what is really going on with you Kent?” Many people had similar experiences with him. He would ask pointed questions that made us look at ourselves, our lives and how we try our cases. In many ways it was like a one-on-one voir dire. He was always there with high expectations and to challenge. For that, I remain indebted, as it was a big part of my own self-discovery. Those who have experienced Gerry have also had those uncomfortable moments when he confronted controversial issues or challenged us personally. That was part of his magic. As part of our ongoing celebration of the life of this rare human being, Gerry Spence, let’s practice taking risks, reaching beyond our fears and being vulnerable and real when connecting with ourselves and others.

VERDICTS AND SETTLEMENTS
Continued from page 13

after the fall. The Plaintiff reported significant pain at L4-5 and adjacent segments, numbness and paresthesia and was diagnosed with chronic pain syndrome.

DEFENSES

Safeway attributed the need for surgery to pre-existing conditions. Plaintiff's medical records had scattered references to back pain, but no diagnoses of or treatment for back issues. Safeway also contended that the early-morning presence of a strawberry was evidence that it had been on the floor for only a short time.

PLAINTIFF'S AGE

49 (at date of injury).

WORK

Warehouse worker.

MEDICAL BILLS

\$113,510.34; \$77,865.86 paid by employer health plan. Significant co-pays and deductibles each year. Plaintiff took out a second mortgage to pay these bills.

LOST WAGES

\$14,244.47 (past); alleged lost future earnings capacity.

PLAINTIFF'S ATTORNEY

Jim Gigax

PLAINTIFF'S EXPERTS

Treating doctors

CASE TYPE: Car Crash /
Wrongful Death

VERDICT OR SETTLEMENT

\$1,250,000, Pre-Litigation, Policy Limits

FACTS

Deceased was traveling on a highway outside of Douglas, Wyoming after looking for a new home for his fiancé and one-year-old daughter. He had recently been hired at his first steady job and planned to move the Douglas with his young family. While driving on the two-lane highway, a driver in a pickup truck traveling in the opposite direction crossed over the double-yellow line and hit the deceased head-on, instantly killing him. He left behind his fiancé, his daughter, parents, and sister. The at-fault driver was also killed in the crash.

The at-fault driver had an auto policy with \$250,000 in limits, and an umbrella

policy (which was initially not disclosed) with limits of \$1,000,000.

INJURIES

Wrongful Death—the Wrongful Death Beneficiaries sustained a loss of society, comfort, and care.

PLAINTIFF'S AGE

23

WORK

Truck Driver for Oil & Gas Company

MEDICAL BILLS

N/A

LOST WAGES

\$2,500,000 over the course of his working life.

PLAINTIFF'S ATTORNEYS

Doug Bailey

DEFENDANT'S ATTORNEYS

N/A

PLAINTIFF'S EXPERTS

N/A

DEFENDANT'S EXPERTS

N/A

CASE TYPE: Commercial Motor
Vehicle Collision on I-80

CASE

McFadden v. Royal Tranz Inc.

COURT

2nd Judicial District Court, Albany
County

JUDGE

Hon. Misha Westby

CASE NUMBER

Civil No. 2024-cv-0036140

VERDICT OR SETTLEMENT

\$830,000

FACTS

In June 2021, world-renowned professional dog handler Bill McFadden—one of only a handful of handlers to have guided multiple dogs to Best in Show at Westminster—was traveling with his employee and ten show dogs from California to New York for the Westminster Kennel Club Dog Show. While driving eastbound on Interstate 80 near Laramie, their van entered a construction zone where traffic slowed to a crawl in a single-lane, 30-mph zone. Despite the reduced speed limit and traffic conditions, a tractor-trailer operated by Saifdeep Singh, an employee of Royal Tranz, Inc., approached at approximately 45 mph and rear-ended the van.



The crash prevented Bill from attending Westminster that year and left him with ongoing injuries and discomfort that impaired his ability to show dogs at the highest level. Bill and his wife, Taffelyn, filed suit against Singh and Royal Tranz, Inc., alleging negligence and seeking punitive damages, with Taffelyn asserting a claim for loss of consortium.

INJURIES

Bill McFadden, two broken ribs, compression fractures at C-7, T-6, and T-8, pain and suffering; Taffelyn McFadden, loss of spousal consortium.

PLAINTIFFS' AGES

Bill McFadden, 63 years at time of injury; Taffelyn McFadden, 59 years at time of injury.

Continued on page 35

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When You Make a Promise, Keep It
Ride for the Brand
Talk Less and Say More
Remember That Some Things Aren't For Sale
Know Where to Draw the Line

CHANCERY COURT

Continued from page 25

This trend continues today and aligns with the law of diffusion of innovation, which explains that new ideas spread gradually—first embraced by early adopters (13.5% of the population with a high tolerance for innovation), followed by the early majority (34% of the population willing to adopt innovation after seeing the benefits reaped by early adopters), then the late majority (the 34% who cautiously embrace innovation after wide acceptance), and finally by laggards (the 16% who, in resistance to change, adopt innovation last).¹² The Chancery Court is now moving from early adoption into broader acceptance—an encouraging sign of its growing value to the bar and business and trust communities.

Overcoming Common Concerns

Despite its advantages, some practitioners may hesitate to file in Chancery Court. The following common concerns are understandable—but as explained, they are also addressable.

“Casper is too far.”

The Chancery Court is not a Casper court—it is a statewide trial court with statutory authority to hold court in any county in the state.¹³ To control costs and increase convenience, Chancery Court holds most proceedings remotely. When in-person hearings are necessary, the court may use its courtroom in Casper, but it is also willing to exercise its statutory authority to hold court in other areas of the state. If the parties, witnesses, and counsel are located in a more convenient location and a courtroom is available, the court will travel to that location.

“I don’t want to learn a new set of rules.”

The Chancery Court has its own set of civil procedure and uniform rules but these are lightly modified versions of the same rules applicable in District Court. Modifications reflect the court’s core characteristics—accelerated timelines, active case management, limited motions practice, and bench trials.¹⁴ Otherwise, the Chancery and District court rules are

identical. So, a practitioner who understands that the Chancery Court engages in early and active case management and resolves cases on an expedited basis with bench trials will have no trouble moving between District and Chancery Court.

“The 150-day timeline is too fast.”

Chancery moves at a higher cadence, no doubt. But the court achieves this higher cadence by investing time early in the matter to develop a customized case schedule and discovery plan, setting expectations upfront to avoid delays later in the case. This early case management pays off. Most cases settle early or are resolved on the pleadings before a trial.

Yet, not all cases are amenable to expedited resolution. Statute and rule establish a goal of resolving most (not all) cases within 150 days, implicitly recognizing that more complex matters may justifiably require additional time. The Chancery Court rules division is exploring the formal creation of a “complex track” for cases involving multiple parties, numerous claims, substantial amounts at stake, and extensive proceedings.

It’s My First Chancery Court Case—What Should I Expect?

If you have yet to litigate in Chancery Court, this is what you can expect in most cases.

After the defendant answers, the court orders the parties to meet and confer to propose a case schedule and discovery plan. The Chancery Court then holds a scheduling conference to review the proposal and establish a customized case plan, which is memorialized in a Comprehensive Case Management and Scheduling Order (CMSO). This order sets deadlines from initial disclosures through trial and requires periodic, brief, and remote case management conferences to ensure the case stays on track.

In most cases, the CMSO also mandates regular settlement efforts—typically three settlement conferences throughout the life of the case, one of which must involve a mediator.

Most proceedings will be held remotely. If the case requires trial, it will be a bench

trial held in Casper or, when appropriate, a more convenient location for the litigants.

The major differences between the District and Chancery Courts are active case management and cadence. The Chancery Court is systematically positioned to give each case careful attention and resolve motions quickly. This active approach keeps cases moving, reduces surprises, and helps parties reach resolution more quickly and cost-effectively than traditional litigation.

Conclusion: Consider Chancery

Litigants have a choice. The Wyoming Chancery Court is systematically positioned and designed to resolve business and trust disputes. It is focused. It is fast. It is fair.

If your client is facing a business or trust dispute or drafting a contract with a forum-selection clause, consider using the Wyoming Chancery Court to get the job done. ●

notes

- 1 The State Court Administrator authored this section to introduce the association to the Chancery Court’s first full-time judge.
- 2 Clayton M. Christensen, Taddy Hall, Karen Dillon & David S. Duncan, *Know Your Customers’ Jobs to Be Done*, 94 Harv. Bus. Rev. 54, 54–62 (2016).
- 3 Wyo. Stat. § 5-13-115; W.R.C.P.Ch.C.2.
- 4 Wyo. Stat. § 5-13-115(b); W.R.C.P.Ch.C. 2(b).
- 5 Wyo. Stat. § 5-13-115 (c).
- 6 Wyo. Stat. § 5-13-115(a); Wyo. Stat. § 5-13-104(h); W.R.C.P.Ch.C. 1.
- 7 W.R.C.P.Ch.C. 16(b).
- 8 Wyo. Stat. § 5-13-104 (f).
- 9 Bus. L. Section, Am. Bar Ass’n, Benjamin R. Norman & Benjamin M. Burningham eds., *Recent Developments in Business Courts 2025*, (Sept. 3, 2025).
- 10 W.R.C.P.Ch.C 3(b); W.R.C.P. 3.2.
- 11 Wyo. Stat. § 5-3-112.
- 12 Everett M. Rogers, *Diffusion of Innovations*, 5th ed., Free Press, 2003; Simon Sinek, *How Great Leaders Inspire Action*, TED (Sept. 2009), https://www.ted.com/talks/simon_sinek_how_great_leaders_inspire_action
- 13 Wyo. Stat. § 5-13-104(d).
- 14 See W.R.C.P.Ch.C. 1, 2, 3, 16, 37.

Benjamin Burningham is Wyoming’s first full-time Chancery Court judge, appointed on January 1, 2025. He is a new member of the American College of Business Court Judges and has worked with the Institute for the Advancement of the American Legal System on improving business dispute resolution. He earned his J.D. with honors from George Washington University Law School, where he served as managing editor of *The George Washington International Law Review*. His legal career includes multi-billion dollar securities litigation at Kellogg Hansen in Washington, D.C., complex litigation at the Wyoming Attorney General’s Office, and service as Chief Legal Officer for the Wyoming Judicial Branch, where he helped establish the Chancery Court.



VERDICTS AND SETTLEMENTS

Continued from page 33

WORK

Professional dog handler and groomer

MEDICAL BILLS

\$41,861.57 in past medical expenses;
\$94,034 life care plan

LOST WAGES

Plaintiffs: \$480,111 lost earnings capacity, including replacement costs.
Defendants: \$26,000 in past lost earnings, \$0–\$46,700 in projected future lost earnings.

PLAINTIFFS' ATTORNEYS

G. Bryan Ulmer III, Catherine E. DiSanto, and Emily S. Madden, The Spence Law Firm LLC

DEFENDANTS' ATTORNEYS

Khale Lenhart and Casey Terrell of Hirst Applegate, LLP; Byron Ames, Stone Kalfus LLP.

PLAINTIFFS' EXPERTS

Alex Barchuk, MD, CL/CP (physical medicine & rehabilitation physician); Adam Grill, C.D.S. (trucking and FMCSA consultant); Diana Bubanja, DPT, CLCP, CFCE (licensed physical therapist,

certified life care planner, certified functional capacity evaluator); John R. Cary, MA, CRC, CDMS (certified rehabilitation counselor, certified disability management specialist); Rick S. Hoffman, CPA, ABV (business valuation).

DEFENDANTS' EXPERTS

Kyle Jacobson, CPA.

CASE TYPE: Car Crash

CASE

Confidential

COURT

Confidential

JUDGE

Confidential

CASE NUMBER

Confidential

VERDICT OR SETTLEMENT

\$75,000, Post-Suit

FACTS

Client, an elderly woman with significant pre-existing spinal degeneration (and prior fusion surgery), was driving outside of Burns, Wyoming

when another driver ran a stop sign and broad-sided her. While surgery was recommended to address her condition, she was not a candidate due to a heart condition.

INJURIES

Soft tissue injuries to spine, including disc herniation, and arguable aggravation of pre-existing condition.

PLAINTIFF'S AGE

85

WORK

Volunteer work in the community

MEDICAL BILLS

\$20,000

PROBABLE FUTURE MEDICAL BILLS

N/A

PLAINTIFF'S ATTORNEYS

Doug Bailey

DEFENDANT'S ATTORNEYS

Confidential

PLAINTIFF'S EXPERTS

Treating physician, Dr. Steven Beer

DEFENDANT'S EXPERTS

N/A



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GRAMMAR AND PUNCTUATION

Continued from page 31

quently misplaced words in legal writing. It modifies the word or phrase that comes directly after it. Move it around, and the meaning can change the sentence completely. Take the following example from *The Grammar Diva*:

- *Only* Judy kicked her friend in the leg. (Modifies *Judy*. No one else kicked the friend, just good old Judy).
- Judy *only* kicked her friend in the leg. (Modifies *kicked*; she kicked her friend, but she didn't do anything else to her).
- Judy kicked *only* her friend in the leg. (Slightly different meaning: Judy didn't kick anyone else, just her friend, thank goodness!).
- Judy kicked her *only* friend in the leg. (Modifies *friend*; no surprise this was her only friend).
- Judy kicked her friend *only* in the leg. (She didn't kick her anywhere else).
- Judy kicked her friend in her *only* leg. (Modifies *leg*; poor friend).

As you can see, placement matters. The next time you use only, pause, read your sentence aloud, and listen for meaning. When only lands in the right place, so will your argument.

5. Split Authority on Split Infinitives

An infinitive is a verb form consisting of to plus the base verb (to eat, to sleep, to object). A split infinitive happens when a word, usually an adverb, sneaks between to and the verb that follows it (*to boldly go*). For generations, grammarphobes have warned us never to split infinitives (or should I say, to never split infinitives?).

Notably, this rule was never really a rule of English; it was a stylistic preference borrowed from Latin, where infinitives

can't be split because they're single words. In English, though, we have two words to work with, which makes splitting possible. Some authoritative sources still advise against it, but others view the act of splitting infinitives as unobjectionable. So the rule is not to "never split," but to "split carefully."

You might consider splitting an infinitive to prevent ambiguity. For example, "I asked him to instantly leave" is clearer than "I asked him to leave instantly," which could mean the request itself happened instantly.

If this all sounds basic, that's because it is. But "basic" doesn't mean unimportant, it means foundational. Apostrophes, dashes, modifiers, pronouns, and infinitives may seem small, but they carry weight. They sharpen your arguments, clarify your tone, and quietly tell the reader that your words and your work can be trusted. Good writing doesn't demand attention; it earns it. So, every now and then, it's worth going back to the basics. 🍷

notes

- 1 "Some people in the legal-writing business argue that we cannot teach basic grammar and style in law school. It is too late, they say; there is no time to make up for years of neglect and poor teaching in high school and college." Robert Barr Smith, *Something for Everyone*, 1 SCRIBE 175, 177 (1990).
- 2 The fifth exception is a sibilant possessive before *sake*. In that instance, the possessive takes an apostrophe without an additional -s: for goodness' sake. Bryan Garner, *THE ELEMENTS OF LEGAL STYLE* 20 (2d ed. 2002).
- 3 *Id.* at 207.
- 4 *Id.* at 208 (quoting Chief Judge Judith S. Kaye, *A Brief for Gender-Neutral Brief-Writing*, N.Y.L.J., 21 Mar. 1991, at 2).
- 5 Arlene Miller, *THE GRAMMAR DIVA, A LITTLE LESSON ABOUT "ONLY"*, <https://bigwords101.com/2013/blog/a-little-lesson-about-only/> (last visited Oct. 18, 2025).

WELCOME NEW WTLA MEMBERS

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Mikala Bolkovatz-Sheridan . .	Cheyenne WY	Paul Knight	Dubois WY	Hunter Peterson	Evanston WY
Christopher Brennan	Cheyenne WY	John Kuker	Cheyenne WY	Deborah Roden	Cheyenne WY
Kelsey Fleener	Timnath CO	Richard Kunckel	Westminster CO	Scott Slawson	Grand Junction CO
Thomas Fleener	Laramie WY	Margaret Laing	Cheyenne WY	Christopher Throssel . .	Fort Collins CO
Elizabeth Greenwood	Pinedale WY	Jacob Lewis	Jackson WY	Steven Titus	Gillette WY
Julie Hill	Laramie WY	Robert Mason	Cheyenne WY	Heidi Whitaker	Fort Collins CO
Elise Hill	Cheyenne WY	Allison McWilliams	Laramie WY	Madison Worst	Ketchum ID
David Hillshafer	Cheyenne WY	Dallin Morrow	Layton UT		

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