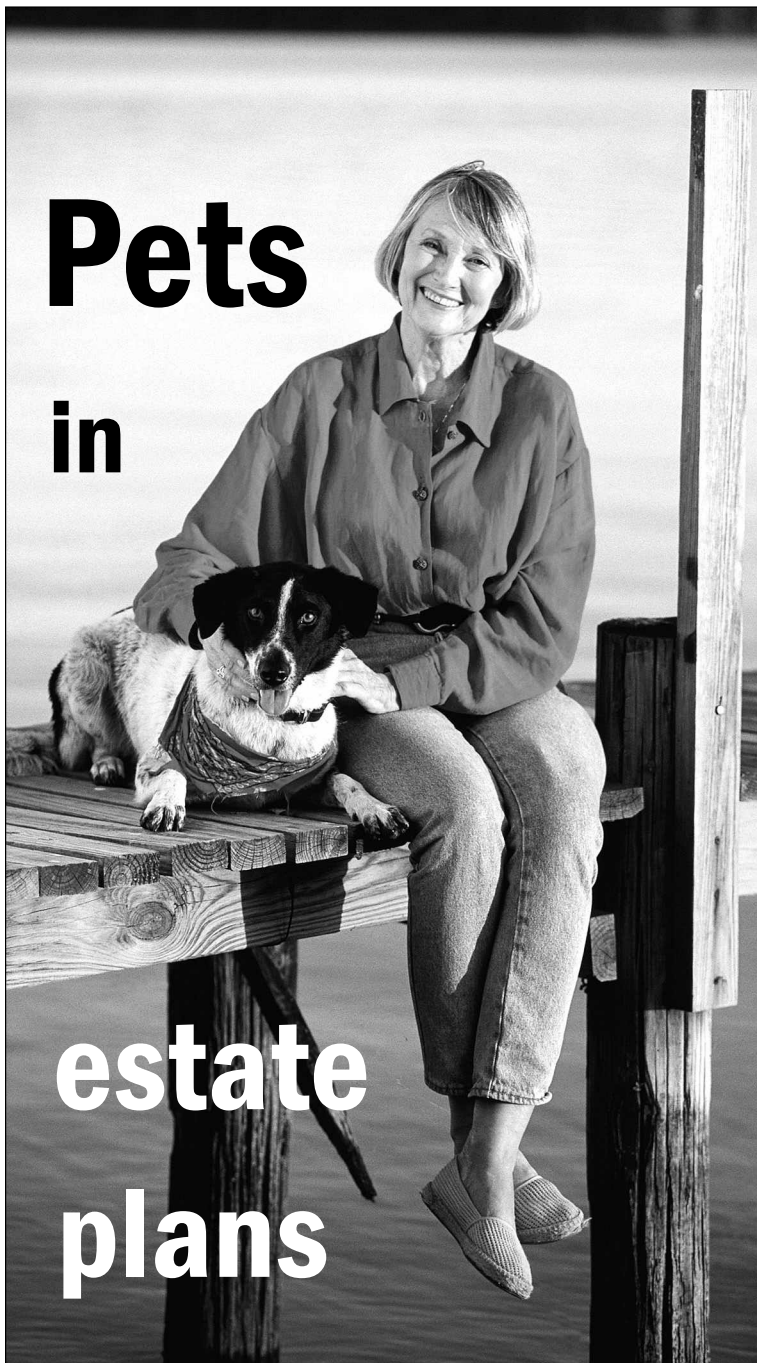


Lawyer

THE STATE BAR OF MONTANA

Pets

in



**estate
plans**

The Discipline Counsel's annual report

AT THE SUPREME COURT



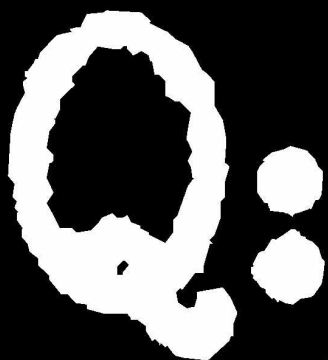
**Memoriam
in honor of
Paul Raftery**

The 'legal thuggery'
ruling – aimed at
a California law firm

Two high-profile disbarments

**Legal-system bills
in the last days of the Legislature**

Update on Page 5



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APRIL INDEX

COVER STORY

- Providing for pets in estate plans 9

FEATURES

- Memoriam to Paul Raftery 6
- ABA eases practice rules in disasters 12
- Two pro bono programs in Billings 13
- IOLTA: A little interest goes a long way 15
- Justice Foundation hires development director 24
- Discipline Counsel annual report 24
- The Legal Writer: redundancies & euphemisms 32

COMMENTARY

- President's Message: Defining the rule of law 4

STATE BAR NEWS

- Legislative update: judiciary budget 5
- Laptops make debut at Bar Exam 16
- Road Show set for 3 cities 16
- Professionalism Award nomination form 17
- State Bar calendar 18
- Law Day forums & classes 19

COURTS

- Court disbars Dan Shea, Pete Bacheller 8
- The 'legal thuggery' ruling 22
- Order: objection limits are self-enforcing 27

REGULAR FEATURES

- Upcoming CLE seminars 19
- State Bar Book & Video Store 20
- News About Members 33
- Deaths 33
- Classifieds 37



PRESIDENT'S MESSAGE

Defining the rule of law

... and your place in carrying it out near and far

Peggy Probasco

It seems to me that simply doing what is right is considered generous, while that which is done at any cost in the name of profit is considered good business. In light of this, but without trying to assign the legal profession the additional duty of society's moral compass, I offer the following thoughts.

Recently, I had the opportunity to hear William Neukom, president-elect of the American Bar Association speak regarding his mission when he becomes the ABA president in August. His ideas are ambitious and relevant to our state on several fronts. He began with bringing a clearer understanding of the rule of law into mainstream America. With a working definition of the rule of law, he hopes to join the World Justice Project, a new organization formed at a symposium in November 2005.

The working definition of the rule of law will sound immediately familiar to many of you, but please consider the ways we might promote this concept in our state. The rule of law is based on four principles:

- A system of self-government in which all persons, including the government, are accountable under the law.
- A system based on fair, publicized, broadly understood and stable laws.
- A fair, robust, and accessible legal process in which rights and responsibilities based in law are enforced.
- Diverse, competent and independent lawyers and judges.

If you have read the mission of the State Bar of Montana, you will find these principles, albeit much more broadly stated. So what? What about this endeavor is new or exciting or inspiring for practicing attorneys? The difference lies in the relevance of these principles in local, state, national and world communities. Certainly these principles guide the legal community, but they also represent a good foundation for any community that wants to promote opportunity

and equity for all. They can be found in principles that guide our teachers, our labor force, physicians, journalists and clergy. They are at work in the engineering, architectural and corporate markets. They are the engine that drives the success of our community, our state and our nation.

This may seem a lofty endeavor for any individual attorney to address. But you represent these principles by the very nature of the work you do every day. Given Mr. Neukom's remarks, each of us is provided with an opportunity to demonstrate the relevance of these principles to everyone with whom we interact.

I heard a clear demonstration of this in a story on National Public Radio on April 5. This story covered the

increasing reliance of commanding officers in the field on their resident judge advocate generals (JAGs) to advise commanders in combat strategy, prisoner interrogation and interaction with the local population. In turn, the JAG corps is required to engage in additional training, including combat training, in order to provide better advice. This important

position, if driven by the rule of law, can provide sound information indeed. The JAG corps gets constant updates on the rules of combat, interrogation and local interaction to help them promote the purpose of our presence in foreign countries. Whether or not you agree with our presence out of country, promoting the rule of law once there is critically important.

I am certain we can each point to other examples closer to home that reveal that the rule of law is a cornerstone of our society that can address problems on a global scale. Consider this as you go about your business.

Finally, April is humor month. Notwithstanding the lawyer jokes – that are almost universally not funny – consider humor in general. My father had a wonderful sense of humor. My mother has a wonderful sense of humor. At its core, it is the ability to laugh at one's self, rather than to laugh at someone else's pain or misery.

Within those parameters, may you find something to laugh at every day. ○

Army lawyers can provide sound advice indeed to their commanders if it is driven by the rule of law.

Judiciary budget is biggest legal item left in session

With about two weeks left in the 2007 session of the Montana Legislature, the focus was on appropriations bills, including the budget for the Judiciary.

On April 11, the day *The Montana Lawyer* went to press, House Bill 819, which contains the \$70.1 million Judicial Branch budget for the biennium, was tentatively approved by the Senate.

Since our March-edition update, the biggest development was the death of House Bill 60, the Access to Civil Justice Act which would have provided \$1.1 million to allow the courts to set up a self-help law program for Montana citizens. HB 60 failed to meet the appropriations-bill transmittal deadline of March 29. But on the motion of Sen. Carol Williams, D-Missoula, the Senate Finance & Claims Committee added a one-time only \$505,000 appropriation to the Judiciary's budget (HB 819), so the program was still alive, though with half the requested funding. The self-help law program would be administered by the Montana Supreme Court. The act is designed to make Montana's court system more accessible by providing all Montanans with user-friendly information through technology and volunteer services, and improve court proceeding for self-represented litigants.

THE NEW OFFICE of Public Defender, established last year, also received a funding scare as legislators drastically pared back its funding request. But on March 29, the Senate Finance & Claims Committee threw \$4 million back into the Public Defender pot, bringing the total funding for 2008 and 2009 to nearly \$34.6 million, still less than the amount the Public Defender Office sought.

OF THE BILLS LISTED on the State Bar's Bill Watch List, only one had been passed by the Legislature and signed into law by the governor. That

was HB 402, revising fees collected by the Supreme Court. The new law requires cross-appellants to pay a filing fee, adds other fees and increases certain current fees.

Of the three bills actively supported by the State Bar through testimony at hearing, Here's how they fared:

■ **HB 60**, titled The Montana Access to Civil Justice Act, died (see paragraphs above) but some of the money it contained was shifted to the Judiciary budget.

■ **HB 361**, introduced by Deborah Kottel, D-Great Falls, revises the law on proxy marriage, requiring one party to be a citizen member of the U.S. Armed Forces, was passed by both the House and the Senate and awaited the governor's signature.

■ **SB 202**, which provides candidates for election to the Montana Supreme Court with the option of a publicly financed election campaign, was passed by the Senate, heard in a House Appropriations hearing on April 10, and was still alive.

As we reported last month, all four bills actively opposed by the State Bar have died. They would have required a candidate for district judge to meet certain minimum civil or criminal trial-experience qualifications; required disqualification of a judge from a case when an attorney in the case has made a reportable campaign contribution to the judge; made the unauthorized practice of law a crime; and urged the Montana Supreme Court to allow any person to take the examination for admission to

the State Bar if the person has graduated from any law school, whether or not the school is accredited.

OTHER BILLS on the State Bar's Bill Watch List (see www.montanabar.org), but on which the Bar's

Executive Committee has not taken a stand are:

■ **HB 251**, authorizing a city or town to establish a city court of record, was passed by the House, died in committee.

■ **HB 722**, requiring justice courts to be courts of record, died in committee.

■ **HJ 43**, a resolution calling for the study of major aspects of the Judicial Branch, was passed by the House, but was tabled in the Senate Judiciary Committee on April 4. Among other things, the study would determine if there is adequate legislative oversight of the Judicial Branch; identify any public concerns with the Judicial Branch that need to be addressed through legislation; determine if the Montana Canons of Judicial Ethics, Judicial Standards Commission and employee Code of Conduct are appropriate; assess whether the current processes for judicial recusal, disqualification, or impeachment are correctly written and functioning as they should; and examine the appropriateness of judicial opinions. The resolution could still be revived before the end of the session.

KEEP WATCHING the State Bar's Bill Watch List at www.montanabar.org to see whether these and other bills are introduced and become law. We'll have an update on the final passage of Bar-watched bills in the May *Montana Lawyer*.

Meanwhile, the complete text of the bills can be found at the Legislature's web site at <http://leg.mt.gov>. ○

Court establishes memoriam to slain clerk

'Paul was foremost a citizen and a gentleman'

The Montana Supreme Court on March 6 established the report by its Memoriam Committee as the Court's memoriam to Paul A. Raftery, the Supreme Court clerk who was killed in December by two teen-aged muggers in Helena. The memoriam follows:

WE, THE COMMITTEE having been appointed by the Chief Justice of this Court to prepare a memoriam on the life and service of Paul Anthony Raftery, do hereby submit the following report and motion:

Paul Anthony Raftery was born March 10, 1965, in Berkeley, California. He graduated from high school in San Jose in 1983. As a young man, he was interested in music and ran cross-country and track and field. He also loved the outdoors and distinguished himself by attaining the rank of Eagle Scout.

Paul graduated from the University of California-Davis in 1988 with a bachelor's degree in Wildlife and Fisheries Biology. While at Davis, he ran for the university's track and field team.

In 1989, Paul accepted a position as a law enforcement ranger for the National Park Service at Canyon de Chelly National Monument on the Navajo Indian Reservation in Arizona. It was there that Paul began his law enforcement career. He assisted park visitors, enforced park regulations, became a medical technician, and assisted in search and rescue efforts.

IN 1990, PAUL GRADUATED with honors from the Federal Law Enforcement Academy in Glynnco, Georgia. He immediately secured a job with the U.S. Park Police in Washington, D.C., where he served as a crime investigator. During that time he also was introduced to the court system as he prepared cases for trial and testified in court.

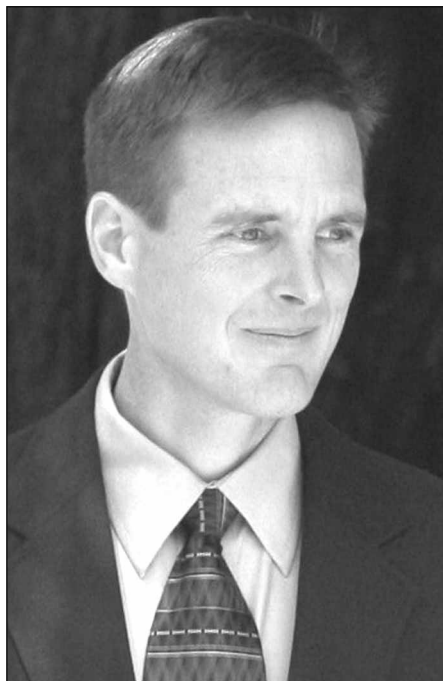
In 1994, Paul left the District of Columbia and moved back west to Pinedale, Wyoming, where he became a deputy sheriff in Sublette County. In Pinedale, as a uniformed police officer, Paul engaged in the nuts and bolts of day-to-day law enforcement. He distinguished himself by proving he had the courage required of a street policeman and also became known for possessing extraordinary judgment in the performance of his

duties. He became a detective and eventually, as a result of his skill in solving crimes, was promoted to Chief Detective, where he supervised other officers and oversaw all criminal investigations in Sublette County.

As Chief Detective, Paul became heavily involved with the court system. He served as chief liaison officer between the County Attorney's Office and the courts. He often testified in criminal trials. He was not only respected by prosecutors, but his judgment and fairness also won the respect of the criminal-defense bar.

Paul was also a respected member of the Pinedale community. His fellow sheriff's deputies, in particular, considered him a person they could count on and who took an interest in them personally, as well as professionally. In his free time, he enjoyed riding his Harley-Davidson motorcycle and camping in the Wind River Mountains, outside of Pinedale.

Although Paul was raised in California, his family had deep ties to Montana. His father was raised in Helena. His grandfather served as the secretary to the State Livestock Commission and as stenographer to Governor Sam Stewart.



IN 2003, PAUL RETURNED to his family's Montana roots when he enrolled in the University of Montana School of Law in Missoula. Although he had been absent from the academic world for some years, Paul distinguished himself from the start with his strong work ethic and discipline. Paul soon became a fixture in the law school's Castles Center, where he spent hours each day studying. He also completed almost twice the required hours while working at the Indian Law Clinic. His diligence paid off in the form of excellent grades and considerable respect among the law school faculty and his peers.

After graduating with honors from law school in May, 2006, Paul passed the bar examination and was admitted to the practice of law in the courts of Montana the following September. He accepted a position as a law clerk in the chambers of Justice John Warner at the Montana Supreme Court. Paul immediately demonstrated exceptional skill in legal research,

legal analysis and in the drafting of Supreme Court opinions. He was often the first to arrive in the office each morning and the last to leave at night. It quickly became evident that he could look forward to a successful career as a lawyer.

PAUL WAS ACTIVE in the Helena Community, becoming a member of the Saint Helena Cathedral Parish, and volunteering his services at community events. He was also dedicated to his dog, Thelma, and, at lunch each day, Paul ran or biked home across town to care for her.

Paul was a humble and unassuming man who always made time for others. He was a careful listener and, while he was willing to take a position and defend it, he respected the beliefs of others. Although he took his work very seriously, Paul also had a splendid sense of humor that was a blessing to all who knew him. Former Sublette County Attorney Dale Aronson, who knew Paul for several years, perhaps described him most appropriately: Paul was foremost a citizen and a gentleman.

Paul A. Raftery, attorney at law and law clerk to the Montana Supreme Court, was slain on Friday, December 8, 2006, while walking home after spending an evening with friends. His tragic death cut short what promised to be a bril-

liant legal career and robbed the State Bar of Montana of one of its most promising young members. His service to the United States, the State of Wyoming, this Court, and the community of Helena distinguished Paul both as a lawyer and a citizen. He will be missed.

NOW, THEREFORE, your committee moves this Honorable Court to accept and approve this memoriam in honor of the late Paul A. Raftery, that the Court order that the same be spread upon the minutes of this Court, that copies hereof be provided to the members of his family, and that this memoriam be published in the next volume of Montana Reports with corresponding notation on the spine of the volume.

DONE and DATED this 6th day of March, 2007.

Justice John Warner
Justice Jim Rice
Zach Zipfel, Esq.
Margaret Weamer, Esq.
Lisa Kallestad, Esq.
Stuart Segrest, Esq.

Two earn awards from MTACDL

The Montana Association of Criminal Defense Lawyers (MTACDL) presented its top awards to a Helena attorney and a Supreme Court Justice.

The Lawyer of the Year Award was presented to Bill Hooks of Helena.

The Judicial Recognition Award was presented to the Hon. James C. Nelson, Justice of the Montana Supreme Court.

Mr. Hooks, the first appellate defender for the State of Montana, has been in private practice since 2000 and is recognized as an authority on criminal appeals and post-conviction litigation. With co-counsel Greg Jackson, Mr. Hooks recently negotiated a life sentence in the Daniel Johnson death penalty case.

Justice Nelson, who has been on the Court since 1993, was acknowledged and honored by MTACDL as a judge who "has demonstrated a continuing dedication to protecting democratic principles, has staunchly preserved and defended the constitutional rights of Montanans, and has endeavored to ensure justice and due process for persons accused of crime in Montana."

In accepting the Judicial Recognition Award, Justice Nelson acknowledged the dedication and support of his law clerks, Maria Roberts, Brent Larson, Seth Palmer, and Ben Sather, and his assistant, Lorrie Cole.

The awards were presented during MTACDL's annual meeting at Chico Hot

Springs on March 15-16. At the meeting, Great Falls attorney Daniel Donovan assumed the presidency of the group for 2007 and 2008.

About 60 criminal defense lawyers attended the seminar. The featured speakers were James McKay of Connecticut and James Klein of Washington, D.C. Mr. McKay, the supervisory public defender for Middlesex County, Conn., gave presentations on "A Five-Step Analytic Approach to Dealing with Expert Testimony" and "How to Cross-Examine the Expert." Mr. Klein, chief of the Appellate Division of Public Defender Services in Washington, D.C., spoke on "Rethinking that 'Fixed' Record: Capitalizing on Trial Skills in Appellate and Habeas Brief Writing."

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Supreme Court disbars two Montanans

Former justice Shea's 'one-man war' fails

The Montana Lawyer

Daniel Shea, a Montana Supreme Court justice from 1977 to 1984, was disbarred by the Court on March 21 for the unauthorized practice of law.

The Commission on Practice had recommended the punishment for Mr. Shea, of Helena, whose license to practice law has been suspended since 1989 for mishandling cases. The Commission said that Mr. Shea "lacks the fundamental prerequisites" to be a lawyer.

The Office of Disciplinary Counsel (ODC) filed a complaint against Mr. Shea on Oct. 17, 2005, alleging that Shea had engaged in the unauthorized practice of law in connection with the case of *Old Elk v. Healthy Mothers, Healthy Babies, Inc.*, Cause No. BDV-1995-18 (First Judicial District Court, Lewis and Clark County).

Mr. Shea, 68, admitted that he helped several people – laid off by Healthy Mothers, Healthy Babies – sue the non-profit organization in 1995, more than five years after his license to practice law in Montana was suspended. He also did research on the lawsuit while it was being handled by several lawyers over nine years in various courts. Disciplinary proceedings began after Helena District Judge Jeffrey Sherlock, who was the presiding judge in the *Healthy Mothers* case, filed a complaint against Mr. Shea.

In what one newspaper called "a one-man war" against the Commission on Practice, Mr. Shea filed lengthy briefs saying the Commission's procedures were improper. But he never filed a formal answer to the Commission's charges of unauthorized practice. "Shea instead elected to attack the integrity of ODC, the review panel of the Commission, the Commission, the district court judge who referred the complaint to ODC, and this Court," the Supreme Court disbarment order said.

Even after the Commission recommended disbarment, "Shea once again chose largely to forego any attempt to address the merit of the Commission's Findings of Fact and Conclusions of Law," the Court said. "Shea once again opted to launch ad hominem attacks" on the courts and the disciplinary agencies. ○



Shea during term as justice

Billings lawyer admitted tapping into trust fund

By Greg Tuttle
of the Billings Gazette

A recently disbarred Billings attorney admitted to a District Court judge in Harlowton on March 20 that he drained a \$200,000 trust fund account that he was appointed to manage.

Pierre "Pete" Bacheller told Judge Randall Spaulding that he "converted to (his) own use" the money placed in trust from an insurance settlement for a Harlowton woman injured in a ranch accident as a child.

After the admission, Spaulding found Bacheller in contempt on one of two allegations that he failed to respond to court orders issued in recent months. Spaulding released Bacheller from the Wheatland County jail and ordered him to gather financial records that might help account for the missing trust fund money.

Bacheller was disbarred by the Montana Supreme Court on Feb. 22 after the justices found that he diverted money in another case and failed to properly represent clients in a civil lawsuit.

Bacheller's legal troubles may be mounting. Attorneys involved in the Harlowton trust fund case said that state and federal agents have begun a criminal investigation into Bacheller's activities.

"We are aware and cooperating with state and federal criminal investigators," said Billings attorney Cliff Edwards, who represents Beth Spizziri, the Harlowton woman whose trust fund Bacheller controlled.

What remains unclear is where the \$200,000 went.

Questioned by Spaulding during the hour-long hearing, Bacheller said he does not know how much of the money may be left, or if he can trace the funds through his financial records. Bacheller said he is willing to cooperate with efforts to make a full accounting.

Bacheller, who appeared subdued throughout the hearing, was represented by Billings attorney Michael Moses.



Pete Bacheller

More on BACHELLER DISBARRED, Page 31

Providing for pets in estate plans

By the **Humane Society
of the United States**

Your clients want the very best for their pets. They want to know that you as an estate planner can help them provide for the dog, cat, horse, or bird who is much more than simply property to them.

Thought lately about providing for pets in your clients' estate plans? Not likely. The subject seldom receives in-depth news coverage or even cocktail party discussion. But it deserves your attention. Because the bonds between people and their pets are usually so great – remember all the pet owners during Hurricane Katrina who risked their lives because they would not leave their pets behind? – giving some attention to this issue can provide peace of mind for you and your clients.

The Humane Society of the United States (HSUS) encourages estate planning professionals and laypeople to carefully consider the ramifications of failing to adequately provide for companion animals in the event that the owners die before their pets. Equally important is moving forward with necessary actions ensuring their companions' safety, care, and smooth transition to new homes.

All too often, people assume that they will survive their beloved pets or that friends, relatives, or neighbors – who once verbally promised to care for these pets in the event of death or disability – are still able or interested in adding new animals to their households. This is not always the case; sometimes their current circumstances prevent them from fulfilling that promise. Meanwhile, employees of local animal shelters frequently see the unintended consequences of people's failure to appropriately provide for their pets in their wills or ascertain that friends, relatives, or neighbors truly want new companion animals in their households.

Even people who have conscientiously provided for their pets in their wills may have neglected to consider a trust and/or powers of attorney affecting their companion animals that would commence in cases of severe disability, when a will would not be read. Similarly, people who want to ensure that they take their role as caregiver seriously may not know where to turn for advice on planning for their pets in estate docu-

ments.

The value of pets to older people or those experiencing health issues is well established.

It may often be in a pet owner's best interest to keep companion animals in their company if they are elderly, incapacitated, ill or dying – and likely suffering the accompanying emotional consequences. These problems, of course, can be compounded for seniors who have outlived loved ones, may live alone or far away from family members, or have too much time on their hands, causing substantial anxiety.

Interacting with animal friends, who provide unconditional love, helps lower blood pressure, increases exercise and circulation, boosts mental acuity and enhances opportunities for social interaction. Pets also provide something else on which to focus, alleviating people's worries about their own conditions and reducing stress, depression,

and loneliness. A number of studies cited by the Delta Society, whose mission is to improve human health through service and therapy animals, show the beneficial physiological and psychological effects that companion animals can have on people facing health issues.

Some older people who do not have pets because they worry they will not survive these friends, but would like to have a companion animal, may actually benefit from acquiring a pet. If these potential pet owners know there are specific legal and financial vehicles to provide securely for pets in estate plans, they might feel more comfortable acquiring the pets who could improve their lives. Then they could adopt from an animal shelter, helping reduce the pet overpopulation crisis in America. Many times, older animals with shorter expected lifespans arrive in shelters with less chance of adoption than puppies and kittens, despite the fact they may be socialized and housetrained as a result of living in another home. These mature animals might be ideal candidates for some people whose lives could be greatly enhanced with the help of a new animal companion.

Free Humane Society kit

To help with this issue, The Humane Society's Office of Major and Planned Gifts now offers a free kit, "Providing for Your Pet's Future Without You," complete with a six-page fact



sheet, wallet alert cards, emergency decals for windows and doors, and caregiver information forms. The fact sheet is available online at www.hsus.org/petsinwills. The material is suitable for estate planning professionals and their clients.

Taking both practical and estate planning steps for a win-win situation benefits pet owners, who may receive greater peace of mind knowing their pets will be cared for as they intended; the animals themselves, who will be much more likely to experience a smooth transition to a new home; and family, friends and other survivors who may or may not want the responsibility of caring for the pets, but will appreciate knowing that provisions have been made.

The issue facing pet-owning clients

Because pets usually have shorter life spans than humans, your clients may have planned for their animal friends' passing. But what if your clients become ill or incapacitated or die first?

As responsible pet owners, your clients provide their pets with food and water, shelter, veterinary care, and love. To ensure this quality of care continues should something unexpected happen to them, it's critical that they plan ahead.

What can clients do now to prepare for the unexpected?

In the confusion that accompanies a person's unexpected illness, accident, or death, pets may be overlooked. In some cases, pets are discovered in the person's home days after the tragedy. To prevent this from happening, pet owners should take these simple precautions:

- Find at least two responsible friends or relatives who agree to serve as temporary emergency pet caregivers. Provide them with keys to the home, feeding and care instructions, the name and phone number for the pets' veterinarian, and information about the permanent care provisions made for the pet.

- Make sure neighbors, friends, and relatives know how many pets are owned and the names and contact numbers of the individuals who have agreed to serve as emergency caregivers.

- Carry a wallet alert card that lists the names and phone numbers of emergency pet caregivers.

- Post removable "in case of emergency" notices on their doors or windows specifying how many and what types of pets are in the home. These notices will alert emergency response personnel during a fire or other home emergency. Avoid using stickers. Because these are often left behind by former residents, firefighters may assume the stickers are outdated, or worse, risk their lives trying to find a pet no longer in the house.

- On the inside of front and back doors, affix removable notices listing emergency contact names and phone numbers.

The HSUS's kit provides all of these materials, making the above steps quite simple. Because pets need care daily and will need immediate attention, the importance of the steps cannot

be overemphasized.

How can clients ensure long-term or permanent pet care upon becoming seriously ill or dying?

The best way is to ensure that clients make formal arrangements that specifically cover the care of their pets. It's not enough that friends once verbally promised to take in the animals or even that the clients decided to leave money to friends for that purpose. An attorney will need to draw up a special will, trust or other document to provide for the care and ownership of clients' pets, as well as the money necessary to care for them.

Choosing a permanent caregiver

Your clients should first decide whether they want all their pets to go to one person, or whether different pets should go to different people. If possible, keep pets who have already bonded with each other together. When selecting caregivers, consider partners, adult children, parents, brothers, sisters and friends who have met the pets and have successfully cared for pets themselves. Also, name alternate caregivers in case the first choice becomes unable or unwilling to take the pets.

Make sure your clients discuss their expectations with potential caregivers so they understand the large responsibility of caring for pets. Remember, new owners will have full discretion over the animals' care – including veterinary treatment and euthanasia – so clients should make sure they choose people they trust to do what is in the best interests of the pets.

If all else fails, it is possible for clients to direct their executors or personal representatives, in a will or some other estate planning document, to place their animals with other individuals or families (not an institutionalized setting). Finding a satisfactory new home can take several weeks of searching, so it is important to line up temporary care.

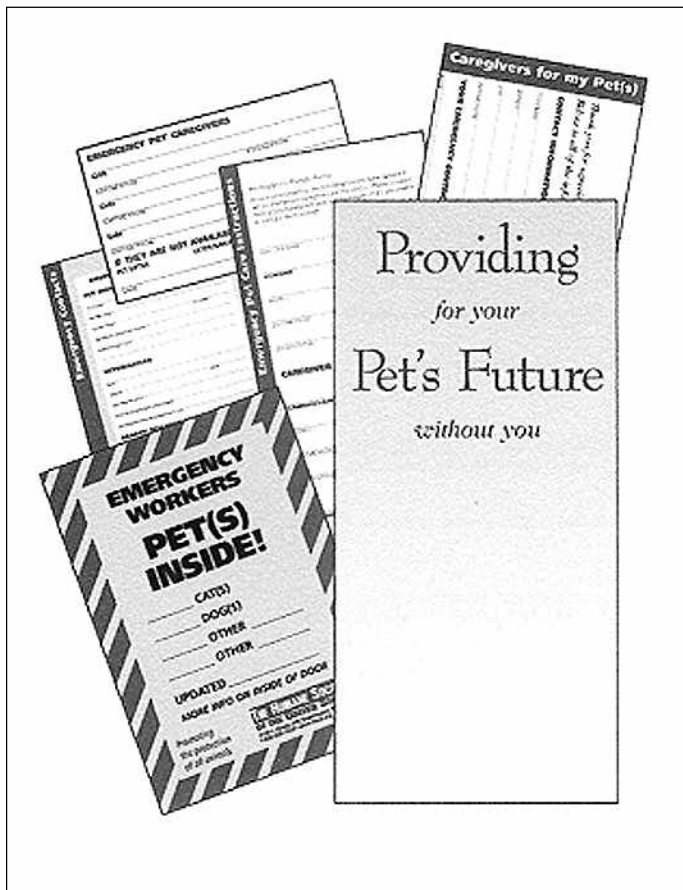
Clients should know and trust their executors and provide useful – but not unrealistically confining – instructions in their wills. They should authorize their executors to expend funds from their estates for the temporary care of their pets, as well as for the costs of looking for new homes and transporting the animals to them. The will should grant broad discretion to the executors in making decisions about the animals and in expending estate funds on the animals' behalf.

Sample language for this approach is:

[Article Number]

A. As a matter of high priority and importance, I direct my Personal Representative to place any and all animals I may own at the time of my death with another individual or family (that is, in a private, non-institutionalized setting) where such animals will be cared for in a manner that any responsible, devoted pet owner would afford to his or her pets. Prior to initiating such efforts to place my animals, I direct my Personal Representative to consult

_____, D.V.M. (currently at the _____ Hospital) or, in the event of Dr. _____ unavailability, a veterinarian chosen by my Personal Representative, to ensure that each animal is in generally good health and is not suffering physically. In addition, I direct my Personal Representative to provide



To order free copies of the Humane Society's pets-in-estate-planning kit, above, send an e-mail to petsinwillsrp@hsus.org.

any needed, reasonable veterinary care that my animal(s) may need at that time to restore the animal(s) to generally good health and alleviate suffering, if possible. Any animal(s) not in generally good health or that is so suffering — and that is beyond the capabilities of veterinary medicine, reasonably employed, to restore to generally good health, or to alleviate its suffering — shall be euthanized, cremated, and the ashes disposed of in the discretion of my Personal Representative. Any expenses incurred for the care (including the costs of veterinary services), placement, or transportation of my animals, or to otherwise effect the purposes of this Article _____ up to the time of placement, shall be charged against the principal of my residuary estate. Decisions my Personal Representative makes under this Article _____ — for example, with respect to the veterinary care to be afforded to my animal(s) and the costs of such care — shall be final. My intention is that my Personal Representative have the broadest possible discretion to carry out the purposes of this paragraph.

Is a will the best way to provide for a pet?

Although a lawyer will help decide what type of document best suits clients' needs, clients should be aware of some drawbacks to a will. For example, a will takes effect only upon death, and it will not be probated and formally recognized by a court until days or even weeks later. What's more, if legal disputes arise, the final settlement of property may be prolonged. Even determining the rightful new owner of pets can be delayed. This means that it may take a long time for instructions regarding the pets' long-term care to be carried out.

This doesn't necessarily mean that people should not include provisions in their wills that provide for pets. It simply means that clients should explore creating additional documents that compensate for their wills' limitations.

How can setting up a trust help?

Unlike a will, a trust can provide for pets immediately — not only if clients die, but also if they become ill or incapacitated. That's because clients determine when their trusts become effective. When a trust is created for pets, money is set aside to be used for the pets' care and trustees are specified to control the funds.

A trust created separately from the will does, however, carry certain benefits:

- It can be written to exclude certain assets from the probate process so that funds are more readily available to care for a pet.
- It can be structured to provide for a pet during a lengthy disability.

There are many types of wills and trusts. Determining which is best for your clients and their pets depends on their situations and needs.

An attorney will need to make sure that a trust for the benefit of one or more specific animals is valid and enforceable in the state in question. Even if state law recognizes the validity of such trusts, keep in mind that tying up a substantial amount of money or property in a trust for the animals' benefit may prove to be controversial from a relative's or other heir's point of view. Moreover, trusts are legal entities that are relatively expensive to administer and maintain — all of which underscore the need for careful planning.

After you've overseen the creation of wills, trusts, or both, your clients should leave copies with the people they've chosen to be executors of their estates, as well as the pets' designated caregivers, so the caregivers can look after the pets immediately. (The executor and caregiver may or may not be the same person.) Make sure the caregivers also have copies of the pets' veterinary records and information about their behavior traits and dietary preferences.

Pet trust legislation

In recent years, specific pet trust legislation has been enacted in 35 states (including Montana) and the District of Columbia. The laws permit a person to create a trust for the care of designated domestic or pet animals and specifies that a

pet owner's intent to provide for his or her animal can now be protected by the courts.

What is a reasonable sum to leave?

The answer depends on the age, health, estimated lifespan and number of pets involved. The funds needed to care for a young horse will certainly be much greater than those needed for an aged parakeet.

It also depends on how much care the owner wishes the animals to receive. If the animals get cancer, diabetes, hip dysplasia, or some other ailment, what kind of treatment do pet owners want to provide and do they want to provide it indefinitely or for a limited period of time? Also, the pet owner may want to look into cremation and burial prices.

Pets can be expensive even when there are no emergencies. Pet food, grooming, routine veterinary care, vaccines, basic medications (like heartworm and flea preventatives), boarding and kennel fees, sitters, and teeth cleaning can add up to hundreds of dollars per animal per year. Horses, of course, mean

additional expenses.

Whereas leaving too much money in the trust can cause problems with heirs or potential heirs, leaving too little could compromise the care of the animal. The trust also should stipulate the frequency and amounts of payments, as well as whether amounts should be adjusted for inflation. Finally, pet owners may want to consider paying a fee to caretakers and/or trustees for their time and effort.

TO ORDER A FREE COPY of the kit, call the Humane Society of the U.S. at (202) 452-1100 or send an e-mail to petsinwillsrp@hsus.org. A fact sheet is also available at www.hsus.org/petsinwills.

○

ABA delegates approve model court rule easing practice restrictions during disasters

The ABA House of Delegates, meeting Feb. 12 in Miami, voted unanimously to adopt a model court rule loosening restrictions on lawyers' ability to practice across state lines after a major disaster has occurred, the ABA announced.

The proposal was presented to the delegates by the ABA Standing Committee on Client Protection. According to the committee's report, the need for such a rule became clear in the aftermath of Hurricanes Katrina and Rita, which wrought havoc on the court systems in parts of Louisiana, Mississippi, and Alabama. The devastation simultaneously increased the need for legal services and decreased their availability in the affected communities.

Compounding the problem were states' unauthorized practice rules, which impeded efforts by lawyers from affected jurisdictions to continue serving clients after they or their clients (or both) had sought refuge in other states, and hampered attempts by out-of-state lawyers to offer free services to victims of the storms.

As an immediate response, many jurisdictions, with the encouragement of the ABA Task Force on Hurricane

Katrina, began waiving their unauthorized practice rules on an ad hoc basis to help displaced lawyers to resume their practices elsewhere on a temporary basis, and to help other lawyers provide legal services to those affected by the storm.

The task force then asked the ABA Center for Professional Responsibility to help draft a model rule to address this situation.

Frank X. Neuner Jr., former president of the Louisiana State Bar, and H. Thomas Wells Jr. of Alabama, co-chair of the ABA Special Committee on Disaster Preparedness and Response, spoke in support of the rule, as did Stephen Gillers, chair of the ABA Joint Committee on Lawyer Regulation and a former member of the ABA Commission on Multijurisdictional Practice.

The "Model Court Rule on Provision of Legal Services Following Determination of Major Disaster" provides a template that state courts can use to respond quickly to emergencies that affect a jurisdiction's legal system, the ABA said. It does this by temporarily relaxing restrictions on lawyers' cross-border practice while enabling the state's

judiciary to maintain control over the process.

Once the jurisdiction's highest court determines that an emergency affects a state's justice system, key provisions of the rule authorize the court to:

- Allow out-of-state lawyers to provide pro bono legal services to the citizens of the affected state, regardless of where those citizens temporarily reside.
- Allow lawyers from an affected jurisdiction to provide legal services in another state, on a temporary basis, that are reasonably related to the lawyers' practices in the affected jurisdiction.

The rule also provides for the regulation of these lawyers by subjecting them to local discipline, requiring them to file a registration statement with the court, and requiring them to inform clients of the practice restrictions imposed by the rule. Pro bono services provided under the rules shall be "assigned and supervised" through an established nonprofit bar association, pro bono program, or legal services program, or an organization specifically designated by the court, (deleting a provision that would have required supervision by a local lawyer).

Full text of the rule presented to the delegates is available at http://www.abanet.org/cpr/clientpro/Recom_Report_Katrina.pdf. ○

2 who nurture pro bono programs in Billings

A project volunteer and a law-firm attorney show why individual efforts are so important

By **Ryan Hazen**, coordinator
Modest Means Program
State Bar of Montana

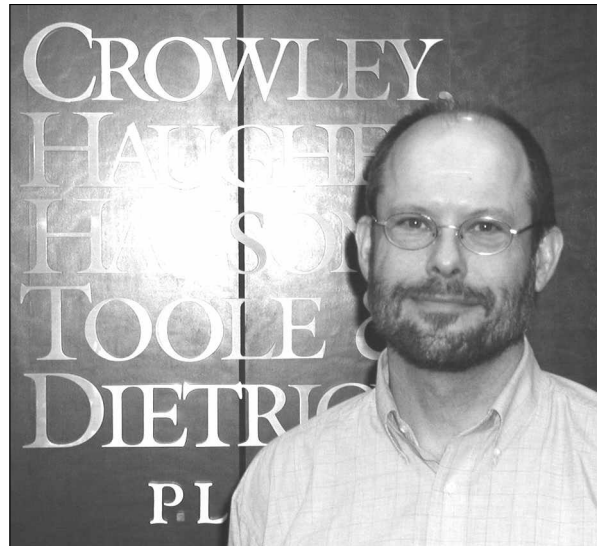
With more than 100,000 residents, Billings is home to about 10 percent of the people living in Montana. Even with such a large population to cover, the 400 attorneys in Billings performed well above the state average number of hours of pro bono work, according to the 2006 Montana State Bar pro bono survey.

This article focuses on a few of the legal professionals and organizations that have made tremendous efforts to bring justice to such a large segment of Montana's populace.

The Crowley program

The first on the list is Gary Connelley and the law firm of Crowley, Haughey, Hanson, Toole, & Dietrich. Mr. Connelley, now the pro bono coordinator for Crowley, has a Montana Legal Services Association background. He spent his first few years out of law school working for MLSA in Billings. There he specialized in domestic violence and migrant workers' issues. After 10 years with MLSA, he was asked by the Crowley firm to coordinate a pro bono program at its main office in Billings. The program would take pro bono referrals from MLSA as well as from inside the firm itself.

"At the time," Mr. Connelley explained, "there were only a handful of



Gary Connelley, who has a Legal Services background, was hired by the Crowley firm to coordinate its pro bono program.

firms with a program like this. One of the decisions made early on was that the program was going to be litigation-based." As the largest firm in four states, Crowley was better equipped to support this type of program than any other firm in Montana.

"When I was at Legal Services we had only one or two sets of the Montana codes," he recalled, "When I came over [to Crowley] one of the first things they said was, 'well, here's your full set of MCAs.' I've been able to do things [at Crowley] that I would never have been able to do on my own or at Legal Services."

The program has provided Mr. Connelley with not only the material benefits that Legal Services' funding is simply not able to provide, but also the wealth of experience and extensive community network that comes with a legal powerhouse like Crowley.

Speaking of his associates at the firm, Mr. Connelley said, "I get to tap into not only their knowledge base, but their con-

tacts in the community as well." For an attorney who is not generating revenue from the majority of his clients, this sort of position is impossible to achieve. It takes years of fee-generating cases to build the type of network – of attorneys and paralegals – that Crowley puts at the disposal of every pro bono client Mr. Connelley and his colleagues represent.

"It's not just me doing the work," Mr. Connelley said, "it's co-counseling with other lawyers and placing cases within the firm, too. Lawyers will come to me and tell me what kind of [pro bono] cases they're interested in

and I will look for those cases." The Crowley program is not limited to Billings, but reaches just as far as the firm's ability to provide fee-generating legal representation does – from Kalispell, MT to Williston, N.D.

"Over the past couple of years, we've been focusing more on children's law issues and young mothers' issues. We have initiated a partnership with a Head Start program called Young Families, for young parents who are still in school. Through that program they get day care, health support, and we have partnered with that program to help them with their legal needs."

The Family Law Project

Even with all of the resources the Crowley firm can provide, Mr. Connelley and his colleagues are still unable to aid everyone in the area who needs representation. For this reason, he provides referrals to and from other programs in the area, such as the Family Law Project, a pro se clinic that has an



When the Family Law Project ran out of money, Patty Fain volunteered to continue managing it for no pay.

accompanying volunteer pro bono program.

Loosely housed in the Billings MLSA office, the Family Law Project is headed by Patty Fain, a volunteer freelance paralegal in Billings. Without a sponsoring firm for the program, Ms. Fain works without expectation of compensation, coordinating the Family Law Project's pro se clinics and making pro bono referrals.

"The core of the Family Law Project existed before my involvement in it did," Ms. Fain told *The Montana Lawyer*. "The more formalized process started in 1998, when Legal Services decided to hire someone to help administer the program."

The someone they hired was Ms. Fain. She stayed in that capacity for about a year. When the funding for the program expired she then decided to stay on as a volunteer.

After building a sturdy base of attorneys willing to accept contested family law cases, it became clear that there was too great a need to address with pro bono attorneys alone. Ms. Fain and her MLSA colleagues redesigned the project to focus most heavily on pro se representation, reserving volunteer attorneys' time for the more complicated contested cases that could not be solved through self-representation alone.

"We would prefer they start through

the pro se process," Ms. Fain explained. "As long as the documentation is done correctly, it basically gets the attorney partway through the process."

Ms. Fain said that about 80 percent of cases in the Family Law Project are successfully completed through the pro se clinics. By encouraging all clients to open cases without an attorney, the Family Law Project is conserving valuable volunteer attorney time and distributing it to those cases that are actually too complicated for a non-attorney to handle.

The Family Law Project also sponsors a free CLE for all attorneys in the program, to teach them in the basics of family law. Other attorneys are welcome to attend, but anyone who chooses not to



District Judge Russ Fagg takes an active role in supporting the Family Law Project.

sign up for the pro bono project must pay the full CLE fee. This money goes into the Family Law Project coffers, and is used to purchase equipment for the pro se clinics.

The project recently established a settlement master option to keep the numbers of litigated cases to a minimum. "The number of attorneys willing to take contested cases has a tendency to shrink over time," Ms. Fain said, "so we wanted other areas where someone could assist without having to take a contested case. That's where we started with the settlement masters."

Instead of taking cases directly to

court, the Family Law Project encourages clients to settle their family law matters using alternative methods of dispute resolution, allowing attorneys to volunteer time without the added commitment of taking that same case to court. "I've made about a dozen settlement master referrals," Ms. Fain said, most of which are requested by attorneys or judges.

On the horizon for the Family Law Project is an interactive video, which can guide clients through the process of filling out the appropriate pro se forms for their legal needs. Using the funds generated from FLP-sponsored CLEs, the program recently purchased a laptop and projection screen, which will further reduce the need for experienced volunteer time and allow clients with time-sensitive issues to get help in a more immediate fashion.

Support from a judge

Billings District Judge Russ Fagg said Patty Fain "really is a godsend." Judge Fagg takes the time to make phone calls to attorneys on behalf of the Family Law Project. He believes that judicial support is absolutely indispensable.

"We've learned that it does help to have a judge call," Judge Fagg says, "they [lawyers who might participate] will take the call a little quicker. I think it's harder to say no when a judge is asking."

Of course, Judge Fagg uses his status judiciously, recognizing that the attorneys participating in this program are doing so out of their own personal and professional time.

"I have to be honest," he admitted, "I feel a little bit uncomfortable asking because I know I'm imposing on them, I know they're busy. But I also know the need for the people out there."

Striking that balance between client need and lawyer availability is a crucial element of the most successful pro bono programs in Montana.

It is clear that the Family Law Project and the Crowley Pro Bono Program succeed because of the the strong personal commitment of Patty Fain and Gary Connelley. And credit is due to the Crowley partners and MLSA for funding these programs. ○

A little bit of interest goes a long way

Lawyers, firms can urge higher IOLTA rates, to help increase funds for civil legal aid

By Amy Sings In The Timber
Director of IOLTA Operations
Montana Justice Foundation

You can help increase the amount of funds available to Montana's legal service providers by negotiating with your bank to increase interest rates and eliminate fees on your lawyer trust accounts.

Despite the gains the Interest on Lawyer Trust Accounts (IOLTA) program has experienced over the last several years, many banks continue to pay interest rates well below that of other local banks. Of the more than 40 banks offering IOLTA accounts in Montana, nearly 70 percent are paying below 1.25 percent on existing IOLTA accounts and many as low as .25 percent. When you consider that the prime rate is currently 8.25 percent and the federal funds rate is at 5.25 percent, this fact is alarming.

The interest generated by the IOLTA program is collected by the Montana Justice Foundation (MJF) and distributed in a competitive grant process among qualified non-profit organizations committed to achieving access to justice for all Montanans. Nearly 90 percent of all interest generated by the IOLTA program has gone directly to the Montana Legal Services Association (MLSA), Montana's largest provider of legal aid to low-income Montanans.

Legal aid programs that receive IOLTA funds address a number of critical needs for Montana's poor, such as preserving housing, protecting subsistence income, obtaining access to health care, addressing issues of domestic violence, providing food and clothing for families, and maintaining their safety, independence and dignity.

You can make a difference. A unified, committed legal community dedicated to maximizing the potential of the IOLTA program is the single, most effective way for the Montana Justice Foundation to accomplish its mission of making justice accessible to all Montanans.

In the past, Montana banks have responded to lawyer requests to provide more favorable interest rates on IOLTA accounts. Most banks have the power to set their own interest rates on IOLTA accounts. Account holders are the key to the success of the IOLTA program.

To advocate for higher IOLTA interest rates:

■ Be aware of the interest rate being paid on your IOLTA accounts.

■ If the rate your bank is paying is below Leadership Bank

status (see listings below) call, visit or write your bank management and request a more favorable interest rate.

■ If your bank denies your request for a more favorable rate, consider switching your IOLTA account to a bank that more fully supports the IOLTA program.

Some banks in Montana are doing their part. The Montana Justice Foundation promotes IOLTA "Leadership Banks" among the legal community and encourages law firms and attorneys to place their IOLTA accounts with these MJF Honor Roll banks (listed rates were gathered from February IOLTA reporting data):

Gold Level Leadership Banks

These banks offer an annual net yield of 2.0 percent or higher and tie their deposit rate to a recognized market indicator:

Mountain West Bank	4.76% on all accounts
Valley Bank of Helena	4.76% on all accounts
Yellowstone Bank, Billings	4.76% on all accounts
Big Sky Western Bank	4.76% - 3.01%
Western Security Bank	4.76% - 3.01%
Wells Fargo	3.1% - .55%

Silver Level Leadership Banks

These banks offer an annual net yield of 2.0% or higher:

U.S. Bank	4.47% - .10%
Bank of Bozeman	5.12% - 2.02%
Heritage Bank	2.0% on all accounts
Glacier Bank	2.0% on all accounts

FOR MORE INFORMATION on how to contact your bank, tips on how to ask your bank for a more favorable rate, or to learn your current IOLTA interest rate, please contact Amy Sings In The Timber with the Montana Justice Foundation at asings@mtjustice.org or call (406) 523-3920.

Laptops make good debut in Bar Exam

Most examinees opt to use computers; one test-day glitch is quickly fixed

More than half the examinees at the Montana Bar Exam on Feb. 26-27 used laptop computers to take the test, instead of using the traditional handwriting method.

The February exam was the first Montana Bar Exam in which laptops have been allowed. Of 51 examinees, 29 opted to use their laptops.

On July 28, the Montana Supreme Court wrote to the Board of Bar Examiners supporting the Board's recommendation to allow use of laptops during the exam. Twenty-nine other states have adopted ExamSoft's SoftTest software for bar exams.

"There was only one minor glitch in uploading one examinee's answers," said Jan Weber, the State Bar's Admissions Administrator. James Cramer, the Information Technology director for the University of Montana School of Law, was able to fix the problem within minutes.

Mr. Cramer was ExamSoft's designated "on-site engineer" for the exam. He has been providing the tech support for exams at the University of Montana for several years and has served as a bar exam site engineer in Texas. ExamSoft, a Florida company, provides and pays for at least one technical engineer to be present during every bar exam.

Mr. Cramer's presence at the exam "significantly decreased my stress level, because I did not have to be concerned with any technology issues," said Ms. Weber. "James was able to monitor all of our examinees and was in communication with a technician at ExamSoft.

"ExamSoft was very quick to deal with this anomaly and nearly instantly wrote code into the software to avoid this particular problem (for every jurisdiction) in the future," Ms. Weber said.

"Because we encouraged everyone to upload immediately following each testing session, we had confirmation that all our examinees' answers – including the one with the glitch – had been uploaded within half an hour following each session," she said.

ExamSoft allows examinees to use their laptops during the bar exam by creating a secure test environment. During testing, examinees cannot access their hard drives, Internet, or any other memory functions. Once a testing session is completed, the answers are stored as deeply encrypted files on the examinees' hard drives. The examinees then use a wireless connection to upload their exams to ExamSoft's server in Florida.

In a letter to the Connecticut Bar Examining Committee, Ms. Weber had high praise for the ExamSoft company. Ms. Weber said other admission authorities that use ExamSoft had few complaints.

"One concern was whether laptop users would have an advantage over those handwriting," Ms. Weber wrote. She said that California bar examiners commissioned a study on that question. The study concluded that, "there does not now appear to be any advantage or disadvantage to using a laptop relative to writing."

Before hiring ExamSoft, Ms. Weber observed a day of final exams at the UM Law School. "What I observed assured me that ExamSoft is secure, user friendly, and of substantial value in my role as administrator."

ExamSoft is used in roughly 110 law schools throughout the country, including UM. "The students at our law school have been using this software for several years and are very comfortable with it," Ms. Weber wrote to the Connecticut Bar. "In recent years, the students have been clamoring for the Board to adopt use of computer-based testing. What's more, the staff of the UM law school believes ExamSoft is absolutely reliable and secure." ○

Road Show set for Helena, Great Falls, Dillon

The State Bar of Montana Road Show, featuring three hours of discussions on Bar issues and attorney ethics, has been tentatively scheduled to appear in three cities in June.

In the past, the Road Show has been concentrated on three or four cities in one particular area of the state. Starting this year in an experiment, the Road Show will visit one city in each of three or four different areas of the state.

The events for 2007 are scheduled to

be in Helena with the 1st Judicial District Bar Association on June 7; in Great Falls with the Cascade County Bar on June 22nd; and in Dillon with the 5th Judicial District Bar on July 25.

The Road Show also may appear in one or two other cities this year, although they have not yet been scheduled, said State Bar Legal Counsel Betsy Brandborg, who is working on the Road Show planning with the Bar's Professionalism Committee.

The Committee has a list of eight topics that it must narrow down in its next conference call. The agenda may include presentations by Supreme Court justices, legislators, state officials and Bar leaders.

The Road Show, which is really a three-hour CLE, is a popular event with Montana lawyers because it is one of the few events where *free* Ethics credits can be earned. More details will be published in the May edition of *The Montana Lawyer* and on the Bar web site at www.montanabar.org.

George L. Bousliman Professionalism Award

The award will recognize lawyers or law firms who have:

1. Established a reputation for and a tradition of professionalism as defined by Dean Roscoe Pound: pursuit of a learned art as a common calling in the spirit of public service; and

2. Within two years prior to the nomination, demonstrated extraordinary professionalism in a least one of the following ways:

- Contributing time and resources to public service, public education, charitable or pro bono activities.

- Encouraging respect for the law and our legal system, especially by making the legal system more accessible and responsive, resolving matters expeditiously and without unnecessary expense, and being courteous to the court, clients, opposing counsel, and other parties.

- Maintaining and developing, and encouraging other lawyers to maintain and develop, their knowledge of the law and proficiency in their practice.

- Subordinating business concerns to professional concerns.

Nominee/Individual or firm: _____

Address: _____

Please describe the nominee's activity in your community or in the state, which you believe brings great credit to the legal profession. Attach any supporting documents to this form.

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations and supporting documents will not be returned. Send them no later than **June 1** to:

Bousliman Professionalism Award
P.O. Box 577
Helena MT 59624
or e-mail to *mailbox@montanabar.org*

STATE BAR CALENDAR

April 23

State Bar Law Day Forum, featuring Chief Justice Karla Gray, 7 p.m., Carroll College Student Center, Helena

April 25

Deadline for advertising and content for the May edition of The Montana Lawyer magazine

April 27

Peoples Law Center meeting, 1 p.m., State Bar offices, Helena

April 30

Montana Justice Foundation meeting, 10 a.m., State Bar offices, Helena

May 1

Law Day

May 1

State Bar Law Day Forum on environmental issues, 6 p.m., Copper Lounge of Montana Tech Student Union, Butte

May 1

Lawyers' Fund for Client Protection board meeting, 10 a.m., State Bar offices, Helena

May 4

CLE Institute spring meeting, Billings

May 4

State Bar Executive Committee meeting, 10 am, State Bar offices, Helena

May 8

State Bar Law Day Forum on identity theft and fraud, 1 p.m., Room 14, Tech Hall, Rocky Mountain College, Billings

May 8

Swearing-in ceremony for new Montana lawyers, 10 a.m, Montana Supreme Court chambers, Helena

May 8

Swearing-in ceremony for new federal-court lawyers, 1:30 p.m., Max Baucus Federal Building, Helena

Attention Lawyers!

Law Day is rapidly approaching and volunteers are still needed

Plans are under way to make this year's Law Day a tremendous success. Because of the theme, "Ensuring democracy, empowering youth," a large effort is being made to guarantee that Montana students are given an opportunity to interact with informed and captivating members of the legal community.

To accommodate the schedules of schools and guest speakers, this year's activities will take place throughout the entire week of May 1st.

There are several ways for you to be involved in this year's activities – as a guest speaker or as a project planner. First, contact your local bar and see what activities are being planned in your area. If you live in one of Montana's major urban centers, check and see if you have a Law Day coordinator that might help you with placement. Or just initiate things on your own. Check with your local schools and see if they'd be interested in having you as a speaker.

The Law Related Education Center is always more than happy to provide lesson plans, lecture materials, or advice on project ideas. For any assistance you might need or just to check in on some of the statewide activities, contact:

Andrew Fox

406/442-7600 x 1205

afox@mtlsa.org

LRECenter web site at *www.montanabar.org/groups/lrecenter/index.html*

Upcoming CLE seminars for Montana lawyers

April 24 Teleconference

Important Lessons for Trustees: How & Why to Say Yes or No to a Beneficiary 1.50 CLE credits. Presented by Cannon, (800) 775-7654.

April 26 Missoula – Marriot Hotel

Landlord-Tenant Law 6.50 CLE credits, including 1.00 Ethics credit. Presented by Sterling Education Services, (715) 855-0495

April 27 Polson – KwaTakNuk Resort

Control Your Workers' Compensation Costs: Improve Safety 6.0 CLE credits. Presented by Putman & Associates, (406) 257-0269

May 22 Teleconference

Estate Planning for Business Owners: A Guide for Basics & Advanced 1.50 CLE credits. Presented by Cannon, (800) 775-7654.

Other web & phone CLEs for Montana credit are:

■ MTLA's SeminarWeb Live! Seminars at www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=show_AppPage&pg=semwebCatalog&panel=browseLive

■ Lorman Education Services' teleconferences at www.lorman.com/teleconferences/

June 12 Teleconference

Retirement Benefit Planning 1.50 CLE credits. Presented by Cannon, (800) 775-7654.

July 17 Teleconference,

Compliance Issues for Trustees 1.50 CLE credits. Presented by Cannon, (800) 775-7654.

Forums, classes revolve around Law Day

With the national Law Day about to arrive on May 1, the State Bar's Law-Related Education Center is working with local bar associations to make presentations on legal topics to schools. Help from Montana lawyers and judges is still needed (see box on preceding page).

The LRE Center also has set up three public forums, at college settings, for discussion of legal issues. They are:

■ **Carroll College, April 23.** Montana Supreme Court Chief Justice Karla Gray will speak at the student center of Carroll College in Helena at 7 p.m. She will address the history and future of the Montana Constitution and the obstacles and challenges it presents to the next generation. After the lecture, the Chief Justice will be available for a question and answer session. Refreshments will be provided.

■ **Montana Tech, May 2.** At 6 p.m. the State Bar of Montana will host a panel discussion on environmental law in Montana. The lecture will take place at the Copper Lounge of the Student Union on the campus of Montana Tech in Butte.

The panel members will discuss their reactions to House Bill 610, which limits who can file lawsuits under the Montana Environmental Policy Act. The forum is designed to give the audience the opportunity to hear the unique and contrasting views of both business and industry and environmental non-profit organizations.

Representatives voicing the opinions of industry will be Tim McHugh of Montana Resources and Becky Summerville. Representing environmental nonprofits will be Kim Wilson and Matt Clifford of the Clark Fork Coalition.

■ **Rocky Mountain College, May 8.** The State Bar of Montana will present a Law Day lecture in Room 14 of Tech Hall at Rocky Mountain College in Billings at 1 p.m. Cort Jensen of the state Attorney General's office will discuss the risks of identity theft and internet fraud. He will be available for issue-specific questions at the conclusion of his lecture.

In addition to the statewide lecture series being hosted by the State Bar of Montana, there are several other Law Day

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These Montana legal manuals and videos are for sale or rent via this mail-order catalog. Other Montana Bar-produced video seminars, are available for download to your computer on the Online CLE catalog at www.montanabar.org.

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2006, 288 pages
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(MPI – MT Pattern Instructions)
1999 w/2003 Update, 400 pages
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Criminal Jury Instructions

1999 w/2003 Update, 400 pages
Book plus CD \$105

Handbook for Guardians & Conservators

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activities being planned. The New Lawyers Section of the State Bar has been invaluable in their contribution to Law Day efforts.

With the help of coordinator Heather McDowell, plans have come together in Billings. A successful effort has been made to ensure that attorneys will have a presence in local public schools. Speakers will travel to Central High School in Billings to address the school's social studies students.

For several years, Jason Holden has coordinated Law Day efforts in Great Falls. This year, Mr. Holden estimates that between 15 and 30 lawyers will participate in Great Falls' activities. They will volunteer in regional middle schools as speakers to an audience of young civics students.

Through the hard work of coordinators Brenda Wahler, Chris Tweeten, and Julie Johnson, events are taking shape in Helena. Volunteers are being recruited to do work in Capitol High School, Helena High School, Helena Middle School and C.R. Anderson Middle School.

Although Law Day is approaching rapidly, attorneys across the state are still putting forth an effort to plan events in their regions. This year's goal of expanding activities to the general public is proving to give Law Day 2007 a very unique and new flavor. The combination of public school volunteers and a public lecture series has guaranteed that Law Day will be an all inclusive community event.

New issue of The Complete Lawyer on web

The State Bar of Montana's new e-zine (a magazine found only on the web) for its members has just published its second issue, with the main topic "The Fast-Changing Face of Diversity."

The Complete Lawyer is a resource (bookmark it on your computer) to help guide attorneys in their careers, their businesses, and their personal lives, tackling important topics facing lawyers. The magazine can be found at <http://montana.thecompletelawyer.com>.

"Change is one of the most onerous challenges human beings grapple with," said the e-zine's editors. "Diversity, for example, is hard to achieve because change is at its heart. This edition of TCL examines diversity from the perspectives of psychology, biology and brain science. While research tells us we have a long way to go with our efforts to institute lasting diversity initiatives, the heartening news is that as humans we have a built-in bias towards empathy, cooperation and altruism – provided we develop the social intelligence to nurture these capacities in ourselves and others. [View the issue]

The Atlanta Bar Association brings you this issue of *The Complete Lawyer*. The cover story asks the question, "How can groups divided by prejudice learn to live and work together effectively?"

See the e-zine at <http://montana.thecompletelawyer.com>.

What do you do in your spare time?

When not practicing law, many Montana attorneys practice fascinating hobbies, have scholarly interests or participate in sports. We know one lawyer who writes music and plays it on his mandolin, others who write books, paint, carve or sculpt works of art, and one judge who climbs mountains.

The Montana Lawyer would like to hear about State Bar members with interesting hobbies and interests, both to present in the magazine and to display the members' works at the Bar's Annual Meeting in Missoula in September.

If you or any judge, lawyer, or legal assistant that you know has a pastime that we should display, please contact Montana Lawyer Editor Charles Wood at (406) 447-2200 or cwood@montanabar.org.

Justices accuse Calif. law firm of 'legal thuggery' in Montana case

By **Eric Newhouse**
of the Great Falls Tribune

The Montana Supreme Court upheld an \$11 million judgment for artist Steve Seltzer, calling threats to force him to change his appraisal "legal thuggery."

"Baseless lawsuits prosecuted in furtherance of ulterior motives have no place in our courts," stated the unanimous opinion, authored by Justice James Nelson.

The March 12 opinion came as a huge relief for the Great Falls appraiser and artist.

He was sued by a collector who disputed Seltzer's conclusion that a painting was the work of his grandfather, O.C. Seltzer.

"This is a judgment on moral virtue of major proportions," Seltzer said after the Supreme Court ruling.

The multi-million-dollar dispute revolved around a painting, "Lassoing a Longhorn," which Steve and Frank Morton bought from the Kennedy Galleries in New York City for \$38,000 in 1972. It had a signature of C.M. Russell, a buffalo skull – Russell's trademark – and a 1913 date.

But, as the Supreme Court noted, the painting style was unlike Russell and more like one of his contemporaries, O.C. Seltzer.

When Steve Morton decided to sell it five years ago, he sent the painting to Steve Seltzer for authentication. Seltzer concluded that, based on the painting techniques, it had been painted by his grandfather.

Russell expert Ginger Renner backed up that appraisal, adding that she believed the signature had been altered. Since Russell is the more famous of the pair, the painting's estimated value dropped from \$650,000 to \$65,000.

Morton quickly hired Gibson, Dunn & Crutcher (GDC), a California law firm, which sent a demand letter to Renner and Seltzer. It said:

"1. Each of you will draft a letter to our specifications completely recanting and withdrawing any statement you have previously made regarding the authenticity of the painting currently owned by Mr. Morton.

"2. In the letter, among other admissions you will make, you will admit that you did not perform a detailed examination of the painting and that your "opinion" was merely conjecture on your part.

"3. You will agree to compensate Mr. Morton for the difference between what the painting sells for today, after we have tried to remove the cloud from its provenance, and what it could have sold for two years ago prior to your defamatory remarks about its authenticity.

"4. Independently, you will reimburse Mr. Morton for the time, expense, embarrassment, grief and anxiety he has

expended in trying to recover from your actions. The price: an additional \$50,000 beyond the loss in value of the painting."

Seltzer refused to be pressured into changing his opinion, but the decision cost him.

"Seltzer testified, he experienced 'a state of panic' as a result of the financial implications posed by the

lawsuit, as well as the potential impact on his reputation in the art community," the Supreme Court opinion stated.

"He testified: 'I was fearful of losing everything that I had. Everything that my wife and I had worked for 37 years to accumulate. I mean, my home, my art studios, my cars. All my personal belongings.'

Carol Seltzer testified that her husband was a nervous wreck, unable to eat or sleep well. "He was confident he could prove that this was his grandfather's work. He never wavered on that," she said. "But there was a huge amount of pressure on him. And he became physically ill as a result of that."

GDC filed a multi-count lawsuit against Seltzer, which it lost. Seltzer counter-sued, charging his reputation, professional standing and health had been harmed by a frivolous lawsuit. "He was clearly wronged, and he's just such a good guy," said his Great Falls attorney, Zander Blewett III.

A District Court jury agreed and awarded Seltzer \$1.1 million in actual damages, plus \$20 million in punitive damages from the law firm that had sued him.

On GDC's appeal, District Judge Dirk Sandefur left actual damages standing, but reduced the punitive award to \$9.9 million.

The state Supreme Court affirmed that ruling.

"Abusive conduct toward an individual, which causes the type of harm at issue here, merits considerable punishment regardless of the setting in which it takes place. However, the fact that GDC utilized the judicial system as a tool to accomplish intimidation and oppression makes this behavior uniquely egregious," the opinion states. "In short, GDC's use of the judicial system amounts to legal thuggery."

Calls seeking comment from GDC's attorneys were not returned.

Adding in interest while the case was under appeal, Seltzer should get about \$13.5 million, Blewett said. The dispute may also have destroyed the value of the painting at issue, Seltzer noted. "It's a wonderful painting, but it can't be sold as a Russell and it no longer has Seltzer's name on it," he said. "I can't imagine that anyone would buy it except for curiosity value," he added. "It's a very curious piece of work now."

This article was published in the Great Falls Tribune on March 14.

Court corrects its February electronic-discovery order

The following order was issued by the Montana Supreme Court on April 4:

IN THE MATTER OF PROPOSED REVISIONS TO THE MONTANA RULES OF CIVIL PROCEDURE WITH RESPECT TO DISCOVERY OF ELECTRONIC INFORMATION

On February 28, 2007, we entered an order in the above matter adopting the Majority Proposal to Amend Rule 26 of the Montana Rules of Civil Procedure and Related Rules to Facilitate Electronic Discovery. We erroneously included "26(b)(2)" in the final paragraph of the revised Rule 26(b)(1). The third sentence of the second paragraph erroneously constituted a sentence fragment.

IT IS HEREBY ORDERED that our February 28, 2007, Order is amended, nunc pro tunc, to delete the extraneous reference to "Rule 26(b)(2)" in the first paragraph of revised Rule 26(b)(1), and to split the third sentence of the second paragraph of revised Rule 34(b) into two separate sentences, as follows:

The response shall state, with respect to each item or category, that inspection and related activities will be permitted, as requested, unless the request is objected to. An objection to the requested form or forms for producing electronically stored information shall state the reasons for the objection. ○

Oral arguments

April 2007


■ **Cause OP 06-0232** – LORI OBERSON, Legal Guardian for BRIAN MUSSELMAN, et al., Plaintiffs, Respondents and Cross-Appellants, v. UNITED STATES OF AMERICA, et al., Defendant, Appellants and Cross-Respondents.

Oral argument before the Montana Supreme Court is set for Friday, April 20, at 10 a.m. in the University Theater, University of Montana, Missoula. An introduction to the oral argument will begin at 9:30 a.m.

May 2007

■ **Cause DA 06-0052** – STATE OF MONTANA, Plaintiff and Respondent, v. RAUL C. SANCHEZ, Defendant and Appellant.

Oral argument before the Montana Supreme Court is set for Monday, May 7, at 10:00 a.m. in the Strand Union Building, Ballroom A, on the campus of Montana State University, Bozeman. An introduction to the oral argument will begin at 9:30 a.m.



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Complaints drop, but ODC had busy 2006

Montana's Office of Disciplinary Counsel (ODC) received 371 new complaints against attorneys last year, a drop in the number of complaints made in 2005 and 2004, said the 2006 Annual Report of the ODC, which was released in February 2007.

The ODC, headed by Disciplinary Counsel Shaun R. Thompson, is part of a lawyer-regulation system established by the Montana Supreme Court in 2002. The system consists of ODC and the Commission on Practice (COP). ODC performs central intake functions and processes, investigates and prosecutes complaints against lawyers within the jurisdiction of the Court. COP hears and decides the complaints and, in appropriate cases, makes recommendations to the Court for discipline. COP and ODC are under the direct supervision of the Montana Supreme Court.

The following statistics are provided in the 11-page report. More details and comparisons to the ODC's previous three years can be found in the complete report at www.montana-courts.org/supreme/odc/reports/06_annual%20report.pdf.

Number of complaints

From Jan. 1 through Dec. 31, 2006, there were 371 new complaints. Of those complaints, ODC opened and docketed 269 new files on matters involving allegations of attorney misconduct, or where the complainant appealed a dismissal by ODC.

Based upon the fact that there are about 2,800 active in-state lawyers, and while some lawyers were subject to multiple inquiries, informal disciplinary complaints averaged about one for every eight lawyers over the 12-month period.

As noted in ODC's Annual Report for 2005, in prior years, when calculating the total number of complaints, matters that were opened as pencil files and then later opened and docketed as new, informal complaint files were counted twice in the complaint total. Without the duplication, the total number of complaints for 2005 would be 429, and for 2004, the total would be 415. In this report, ODC, in calculating the total number of complaints, does not duplicate files that were opened as pencil files and later opened as informal complaint files.

By comparison, the number of complaints received in 2006 represents a decrease of about 14 percent from the number of complaints received in 2005, about an 11 percent decrease from 2004, 14 percent increase from 2003, and 28 percent increase from 2002.¹

Lawyers disciplined or placed on disability inactive status

In 2006, the Montana Supreme Court imposed 24 formal disciplinary sanctions and disability inactive rulings (permanent public records) based on 17 Court orders for 16 Montana

lawyers and one out-of-state lawyer who applied for admission to the Montana State Bar.² The public sanctions and disability inactive rulings included three disbarments, nine suspensions, one prohibited admission, five public censures, three probations and two attorneys were placed on disability/inactive status. They are:

- Atcheson, Brian T. – Suspension, extended 1 year.
- Baldassin, William – Disability inactive status.
- D'Alton, Moira – Suspension, 30 days; public censure; probation.
- Drozd, Marla Jean – Suspension, 60 days.
- Dupuis, Rebecca – Indefinite suspension.
- Dupuis, Rebecca – Disbarred.
- Harrington, J. Cort Jr. – Suspension, 6 months; public censure; probation.
- Hawkins, Kristine – Disability inactive status.
- Hussey, Bruce – Disbarred.
- Lynch, Jeff R. – Disbarred.
- Moses, Stephen – Indefinite suspension, one year minimum.
- Musick, Richard L. – Indefinite suspension, one year minimum.
- Neidhardt, Donald J. – Prohibited admission, one year; censure.
- Strickland, Graeme – Suspension, one year minimum.
- Truman, Catherine – Public censure.
- Turrin, Fausto G. – Public censure.
- Wesson, Kenneth – Indefinite suspension, one year minimum.
- Wing, David – Probation.

By comparison, in 2005, 18 formal disciplinary sanctions and disability inactive rulings were imposed on Montana lawyers; in 2004, 21 formal disciplinary sanctions and disability inactive rulings were imposed; and, in 2003, 16 formal disciplinary sanctions were imposed. There were about 58 public disciplinary orders in the ten-year period between 1992 and 2002 compared with 77 public disciplinary orders or disability inactive rulings in the last four years, 2003-2006.³

Private discipline

In 2006, COP imposed an additional 14 private and informal disciplinary sanctions on 14 attorneys based on 14 disciplinary orders, including 13 private admonishments and one probation. By comparison, in 2005, COP imposed 31 private and informal disciplinary sanctions on 31 attorneys based on 31 disciplinary orders, including two probations, 27 private admonishments and two resignations; in 2004, 22 private and informal disciplinary orders, including nine probations and 13 private admonishments; and in 2003, 28 private and informal disciplinary orders and disability inactive rulings, including

five probations, 21 private admonishments and two attorneys were transferred disability inactive status.

In 2006, about one for every 165 lawyers was formally sanctioned or transferred to disability inactive status and about one in every 200 was privately sanctioned. Or, collectively, about one in every 90 Montana lawyers (one percent) was either publicly or privately sanctioned or transferred to disability inactive status. In 2005, this statistic was one in every 57 lawyers; in 2004, one in every 56 lawyers; and in 2003, one in every 70 lawyers.

Alternatively, 89 of 90 Montana lawyers (99 percent) were not subject to any disciplinary sanction or disability inactive rulings last year. Montana lawyers continue to overwhelmingly represent their clients ethically.

Since 2003, there has been a sharp increase in public disciplinary orders and disability inactive rulings (from six per year to over 18 per year on average).

Cases in Inventory

Effective July 7, 2003, the Montana Supreme Court amended the Rules for Lawyer Disciplinary Enforcement to allow ODC to dismiss cases under limited circumstances.

Screened cases

Of the 371 new informal disciplinary inquiries in 2006, ODC was able to screen (i.e., not immediately docketed) 145 of those cases (about 39 percent) because they did not appear to state a disciplinary complaint. The results of those are described below:

- 145 inquiries screened prior to COP involvement.
 - 57 dismissed by ODC
 - 17 ODC dismissals appealed to COP
 - 40 inquiries closed as dismissals
 - 50 closed with no further action
- 90 closed without COP involvement.
- 45 docketed cases, including 17 appeals.
- 15 screened cases carried over to 2007.

In the 50 screened complaints resulting in closure with no further action, the complainant did not respond to ODC's request for more information or the matter was withdrawn.

In some of the 45 screened complaints resulting in docketed cases, informal disciplinary matters, more than one docketed file was opened.

Docketed cases

Of the 371 new informal disciplinary inquiries in 2006, 269 files were docketed. Of those 269 new docketed cases, ODC issued dismissal letters in two of those cases prior to COP review. Neither of ODC's dismissals of docketed matters were appealed to COP.

ODC had 455 open (docketed) cases in 2006 based on the following:

- 6 cases carried over from 2003.
- 23 carried over from 2004.

- 155 carried over from 2005.
- 269 new cases docketed in 2006.

Of those 455 open cases, ODC completed intake and investigations and made 289 reports and recommendations (including supplemental reviews or appeals) to the COP over the course of the five COP meetings held during the year. In comparison, ODC completed 353 case reports in six COP meetings in 2005, 280 reports in five COP meetings in 2004, and 296 reports in six COP meetings in 2003. This represents a slight decrease in the average case reports reviewed per meeting. The averages are as follows:

- 2006 – 58 reports per meeting.
- 2005 – 59 reports per meeting.
- 2004 – 56 reports per meeting.
- 2003 – 49 reports per meeting.

Screened and docketed cases

Including both screened files and docketed matters, ODC prepared the following number of reports or dismissal letters per year:

- 2006 – 348 reports/dismissals.
- 2005 – 393 reports/dismissals.
- 2004 – 342 reports/dismissals.
- 2003 – 325 reports/dismissals.

One hundred ninety-four cases were in inventory and carried over to 2007, nearly all of them less than 120 days old, compared with 186 cases carried over from 2005 to 2006, 110 cases from 2004 to 2005, and 72 cases from 2003 to 2004.⁵

At the end of 2006, there were 25 open formal cases. There were 22 pending formal actions before the Montana Supreme Court. ODC had three additional formal complaints to file pursuant to COP's recommendation.

Public inquiries

In addition to the ODC's handling of complaint investigations and prosecutions, the office received the following inquiries from the public per year.

- 2006 – 405 telephone, 59 written, 4 walk-ins.
- 2005 – 460 telephone, 117 written, 9 walk-ins.
- 2004 – 654 telephone, 87 written, 17 walk-ins.
- 2003 – 562 telephone, 139 written, 7 walk-ins.

ODC mailed 468 complaint packets and information forms in 2006, compared with 585 packets in 2005. 758 packets in 2004, and 655 in 2003.⁶

Case Prosecutions

Disciplinary counsel appeared at 23 hearings over the course of the five COP meetings held during the year further described below.

- 15 - Formal hearings.
- 6 - Rule 26 consent hearings (involving both formal and informal cases).
- 1 - Rule 28 hearing (one additional Rule 28 matter was

reviewed by COP where the hearing was waived by the respondent).

- 0 - Show Cause hearings
- 0 - Reinstatement hearings

In previous years, ODC appeared at 53 hearings over 6 meetings in 2005, 38 hearings over five meetings in 2004, and 37 hearings over six meetings in 2003. In the past, OTSC hearings set when a lawyer has failed to respond have often unduly delayed the proceedings. Now, ODC usually includes failure to respond as a ground for discipline in the formal complaint.

Nature of grievants

Complaints from clients or former clients far exceeded complaints filed by others. No attorneys self-reported. In 2006, the types of complainants whose complaints resulted in docketed cases were:

- Clients or former clients 65 percent.
- Attorneys 5 (a four-year low)
- Opposing parties 15
- Third parties/other 14
- Courts 1

Practice areas

The following is a 2006 breakdown of the various areas of practice in which docketed cases were involved:

- Criminal law 36 percent
- Family law 23
- Civil litigation 14
- Personal injury 5
- Probate 5
- Bankruptcy 3
- Real estate 3
- Business 1
- Other 10

Types of allegations

The following is a comparison of the types of allegations made in complaints received by ODC that resulted in docketed cases in 2006:

- **Performance and Communication** (the lawyer acted incompetently or did not perform promised legal services at all, delayed performance beyond what was expected, or failed to adequately communicate with the client) – 52 percent.
- **Interference with Justice** (the lawyer failed to expedite litigation, communicated with represented adversaries, made misrepresentations to a court, disobeyed court orders, or filed non-meritorious claims) – 14 percent.
- **Conflicts of Interest or Improper Withdrawals** (the lawyer failed to satisfy duties to the client by disregarding conflicts of interest, improperly withdrawing from representation, failing to turn over files to the client, or settling

cases without authority) – 13 percent.

- **Personal Misconduct** (such as dishonesty and misrepresentations to non-clients, clients, opposing parties and counsel, or a court) – 11 percent.

- **Other categories**, including excessive fees, prosecutorial misconduct, trust-account violations each made up two percent or less of the 2006 breakdown.

Disposition of Cases by Review Panels

Of the 289 cases reviewed, the COP dismissed 77 percent after a review panel determined that either the complaint was outside the disciplinary jurisdiction of the Court or there was no evidence or insufficient evidence that a violation had occurred (up from 73 percent in 2005, 72 percent in 2004 and 65 percent in 2003 and 2002).

The review panel recommended further ODC investigation in only about one percent of the cases reviewed (same in 2005 and 2004, and down from two percent in 2003).

It recommended discipline in about 18 percent of the cases reviewed (compared with 16 in 2005, 26 percent in 2004 and 17 percent in 2003).

Eleven percent (33 cases) of the cases reviewed resulted in a recommendation for formal discipline (compared with eight percent in 2005, 18 percent in 2004 and 11 percent in 2003).

Seven percent (20 cases) of the cases reviewed resulted in a recommendation for informal discipline (compared with eight percent in 2005, nine percent in 2004 and six percent in 2003).

Nine cases were deferred due to the lawyer's transfer to disability inactive status or disbarment (two in 2005 and none in 2004).

One show-cause recommendation was made due to a lawyer's failure to respond to an ODC inquiry, which was resolved prior to hearing (11 show-cause orders were issued in 2005, nine in 2004 and 16 in 2003).

One case was resolved by consent discipline by an adjudicatory panel under Rule 26 prior to review by a review panel (none in 2005, one in 2004 and none in 2003).

Eleven cases were continued to the January 2007 meeting.

Other Matters

Suggested rule revisions and other matters

Rule 5, Rules for Lawyer Disciplinary Enforcement (2002) was amended, effective Nov. 8, 2006, to have the Board of Trustees of the State Bar of Montana review ODC's budget.

Much of the language of the current Rules for Lawyer Disciplinary Enforcement is derived from the rules that existed prior to the restructuring of the lawyers disciplinary system in 2002. Some parts, but not all, are based on the ABA Model Rules for Lawyer Disciplinary Enforcement.

There are certain internal inconsistencies within the rules. Also, there are a number of areas in which the rules could be improved or clarified. ODC intends to propose, after consulta-

tion with members of the Commission, a comprehensive revision of the rules.

Annotation project

In 2005, former Disciplinary Counsel Tim Strauch, in conjunction with the University of Montana School of Law, completed the annotation project for the years 1992-2004. The final work product is a comprehensive set of annotations of all Supreme Court decisions and COP recommendations in formal disciplinary matters since 1992. ODC has updated the annotations with the 2005 cases and will continue to do so annually.

NOTES

1. When calculating the year-to-year comparisons, ODC used the actual fig-

ures for 2004 and 2005 rather than the duplicated figures as in previous reports.

2. Some lawyers received multiple sanctions for their misconduct in a disciplinary matter. In addition, some sanctions were imposed for an attorney's conduct in multiple matters.

3. In years prior to 2006, these figures included only one sanction per attorney.

4. The total private sanctions for 2005 differs in this report from the 2005 annual report because ODC used a more accurate way of calculating the totals. In the past, a private admonition was counted in the year the case was closed in ODC's database. Now, it is counted when an adjudicatory panel approves the giving of a private admonition. The figures for 2003 and 2004 remain unchanged.

5. Thirteen cases were continued from the November 2006 COP meeting to the January 2007 meeting due to the absence of some COP members.

6. Since the time that ODC's webpage was up and running, ODC began referring people directly to the website where they could review and download ODC's information and forms. ODC did not keep a log of these inquiries. The result of these referrals is a decrease in telephone inquiries and packets mailed.

30-day limit to file objections now 'self-enforcing,' not in orders

The following Montana Supreme Court order, approved by all seven justices, was filed by the Court on March 21:

AF 06-0628 IN THE MATTER OF THE RULES OF LAWYER DISCIPLINARY ENFORCEMENT

Rule 16 of the Montana Rules of Lawyer Disciplinary Enforcement states, in part, that

[a]fter service of a copy of the findings of fact and conclusions of law and recommendation of discipline to the lawyer and to lawyer's counsel, if any, the lawyer shall have thirty days

from date of service within which to file with the Court objections to the findings of fact and conclusions of law and recommendation of discipline, and a written brief in support thereof.

The rule further provides that, after the lawyer serves a copy of the objections and brief on Disciplinary Counsel, Disciplinary Counsel shall have thirty days to file an opposing brief and serve it on the lawyer or lawyer's counsel. In addition, the rule states that after such filings, or at the expiration of the time allowed for such filings, the Court shall consider the matter, issue its written decision, and impose such discipline as

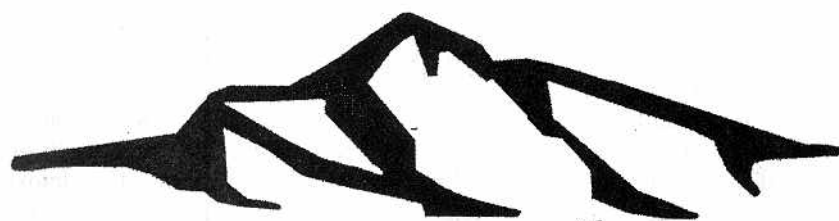
it deems appropriate.

Rule 16 is clearly meant to be self-executing. In the past, however, this Court often has issued orders specifying that a lawyer has thirty days to file objections. Because the rule does not require such an order and a lawyer subject to disciplinary proceedings is on notice about the applicability of the Montana Rules of Lawyer Disciplinary Enforcement, we will do so no longer.

THEREFORE,

IT IS ORDERED that, effective May 1, 2007, this Court will no longer issue orders expressly providing 30 days for the filing of objections to findings, conclusions and recommendations of the Commission on Practice; and

IT IS FURTHER ORDERED that, on and after May 1, 2007, the time limits in Rule 16 of the Montana Rules of Lawyer Disciplinary Enforcement shall be self-executing. ○



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U.S. Supreme Court rejects O'Neill appeal

Montana state senator Jerry O'Neil has lost his effort to have the U.S. Supreme Court hear his claim that he should be allowed to practice law, despite not being a licensed lawyer.

The court denied Mr. O'Neil's appeal on March 19, without comment. The denial means that a Montana Supreme Court ruling issued in November will stand.

The state high court upheld a District Court ruling from 2004 that found Mr. O'Neil in contempt and prohibited him from practicing law.

A self-described "independent paralegal" from Columbia Falls, Mr. O'Neil has long sought permission for nonlawyers to give legal advice and prepare legal documents. O'Neil has tried unsuccessfully to change state law so that the Legislature, rather than the Supreme Court, would have authority to determine eligibility to practice law.

Disputes over O'Neil's desire to practice law began in the 1980s. In 1986, he was rejected as a candidate for the Montana Supreme Court, for lack of credentials. The constitution requires that Supreme Court justices be lawyers.

Bozeman attorney to run for state AG slot

Bozeman attorney Mike Wheat announced that he is a Democratic candidate for Montana attorney general in the 2008 election.

Mr. Wheat, who served in the state Senate, in 2003 and 2005, entered the race at a press conference in the old Supreme Court Chambers in the Capitol in Helena on March 29.

Mr. Wheat, a 1978 graduate of the University of Montana School of Law, worked for three years as a deputy county attorney in Butte-Silver Bow counties, then moved to Bozeman to enter private practice, specializing in representing plaintiffs in personal-injury cases. "I think it is important that the next attorney general have courtroom experience," he was quoted by the *Billings Gazette* as saying.

The *Gazette* said that House Minority Leader John Parker of Great Falls and Helena attorney Steve Bullock also have said they will be in the Democratic race for the attorney general office. Democrat Mike McGrath, the present attorney general, cannot run for re-election as AG in 2008 because of term limits.

Smith attends ABA Bar Leadership Institute

Joining some 300 other emerging leaders of lawyer organizations from across the country at the American Bar Association's Bar Leadership Institute (BLI), March 15-17 in Chicago was Cynthia K. Smith of Missoula, chair of the State Bar of Montana's Board of Trustees.

The BLI is held annually in Chicago for incoming officials of local and state bars, special-focus lawyer organizations and

bar foundations. The seminar provides the opportunity to confer with ABA officials, bar leader colleagues, executive staff, and other experts on the operation of such associations.

Ms. Smith, who runs a private law practice in Missoula, attended BLI sessions on bar governance, finance, communications, and planning. State Bar Executive Director Chris Manos also attended the March BLI.

UM student wins top bankruptcy-law award

University of Montana law student Valerie Grubich has been selected to receive the 2007 Distinguished Bankruptcy Student Award for the 9th Circuit from the American College of Bankruptcy.

The awards are presented annually to the top law students in the 1st, 2nd, 3rd, 4th, 9th and 11th Circuit Courts of Appeal. Ms. Grubich is the first Montana student to receive the award for the 9th Circuit, which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

She was nominated for the award by the Hon. Ralph Kirscher, chief judge of the U.S. Bankruptcy Court for the District of Montana. She traveled to Washington, D.C., in March to represent the 9th Circuit at an awards reception during the annual meeting of the American College of Bankruptcy.

Ms. Grubich, will receive her juris doctorate degree from UM School of Law this year.

Study shows length of time for capital appeals

How long do appeals in capital cases take?

A report by a visiting fellow of the National Institute of Justice details how long it takes court systems to process a direct appeal in capital cases.

Dr. Barry Latzer, professor at John Jay College of Criminal Justice, examined data for 1,676 cases resolved between 1992-2002 in 14 states.

He found that, measuring from date of death sentence, it took a median 966 days to complete direct appeal. The number of days for an appeal to reach the court of last resort varied greatly between states. Petitions to the U.S. Supreme Court added a median of 188 to 250 days.

Factors that affected the number of days required to process an appeal included case complexity, number of dissenting opinions, if there was a reversal of the lower court decision, prior review by an intermediate appellate court, and if there were state laws or rules on expediting capital appeals.

Read the full report at www.ncjrs.gov/pdffiles1/nij/grants/217555.pdf



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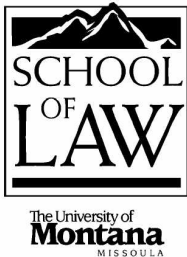
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A Sampling of Articles and Topics for 2007



Intelligent Design Will Survive Kitzmiller v. Dover

by David K. DeWolf, John G. West, & Casey Luskin

Disaster in Dover: The Trials (and Tribulations) of Intelligent Design

by Peter Irons

A Compilation of Articles from the Fall 2006 "The Right to Privacy"
Symposium, including *Privacy and Same-Sex Marriage: The Case for
Treating Same-Sex Marriage as a Human Right* by Vincent J. Samar

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The Spizziris, a ranch family in Shawmut, did not attend the hearing but were represented by attorney Linda Hickman.

After the hearing, Diane Spizziri said she was disappointed but not surprised to learn that Bacheller had pirated her daughter's trust fund. Spizziri said that while she appreciated Bacheller's admission, she believes the former lawyer entrusted to oversee her daughter's trust fund owes the family more than an accounting of how he spent the money.

"Not that this will heal the wounds, but I expect an apology from him," Spizziri said.

Beth Spizziri, 23, was 12 years old when she was injured in an accident at the family ranch. Two insurance settlements eventually awarded her just more than \$200,000. Edwards represented Beth Spizziri in the case, and Bacheller was appointed afterward to act as her guardian and the conservator of the settlement, which had been placed in trust.

Last year, the Spizziris hired Hickman after becoming concerned that bills were not being paid from the trust. When queries to Bacheller went unanswered, Hickman filed a motion in District Court to force Bacheller to give an accounting of the trust fund.

In September, Spaulding ordered Bacheller to appear in court on Jan. 2 with the financial records. When Bacheller failed to appear on that date, Spaulding issued a second order terminating him as conservator and guardian and ordering him to transfer the trust money to Beth Spizziri by Feb. 15.

When Spaulding still got no response from Bacheller, the judge issued an arrest order for the attorney on two civil contempt charges for violating court orders. He was held until in the Wheatland County jail on bond set by Spaulding at \$200,131.48, the amount of the trust fund award.

At the hearing, Moses told Spaulding that he was concerned that Bacheller had the right to remain silent. After discussing

those rights, Bacheller agreed to testify.

Moses then asked Bacheller why he didn't respond to Spaulding's court orders. "Depression. Despair. Fear." Bacheller responded.

Bacheller said he had "nothing left to turn over" because he had "converted (the trust fund) to my own use." He said no one knew what he did until early March, when he talked with Moses about the case.

"Is there anything left of Beth's (trust fund) to transfer?" Moses asked. "No," Bacheller responded.

Bacheller said he has financial records that may help track where the money was spent. A trustee has been appointed to oversee Bacheller's business records since his law firm was shuttered after his disbarment.

Bacheller told Spaulding he did not know how much of the trust fund might remain. Bacheller was not asked how he spent the money.

Spaulding dismissed the contempt charge related to Bacheller's failure to appear for the first hearing. He found Bacheller in contempt for failing to respond to the second order requiring him to turn over the trust money. Because the contempt charge is a civil complaint, the only punishment available is to require Bacheller to fulfill the

court order, Spaulding said.

But the judge warned Bacheller that an arrest warrant would be issued if Bacheller failed to meet the May 1 deadline for providing financial records related to the trust fund.

Hickman said after the hearing that she didn't feel it was appropriate at this stage of the case to press Bacheller on how and where he spent the money. "Ultimately I hope we'll get that answer," she said.

Hickman, who is also the Wheatland County attorney, said she is aware that Bacheller is being investigated for possible criminal charges. Any criminal charge in the case would be filed in Yellowstone County District Court or in federal court, she said.

Edwards said his next step is to request reimbursement for Beth Spizziri's financial loss through a Montana Bar Association program called the Lawyers' Fund for Client Protection. The program uses an assessment paid annually by Montana attorneys to pay for losses to clients of attorneys found to have committed a fraud.

"I think that's one of the great functions the bar provides," Edwards said.

This story appeared in the Billings Gazette on March 21.

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The Legal Writer

Judge Mark Painter

Redundancies & euphemisms



Bad: For free

Better: Free (Does the “for” add any meaning?)

Bad: In order to

Better: To (Same here – unless the in order adds something, strike it.)

Bad: By means of

Better: By (Same)

There are countless others. If you strike them you not only cut bad grammar but also save words. And your writing becomes much crisper.

Redundancies

Redundancies add words without adding meaning, cluttering up our writing. Remember that the goal is to use as few words as possible without losing meaning. Use the words you need to make the meaning clear, but no more.

The legal redundancies that resulted from the Norman Conquest – will and testament, null and void, free and clear, give and devise, and others of that ilk – were the subject of a previous column [at <http://www.judgepainter.org/legal-writer34.html>]. Never use them.

But we use many others – the garden-variety redundancies that creep into our writing – such as the usual example of very unique. Since unique means one of a kind, there can’t be any degrees. We use more of these than we might think. I have seen the ones in the chart below more than a few times.

Bad: During the month of May

Better: In May (May is a month, making month redundant.)

Bad: John Smythe, fifty years of age

Better: John Smythe, 50 (What else would it be but age?)

Bad: Going at a speed of 70 miles per hour

Better: Going 70 (Again, everyone knows.)

Bad: A period of a week

Better: A week

Bad: Hit him with a closed fist

Better: Fist (If it’s not closed it’s not a fist.)

Bad: Convicted felon

Better: Felon (To be a felon one must necessarily be convicted.)

Bad: Pair (or set) of twins

Better: Twins

Bad: In the near vicinity

Better: In the vicinity, or better, near.

Bad: It was raining outside

Better: It was raining (Does it rain inside?)

Bad: Past history

Better: History (History is necessarily past.)

Euphemisms

Shun euphemisms. If people die, they died. They didn’t pass away, or pass on, or even worse, expire. (Do we all have an expiration date?). A tax increase is just that – not a revenue enhancement.

A euphemism is a less harsh term for something we don’t really want to talk about: collateral damage, instead of civilian deaths, correctional facility for prison. And toilet paper has morphed into bathroom tissue. The simple concept of a lie is now a fabrication, or erroneous information, or disinformation. One of my favorites is how lawyers describe their clients’ thefts: they just misappropriated the money. Sounds like a simple bookkeeping error.

Not all euphemisms are bad – sometimes a new word for something is better. Mentally challenged sounds kinder or more accurate than mentally retarded. But eschew extending challenged to the mundane: our vertically challenged candidate, the follically challenged newsreader.

If a new word helps, use it. But most are just silly, such as in the new government term for hunger. Hunger has been euphemized.

The U.S. Department of Agriculture has started to purge hunger from America. A noble goal, but there will still be as many hungry Americans. But they have been redefined as “lacking in food security.” Maybe terrorists are blowing up the broccoli? Should we lock up the lima beans?

Food insecurity is a euphemism; it’s also jargon of the worst kind – bureaucratic doublespeak.

I’m not making this up. A panel of “experts” in hunger (food insecurity) has studied the issue for the USDA.

I download the quotation below directly from the USDA web site. (It was not easy to find – the headline on the web site was that four people had been appointed to the Peanut Board.) The experts, after no telling how long and at what cost, have come up with, among others, these recommendations:

■ **Recommendation 3-1:** USDA should continue to measure and monitor food insecurity regularly in a household survey. Given that hunger is a separate concept from food insecurity, USDA should undertake a program to measure hunger, which is an important potential consequence of food insecurity.

■ **Recommendation 3-2:** To measure hunger, which is an individual and not a household construct, USDA should

develop measures for individuals on the basis of a structured research program, and develop and implement a modified or new data gathering mechanism. The first step should be to develop an operationally feasible concept and definition of hunger.

■ **Recommendation 3-3:** USDA should examine in its research program ways to measure other potential, closely linked, consequences of food insecurity, in addition to hunger, such as feelings of deprivation and alienation, distress, and adverse family and social interaction.

■ **Recommendation 3-4:** USDA should examine alternate labels to convey the severity of food insecurity without the problems inherent in the current labels. Furthermore, USDA should explicitly state in its annual reports that the data presented in the report are estimates of prevalence of household food insecurity and not prevalence of hunger among individuals.

Running a test of readability on the above gem, it comes in at a grade level of 18.7 – people who have had 18.7 years of formal education should be able to understand it. That means a doctorate.

Being the proud owner of a doctorate, I should understand it, but I don't. Are they trying to say that hunger affects people, not households? So, in the last paragraph, household food insecurity doesn't mean the people in the household are hun-

gry? It also says something similar in the second paragraph. Paragraph three talks about measuring problems of food insecurity. I guess we would expect adverse family and social interaction if people do not have enough to eat.

Most Americans are food secure – we have plenty to eat. We are so secure that obesity is a major problem.

But according to the same USDA, there are still 35 million Americans who are sometimes hungry – that is they do not have enough to eat – they should not be euphemized away.

Readability

I always show the readability scores for this column. Statistics for this column (excepting the quotes, of course, which are unintelligible): 13 words per sentence, 7 passive voice, and grade level 9.3.

MARK PAINTER has served as a judge on the Ohio 1st District Court of Appeals for 12 years, after 13 years on the Hamilton County Municipal Court. He has taught as an adjunct professor at the University of Cincinnati College of Law since 1990. Judge Painter is the author of 340 nationally published decisions, 102 legal articles, and 5 books, including "The Legal Writer: 40 Rules for the Art of Legal Writing." It is available from <http://books.lawyersweekly.com>. Judge Painter has given dozens of seminars on legal writing. Contact him through his web site, www.judgepainter.org.

NEWS ABOUT MEMBERS

Karan L. Dunnigan, a 1983 graduate, with honors, from the University of Montana School of Law, was recently named field solicitor (Billings Field Office), Office of the Solicitor, U.S. Department of the Interior. The Office of the Solicitor provides legal services to the Secretary of the Interior and various Interior bureaus and agencies. Ms. Dunnigan has been an attorney-advisor in the Solicitor's Office since 1988. Prior to that, Ms. Dunnigan clerked for former U.S. District Judge James F. Battin.

Paul T. Ryan has opened the office of Paul Ryan & Associates PLLC in Missoula. Mr. Ryan has been practicing law in Missoula since 1993, and was formerly a shareholder at Datsopoulos, MacDonald & Lind. His new office will have an emphasis on personal injury law, criminal defense and civil litigation. He is a native of Missoula. Contact him at 218 E. Front St., Suite 210, Missoula MT 59802; (406) 542-2233; or paulryanlaw@gmail.com.

Timothy K. Wenz has opened the Wenz Law Office in Kalispell. Mr. Wenz is a 2002 graduate of the University of Montana School of Law. From October 2002 to February 2007, he served as a deputy county attorney for Flathead County where he prosecuted felony and misdemeanor criminal cases. He will have a general practice with an emphasis on

criminal defense and personal injury law. Mailing address is: 309 1st Ave. E, Kalispell, MT 59901; phone (406) 752-9369; fax (406)-257-7469.

DEATHS

Fred Root, Missoula attorney

Retired Missoula attorney Fred C. Root, 93, died on March 4 at his home.

Mr. Root was born and raised in Butte. He was an accomplished middleweight boxer. He attended Butte public schools, Montana State University and the University of Montana, where he received his law degree in 1942.

After graduation, Mr. Root entered the U.S. Army and served through the remainder of World War II, serving in the Philippines and New Guinea. He was decorated on several occasions and received a Purple Heart for wounds received in combat in New Guinea. He ended his military career as a captain in 1946.

In 1943, he married Ida Radcliff Birke of Manchester, England. She died in 1967 in Missoula.

In 1946, Mr. Root started his general law practice in Missoula, practicing in state and federal courts. He was a pres-

ident of the Western Montana Bar Association. In 1961, he became the Missoula city attorney, and he held that position until 1978, when he retired.

Mr. Root was an active, charter member of the Western Montana Shrine, as well as the Odd Fellows, Elks, Masons, and the American Disabled Veterans.

Mr. Root is survived by a daughter and a son.

John McCarvel, retired district judge

Former Great Falls District Judge John M. McCarvel, died March 10 at age 85 in a hospital near his Palm Desert, Calif., home. He was a past president of the Montana Bar Association.

In a tribute on March 14, the Great Falls Tribune called him "a colorful state judge who produced many opinions and ran a no-nonsense courtroom."

Judge McCarvel was in private law practice when he was first elected to the bench in 1978. He served as district judge through 1994, when he lost a bid for re-election.

"He cut to the core of matters," recalled District Judge Tom McKittrick of Great Falls for the *Tribune* article. "He didn't beat around the bush." McKittrick prosecuted cases before McCarvel, and also served with him as a judge.

Judge McCarvel didn't hesitate to cite people for contempt during his time on the bench, the *Tribune* said.

"You didn't try to pull any fast stunts in his courtroom," McKittrick recalled. "He maintained control."

McKittrick said he and Judge McCarvel both grew up in Anaconda, and their fathers both came from the same town in Ireland, Carrickmacross.

A World War II Navy veteran, Judge McCarvel gained a law degree from the University of Michigan.

Judge McKittrick's father, Dan, who was mayor of Anaconda at the time, hired McCarvel as the city attorney right out of college, the *Tribune* said.

As an attorney, McCarvel handled private criminal defense cases – sometimes for indigent defendants – as well as personal injury cases and divorce matters, Judge McKittrick recalled.

Leonard Jungers, attorney and farmer

Leonard D. Jungers, 77, a longtime attorney in Big Sandy and Fort Benton, died at his home in Billings on March 19 after a lengthy illness.

He was born in Regent, N.D. He graduated from high school in Forsyth, Mont., and received a bachelor of arts degree from Carroll College in Helena. After serving two years in the Army, he attended law school at Gonzaga University in Spokane. He passed the Montana bar exam in 1956 and graduated from law school the following year.

Mr. Jungers practiced law in Fort Benton and Big Sandy for 50 years, but his first love was his farm, his obituary said.

Mr. Jungers is survived by his wife, Audrey, a daughter and a son. He has preceded in death by two sons and a grandson.

Robert Gabriel, Great Falls attorney


Retired Great Falls attorney Robert "Bob" W. Gabriel, 78, died of natural causes March 20 at a Great Falls hospital.

Mr. Gabriel was born in Ortonville, Minn., and grew up and attended schools in Minnesota, North Dakota and Montana, graduating from Great Falls High in 1945. He received a law degree from University of Montana School of Law.

Mr. Gabriel was one of the founding members of the Montana Trial Lawyers Association. He worked as a city attorney for Great Falls and was an assistant district attorney for Cascade County. He operated a private law practice in Great Falls for more than 50 years. Mr. Gabriel was a strong advocate for Native American rights and performed such advocacy pro bono, his obituary said.

Mr. Gabriel was president of the Young Democrats State Association, delegate to the Democratic National Convention in 1960, and he met John F. Kennedy. He ran for the Montana Supreme Court in 1972.


He also was passionate about farming, beginning with the original breaking of the land on the family farm west of Box



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Elder which is still operated by his nephew. He was an avid fly fisherman, private pilot, bird hunter, skier, motorcyclist, sculptor and short-story writer.

Survivors include his wife, Catherine, and a daughter.

Jerry Kohn, attorney and insurance man

Jerome M. "Jerry" Kohn died on March 28 at the age of 91.

Mr. Kohn was born in Far Rockaway, N.Y. He soon moved with his mother to Billings and remained a resident of Billings for the next 90 years, until his death.

For his junior and senior years of high school, his parents enrolled him in the Randolph Macon military academy in Front Royal, Va., where he graduated as valedictorian in 1932. He then went on to attend the University of Virginia, where he graduated with honors in 1936, and the University of Montana School of Law, where he graduated in 1938.

After law school, Mr. Kohn practiced law in Billings and also helped his mother operate the family's wholesale candy and tobacco business. In 1942, he joined the Navy and attended midshipman's school at Columbia University in New York City, where he earned an ensign's commission. During World War II, he served on the staff of Admiral M.L. Deyo, seeing action in both the Atlantic and Pacific theaters.

In 1941, Jerry married Elizabeth "Betty" Sanders of Wilsall. After the war, they settled back in Billings to raise a family. She died in 2000.

In the early 1950s, Mr. Kohn joined American National Insurance Company, became a chartered life underwriter, and became active in the National Association of Life Underwriters. In 1968, he was elected trustee of the national association. He was also active in the Montana Life Underwriter's Association.

Mr. Kohn was president of the Billings Optimist Club, district governor of Optimist International, and an active member of the Elks Club. He belonged to Congregation Beth Aaron, helping to establish the congregation's first synagogue in 1940 and later serving as president of the congregation. As a youngster, Jerry missed the opportunity to have a Bar Mitzvah, the traditional Jewish coming-of-age ceremony for 13-year-olds. He remedied that in 1998, when he and several other adult members of the congregation, after months of Hebrew lessons and other studies, were Bar Mitzvahed together in a ceremony both solemn and joyous. He was 83 years old at the time. Mr. Kohn was appointed by Gov. Ted Schwinden to the State Board of Medical Examiners and spent many years representing the insurance industry on the hospital rate review board.

Mr. Kohn traveled extensively, and in 2001 he fulfilled a lifelong dream of traveling all the way around the United States by train. He was a member of MENSA, an enthusiastic "big brother" for the Big Brothers and Big Sisters program in Billings, and a dedicated H.O.S.T.S. volunteer, helping Billings elementary students with reading and math for over 10 years.

Mr. Kohn is survived by two daughters and a son.

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ATTORNEY: Dawson County Domestic Violence Program is seeking a full-time civil legal attorney to work in Eastern Montana. This individual will provide civil legal assistance to victims of domestic violence, sexual assault and stalking. Salary depends on experience. Send a resume and a sample of your legal writing. Applicants must be admitted to practice in Montana. Send to: Dawson County Domestic Violence Program, PO Box 505, Glendive MT 59330.

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Indian law and criminal law, and trial experience preferred. Knowledge of criminal law and procedures, rules of evidence and civil procedures, familiarity with computerized legal research and word processing are required. Indian preference applies. Salary range negotiable, from \$50,000 depending on qualifications. Submit a letter of interest, resume and references to: Crow Human Resources Department, PO Box 159, Crow Agency MT 59022, with a copy to Office of Legal Counsel, PO Box 340, Crow Agency MT 59022. Position open until filled.

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ASSOCIATE: Sullivan Tabaracci & Rhoades PC seeks an associate attorney with at least 3 to 7 years experience to complement its growing transactional and litigation practice specializing in commercial, real estate and business law. Our 11-member firm enjoys over seven decades of combined experience, and provides associates with excellent opportunities to expand their legal practice. In our continuing effort to exceed our client's expectations, we hire only exceptional attorneys and staff. Situated in centrally-located Missoula, the firm's upscale office suite offers a spacious, technologically advanced and pleasant work environment. Successful applicants must be licensed to practice law in Montana and demonstrate an exceptional academic background as well as superior research, analytical, verbal and writing capabilities. All applications will be held in confidence. Please submit your cover letter and resume to: Sullivan, Tabaracci & Rhoades PC, Attn: Office Administrator, 1821 South Avenue West, Third Floor, Missoula

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LEGAL SECRETARY / LEGAL SUPPORT: The Missoula law firm of Phillips Bohyer & Hedger is seeking a highly professional full-time legal secretary for two positions. Requires two years experience in a law firm - education, licensing, certificate or training will be considered. Will provide support to attorneys and paralegals. Requires a high degree of accuracy. Involves word processing; transcribing; opening new files; mail duties; calendar oversight for meetings, travel, appointments, seminars; legal assistant tasks; possible backup phone reception and other duties as needed. Must have strong computer/word processing skills, excellent written and oral language skills, reasoning and problem-solving ability. Must maintain confidentiality, be able to focus on work while multi-tasking, be supportive and friendly while maintaining calm and professional demeanor. Experience in insurance defense litigation or railroad practice a plus. Minimum typing test of 60 WPM, WordPerfect and Word tests. Competitive pay package includes 401K; health insurance/flex benefit

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LEGAL ASSISTANT: Small downtown Billings firm seeks personable and motivated legal assistant for part-time employment. Ideal candidate must be well organized, with strong computer skills and ability to thrive in a busy environment. Salary appropriate to experience. Please send cover letter and resume to *The Montana Lawyer* #3-23, PO Box 577, Helena MT 59624.

LEGAL ADMINISTRATOR: Missoula law firm of Boone Karlberg PC seeks legal administrator for office of 14 attorneys. Duties include human resource management, financial oversight, A/P, A/R, payroll and taxes, facility management, network administration. Boone Karlberg offers excellent benefit package and salary depends on experience. Please send cover letter and resume to Dean A. Stensland, Boone Karlberg PC, PO Box 9199, Missoula MT 59807-9199.

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