

# Lawyer

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THE STATE BAR OF MONTANA



## Emily did it!

18 hours  
and 33 miles  
later, Kalispell  
lawyer makes  
Montana  
swimming  
history on  
behalf of  
ailing child



**2010**  
**Annual Meeting**  
**program inside**

## Court opening door to attorney discipline details



*Proposed rule changes  
give public more access  
to formal sanctions*

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## Lawyer advertising: new rules

See court order on Page 20



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## PRESIDENT-ELECT'S MESSAGE

# We need to laugh at ourselves

## *Chilling out in this overheated profession*

Joe Sullivan

**By the Court:** *Is there any reason why you couldn't serve as a juror in this case?*

**By a Potential Juror:** *I don't want to be away from my job that long.*

**The Court:** *Can't they do without you at work?*

**Potential Juror:** *Yes, but I don't want them to know that.*

What we do is serious work. We help other people solve their problems. We seek to achieve justice for our clients. We attempt to protect those susceptible to abuse.

However, like everything in life, we need balance. There is a time to be serious and a time to laugh. Laughing at ourselves and how serious we are may well be one of the best sources of balance and perspective.

**By Attorney:** *Can you describe the individual?*

**By Witness:** *He was about medium height and had a beard.*

**Attorney:** *Was this a male or a female?*

Over the next year, I will have the privilege of serving as your president. One of my responsibilities in that role is to write a President's Message each month. (They let me start early so Cindy Smith could have a month off.)

The goal of the message is not just to fill a page of *The Montana Lawyer*. The message must be compelling. As Sister Kathleen, my high school English teacher would say, "An essay should be like a young girl's skirt, long enough to cover the subject matter, but short enough to keep it interesting" (it was an all-boys Catholic high school). I intend to make these monthly letters interesting by challenging you in ways that hopefully better our profession and our Bar.

**By Attorney:** *Did you blow your horn or anything?*

**By Witness:** *After the accident?*

**Attorney:** *Before the accident.*

**Witness:** *Sure, I played for ten years. I even went to school for it.*

My initial challenge to you is twofold: (1) make yourself laugh at least once a day for a week; and (2) once a day for a week make someone else laugh. Sound ridiculous? Try it. Laughter is contagious and addictive. Then, at the end of the week, take a moment to reflect on the seriousness of your work.

I believe if you commit to this challenge you will reflect back at week's end with a somewhat different perspective. Those things in your work that are serious will still be serious. Their seriousness may even be emphasized. However, many things you felt were serious may well have found their proper perspective. It is my hope this exercise in laughter will bring you some balance.

**By Attorney:** *What gear were you in at the moment of impact?*

**By Witness:** *Gucci sweats and Reeboks.*

Finally, I would like to offer thanks to a person I feel has an excellent sense of balance in her life – Cindy Smith. She is soft spoken, diligent, dedicated, caring, and compassionate. She runs a law firm, is a wonderful mother, and is a good friend to many (of whom I feel lucky to be one). She has devoted endless hours to our Bar as a trustee, president-elect, and now as our president. It is my hope for her that she received as much from her time and efforts as she gave.

We are fortunate to have people like Cindy in our profession. I encourage any of you, especially those of you new to our profession, to look to Cindy as an example of a person who truly has a balance in her life. Best of all, she has a great laugh.

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**FOR OTHER HUMOROUS** courtroom quotes see [www.request.net/g2g/humor/courtroom/index.htm](http://www.request.net/g2g/humor/courtroom/index.htm).

# Proposed rules would let public in on attorney discipline details

On July 6, the Montana Supreme Court issued an order proposing changes to the Rules of Lawyer Disciplinary Enforcement that would make public the details when an attorney is formally disciplined.

The action follows a lawsuit filed by the *Billings Gazette* seeking information about the 2006 discipline of a former Billings assistant city attorney.

The Court agreed to set up a working group consisting of representative of the *Gazette*, the Commission on Practice, the Montana Newspaper Association and the State Bar of Montana.

The proposed revisions, presented in the complete July 6 order below, allows the public to see the details of an attorney's violation of rules of conduct after a formal discipline process is complete, while still allowing for a private warning to attorneys who commit minor misconduct.

No. AF 06-0628

## IN THE MATTER OF PROPOSED REVISIONS TO THE RULES FOR LAWYER DISCIPLINARY ENFORCEMENT

For well over a year, the Court has been exploring various options for changes to the Montana Rules for Lawyer Disciplinary Enforcement, primarily in recognition of the public's right to know under Article II, Section 9 of the Montana Constitution. We have been aided in this endeavor by various entities and individuals, and have accepted comments at three public meetings and several drafts of proposed revisions to the Rules.

The Court now offers the attached proposed revisions to the Rules for public comment.

IT IS ORDERED that this Court will accept public comments on the attached proposed revisions to the Rules for Lawyer Disciplinary Enforcement until 5 p.m. on Aug. 5, 2010. Each person or entity wishing to comment on the proposed revisions shall file his or her comments, in writing, with the Clerk of this Court within that time.

## Court's proposed changes to the Rules for Lawyer Disciplinary Enforcement

### RULE 3. REVIEW PANELS: COMPOSITION; POWERS & DUTIES; QUORUM

**A. Composition.** The Chairperson of the Commission shall

appoint one or more Review Panels of five members each, at least two of whom shall be non-lawyers; shall designate a Chairperson for each Review Panel; and shall realign the membership of Review Panels from time to time.

**B. Powers and Duties.** A Review Panel shall:

(1) Review Disciplinary

Counsel's request to file a formal complaint, together with the complaint, the response from the lawyer against whom the complaint was made and any reply from the complainant together with other relevant documents and Disciplinary Counsel's intake summary, investigative report and recommendations.

~~(2) Determine any preliminary and procedural matters.~~

~~(3) Refer complaint to Disciplinary Counsel for any further investigation, if needed to determine whether a formal complaint is appropriate.~~

**THE COURT ACCEPTED COMMENTS** on the proposed revisions through Aug. 5. The order and a notice about the comment period appeared on the State Bar web site.

~~(4) Dismiss the complaint when the facts do not appear to warrant disciplinary action.~~

~~(3) (5) Approve Request~~ Disciplinary Counsel's request to prepare and file with an ~~Adjudicatory Panel~~ a formal complaint when the facts appear to warrant disciplinary action or transfer to disability/inactive status.

~~(6) Request Disciplinary Counsel's to prepare and file with an Adjudicatory Panel a complaint proposing interim suspension in an appropriate case.~~

~~(4) (7) Hear and determine requests for review pursuant to Rule 10C(3) and for reconsideration pursuant to Rule 14.~~

~~(5) (8) Authorize the stay of disciplinary proceedings for good cause shown pursuant to Rule 28.~~

~~(6) (9) Conduct show cause hearings when a lawyer has refused to respond to inquiries from the Office of Disciplinary Counsel or the Commission.~~

~~(7) (10) Notify parties of action by a Review Panel.~~

**C. Quorum.** Three members of a Review Panel, at least two of whom are lawyers, shall constitute a quorum, however, any act of the Review Panel shall require the vote of three members.

#### **RULE 4. ADJUDICATORY PANELS: COMPOSITION; POWERS & DUTIES; QUORUM**

**A. Composition.** The Chairperson of the Commission shall appoint one or more Adjudicatory Panels of nine members each, at least three of whom shall be nonlawyers; shall designate a Chairperson for each Adjudicatory Panel; and shall realign the membership of Adjudicatory Panels from time to time.

**B. Powers and Duties.** Adjudicatory Panels shall, in accordance with the specific procedures and provisions of these Rules:

- (1) Hold hearings on formal complaints and complaints for interim suspension filed by Disciplinary Counsel;
- (2) After hearing, make findings of fact, conclusions of law, and recommendations to the Court for discipline or other disposition of formal complaints ~~and complaints for interim suspension.~~
- (3) Hear and determine preliminary and procedural matters incidental to the exercise of its powers and duties.
- (4) Administer ~~private~~ admonitions ~~pursuant to Rule 13.~~
- (5) Hear and determine requests for reconsideration pursuant to Rule 14.
- (6) Administer oaths, provide for discovery, and exercise its subpoena power pursuant to Rule 19.
- (7) Authorize the stay of a disciplinary proceeding for good cause shown pursuant to Rule 28.
- (8) Hold show cause hearings when a lawyer has refused to respond or cooperate with the Office of Disciplinary Counsel, a Review Panel, or an Adjudicatory Panel pursuant to Rule 24.
- (9) ~~Administer discipline by consent pursuant to Rule 26.~~
- ~~(10)~~ Conduct proceedings relative to disability and transfer to inactive status pursuant to Rule 28.
- ~~(10)~~ ~~(11)~~ Hold hearings on petitions for reinstatement and make recommendations for their disposition to the Supreme Court pursuant to Rule 29.
- ~~(11)~~ ~~(12)~~ Hold hearings and make recommendations to the Court concerning assessment of the costs of proceedings, investigations and audits pursuant to Rule 9.
- ~~(12)~~ Approve Disciplinary Counsel's request to file a formal complaint when the facts appear to warrant disciplinary action or transfer to disability/inactive status.

**C. Quorum.** Five members of an Adjudicatory Panel, at least three of whom are lawyers, shall constitute a quorum, however, any act of the Adjudicatory Panel shall require the vote of three members.

#### **RULE 5. OFFICE OF DISCIPLINARY COUNSEL**

**A. Appointment.** The Court shall appoint a lawyer to serve as Chief Disciplinary Counsel and may appoint such Deputy Disciplinary Counsels as they deem necessary. Disciplinary Counsel shall not engage in private practice; shall be admitted to practice in Montana at the time of appointment or within a reasonable time thereafter as determined by the Court; and shall maintain offices in Helena, Montana, in facilities desig-

nated by the Court.

**B. Powers and Duties.** Disciplinary Counsel shall perform all prosecutorial functions and shall have the following powers and duties:

- (1) Supervise Office of Disciplinary Counsel (Office) staff in performing central intake functions;
- (2) Evaluate all information coming to the attention of the Office to determine whether it is within the disciplinary jurisdiction of the Court;
- (3) Investigate all information coming to the attention of the Office which, if true, would be grounds for discipline or transfer to disability/inactive status;
- (4) Investigate all facts pertaining to petitions for reinstatement or readmission;
- (5) ~~Dismiss the information which, if true, would not constitute misconduct or incapacity; or recommend discipline~~ a complaint that Disciplinary Counsel determines does not warrant disciplinary action;
- (6) In addition to dismissing the complaint, Disciplinary Counsel may issue a letter of caution or take other corrective action when Disciplinary Counsel deems it appropriate;
- (7) Request leave to file a formal complaint when Disciplinary Counsel determines that disciplinary action is warranted;
- ~~(8)~~ ~~(6)~~ Prosecute before Review Panels, Adjudicatory Panels, and the Court, discipline, interim suspension, reinstatement, and readmission proceedings, and proceedings for transfer to or from disability/inactive status;
- ~~(9)~~ ~~(7)~~ Employ and supervise Office staff needed for the performance of prosecutorial functions and, when circumstances necessitate their use, appoint and supervise special investigators and volunteer special counsel;
- ~~(10)~~ ~~(8)~~ Notify promptly the complainant and the lawyer that an investigation is to be initiated by Disciplinary Counsel or, where Disciplinary Counsel dismisses, provide a concise written statement of the facts and reasons a matter has been dismissed;
- ~~(11)~~ ~~(9)~~ Develop written guidelines for determining which matters fail to allege facts that would constitute grounds for disciplinary action;
- ~~(12)~~ ~~(10)~~ Request the Clerk of the Supreme Court to notify each jurisdiction in which a lawyer is admitted of a transfer to or from disability/inactive status, reinstatement, readmission, or any public discipline imposed in this state;
- ~~(13)~~ ~~(11)~~ Whenever costs have been assessed against a lawyer by the Supreme Court, assemble and serve on the lawyer an itemized list of the costs of proceedings, investigations, and audits;
- ~~(14)~~ ~~(12)~~ Seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction;
- ~~(15)~~ ~~(13)~~ Forward a certified copy of the judgment of conviction to the disciplinary office in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a serious crime (as hereinafter defined) in this state;
- ~~(16)~~ ~~(14)~~ Maintain permanent records of discipline and disability matters and compile statistics to aid in the adminis-

tration of the system;

(17) ~~(15)~~ Prepare an annual budget for the Office and submit it to the Board of Trustees of the State Bar of Montana for review;

(18) ~~(16)~~ Make reasonable and necessary expenditures pursuant to the reviewed budget to perform the duties of the Office;

(19) ~~(17)~~ Supervise and direct Office staff and operations;

(20) ~~(18)~~ Prepare and submit to the Court recommendations concerning the annual assessment of Bar members; and

(21) ~~(19)~~ Make recommendations to the Court about the lawyer regulation system.

**C. Prohibited Activities.** Disciplinary Counsel shall not have authority to render advisory ethics opinions, either orally or in writing, or to impose any form of discipline on a lawyer.

## RULE 9. DISCIPLINE AND SANCTIONS

**A. Forms of Discipline.** Discipline may take one or more of the following forms:

(1) Disbarment. "Disbarment" means the unconditional termination of any privilege to practice law in this State and, when applied to any attorney not admitted to practice law in this State, means the unconditional exclusion from the admission to or the exercise of any privilege to practice law in this State.

(2) Suspension from the practice of law for a definite period of time or for an indefinite period of time with a fixed minimum term. "Suspension" means the temporary or indefinite termination of the privilege to practice law in this State and, when applied to any attorney not admitted to practice law in this State, means the temporary or indefinite exclusion from the admission to or the exercise of any privilege to practice law in this State.

(3) Public censure.

(4) ~~Private~~ Admonition administered by an Adjudicatory Panel of the Commission.

(5) Probation.

(6) Requirement of restitution to persons financially injured.

(7) Reimbursement to the Lawyers' Fund for Client Protection.

(8) Assessment of the cost of proceedings, investigations and audits. Whenever costs of proceedings are assessed by the Supreme Court as part of the discipline imposed upon a lawyer, the Disciplinary Counsel shall assemble and serve upon the lawyer an itemized list of those costs. The lawyer shall then have ten days thereafter in which to file written objections with the Commission on Practice and, if so desired, request a hearing before an Adjudicatory Panel on whether the amount of such costs is reasonable and necessary. An Adjudicatory Panel shall thereafter recommend an amount of costs to be imposed, and shall file its recommendation, ~~along with any objections thereto,~~ with the Supreme Court, which shall then issue an appropriate order assessing costs.

(9) Interim suspension pending final determination of discipline.

**B. Discipline Criteria.** The following factors shall be considered in determining discipline to be recommended or imposed:

(1) The gravity and nature of the duty violated, including whether the duty is owed to a client, to the public, to the legal system, or to the profession;

(2) The lawyer's mental state;

(3) The actual or potential injury caused by the lawyer's misconduct; ~~and~~

(4) The existence of aggravating or mitigating factors; and

(5) The existence of prior offenses.

**C. Probation.** A lawyer against whom disciplinary proceedings are pending may be placed on probation by the Supreme Court or, with the lawyer's concurrence, by an Adjudicatory Panel. The probation shall be for such time and upon such terms and conditions as are determined appropriate in the case. Discipline may be imposed for violation of any of the terms and conditions of such probation, including satisfactory completion of a diversion or treatment program.

**D. Procedure for Discipline for Willful Contempt of Court and Failure to Purge the Contempt.** Upon receipt of a certified copy of an order of contempt that has become final, the Supreme Court may, in its discretion, issue an order to show cause why the lawyer's license to practice law should not be suspended or other discipline should not be imposed. The lawyer against whom such an order has been entered in district court shall not have the right or opportunity to re-litigate the merits of the contempt order, the right to hearing and due process having been afforded him or her in the district court. In the alternative, the Supreme Court may direct an adjudicatory Panel to issue the order to show cause or direct the lawyer to appear before the Adjudicatory Panel. In that event, the Adjudicatory Panel shall make a written recommendation to the Supreme Court regarding suspension of the lawyer's license or other discipline.

An attorney who has been purged of the contempt order may be reinstated to practice law. Prior to reinstatement, the lawyer shall be required to pay the costs of any proceedings before the Commission on Practice.

## RULE 10. OFFICE OF DISCIPLINARY COUNSEL PROCEDURE

**A. Central Intake and Evaluation.** The Office of Disciplinary Counsel shall perform central intake functions including, but not limited to, the following:

(1) Receive information and complaints regarding alleged lawyers' misconduct ~~from members of the public;~~

(2) Make appropriate referrals regarding information and complaints while assuring that any member of the public who wishes to make a complaint against a lawyer is able to do so;

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**More on RULE PROPOSALS, Page 24**

# Lawyer completes historic Flathead swim

By the Kalispell Daily Inter Lake

**A**fter a long day in the water Saturday [July 17], Kalispell swimmer Emily von Jentzen became the third person — and first woman — to swim the length of Flathead Lake.

Von Jentzen reached the shore of Boettcher Park in Polson at 10:49 p.m. after swimming for 18 hours, 26 minutes. Officially she covered 28 miles — although von Jentzen said the actual mileage is probably closer to 33.

A crowd of about 50 people, including an ill Missoula girl to whom the swim was dedicated, greeted von Jentzen in Polson.

She started her swim around 4:20 a.m. Saturday [July 17], but her day actually began hours before. Von Jentzen, a 27-year-old triathlete and recently hired Flathead County deputy attorney, had gone to bed around 10 p.m. Friday.

Two hours later she woke up for a bagel and peanut butter.

“My pattern is before a big event to wake up four hours before and eat,” von Jentzen said.

After her snack, she went back to sleep until 3 a.m., when her brother took her from her Kalispell home to the dock in Somers Bay where she would begin her swim. Her sister and father were already there to get the boat set up.

“At 3 o’clock in the morning, it was the first time in nine months that I thought to myself, this is kind of crazy,” von Jentzen said Sunday [July 18]. “People have been saying it to me, but that was the first time I thought it.”

When she arrived, her sister hurried over to her. “Don’t freak out, but we’ve got a little problem,” she told von Jentzen. The boat key was missing. Wild Wave Watercraft Rental had donated the boat, but von Jentzen doubted they’d appreciate a 3 a.m. call for help finding a key.

After a frantic search, they finally found it, but the delay meant von Jentzen started her swim about 20 minutes later than planned.

**THE EARLY MORNING** was a little cool, so von Jentzen started the swim with a Neoprene shirt over her sleeveless wetsuit.

“The first three miles were really good,” she said. “It wasn’t really cold.”

Difficulties came between mile four and mile 10 or 11, von Jentzen said. “I was having a bit of a dispute with my navigators about where I should be in the lake. They were trying to get the shortest route possible, but ... it was my understanding that I was heading toward the center of the lake,” she said.



**EMILY VON JENTZEN** takes a brief rest between the two pontoon boats that carried her support team during her 33-mile swim. Going by national Swim Federation rules, she was not allowed to touch either the boats or anyone on them. The team was allowed to hand her food and water bottles.

Not knowing exactly where she was in the water was confusing and mentally challenging, she added. “It was hard for me because I’m very much somebody who needs to know what I’m doing before I do it.”

**THE ROUTE VON JENTZEN TOOK** kept her relatively close to the shoreline. Between the wind and getting off course despite help from GPS, she thinks she swam about 33 miles — well above the 27.3-mile length she’d anticipated.

The added miles kept her in the water longer. When she reached the halfway point, von Jentzen had already been in the water about nine hours, and she knew there was no way she was going to make it to Polson under the 15-hour mark.



She worried that by the time she finally made it to shore, no one would be left to witness her feat. She also worried that 3-year-old Karmyn Flanagan, for whom von Jentzen did the swim as a fundraiser, would be long gone.

"She's so little. She's got a bedtime," von Jentzen worried.

**ON SUNDAY, AFTER** icing her sore shoulders and recuperating from the previous day's hard work with cinnamon rolls and a "Grey's Anatomy" marathon, von Jentzen didn't minimize the struggles she'd faced the day before.

"It really was just kind of like life," she said. "There were dark spots that were really bad when I really didn't know how much farther I could go."

Those dark spots came around mile nine, again between miles 17 and 20, and finally in about the final four miles of the swim — until the lights at Polson began to make the end seem like reality.

At one point, finishing seemed impossible. Simone Musbo, a member of her team, jumped into the water next to von Jentzen and asked what was wrong. "My shoulders hurt so bad!" she told him. Then she started to cry. When she finished, Musbo encouraged her to keep going.

"OK, now you're done. Take a deep breath. You're stronger than that. Let's keep going," he told her.

It was support from people like Musbo that helped von Jentzen finish. "There were hundreds of people rooting for me. If they weren't there at the lake, they were glued to their computers because my sister was updating my Facebook page," she said.

Having a purpose greater than herself helped as well, von Jentzen said. She had first heard about Karmyn, who has acute lymphoblastic leukemia, when she saw a flier about the little girl at the Missoula Staples store. That's when it occurred to von Jentzen that her swimming expedition could be used as a fundraiser for Karmyn.

"When I started to get discouraged, I kept coming back to Karmyn," she said. "Had I been doing that just it see if I could do it, I wouldn't have finished maybe."

**IT WASN'T UNTIL** von Jentzen finally reached Boettcher Park that she got to meet the little girl who'd helped her make it through the long day. People helped von Jentzen out of the water; her legs weren't working well, and she needed help

**"MY CO-WORKERS WERE GREAT!"** Ms. von Jentzen e-mailed *The Montana Lawyer* about her colleagues in the Flathead County Attorney's Office. "They rented a pontoon and were out on the lake from about 11 a.m. til I finished! It was pretty cool. Then when I came back to work on Monday they had decorated my entire office with balloons, streamers and copies of the [Kalispell] *Daily Inter Lake!* :)"



A exhausted von Jentzen kneels on the beach at Polson, seconds after completing her swim.

waiting for von Jentzen to complete her swim.

Karmyn was shy, von Jentzen said, and seemed intimidated by the cameras around them. But von Jentzen had a gift for her. "I had picked up a heart-shaped rock my sister had found in Somers and taped it under my swimsuit," she said. "I untaped it and said, 'Karmyn, this went the whole way with me,' and gave that to her."

In return, Karmyn gave von Jentzen a collage of photos of her and her brother. Then she brought the swimmer flowers. Then she left and returned with licorice; "she thought I looked hungry," von Jentzen said.

Von Jentzen was hungry; her mother brought her a milkshake, which she downed in a few gulps. She devoured a couple of hamburgers on the drive back to Kalispell, but by the time she got home around 1 a.m. Sunday, all she wanted was to shower and go to bed.

**VON JENTZEN WOKE UP** at 7 a.m. starving and in pain. But after her mom helped saran-wrap bags of ice around her shoulders and she ate the cinnamon rolls a friend had brought over, Von Jentzen felt better.

That's when the real fun began,

she said.

"I got to go back through my phone and see all the voice mails and text messages and Facebook posts people left," she said. "It's overwhelming, the number of people waiting to hear the next update."

"It was so awesome, so absolutely awesome."

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**READERS CAN LEARN** more about von Jentzen's Flathead Lake swim on her blog at <http://50kforkarmyn.blogspot.com>, the Kalispell Daily Inter Lake said.

**DONATIONS FOR KARMYN FLANAGAN** may be sent to von Jentzen's Missoula post-office box: P.O. 3601, Missoula MT 59803.

# The 2010 Annual Meeting agenda is set

A chance to visit the new federal courthouse on the banks of the Missouri River, meeting the Montana Supreme Court candidates, and more than nine hours of CLEs highlight the State Bar of Montana's 2010 Annual Meeting in September.

The Annual Meeting will be held on Sept. 16-17 at the Holiday Inn in Great Falls. The Meeting also provides a gathering place for various commissions, committees, and Bar sections.

CLEs will include Ethics credits, and a two-part course on the new Health Reform Act, by Missouri attorney Andy Haynes.

The Annual Meeting's agenda:



The Cascade County Bar Association will host a reception at the new U.S. District Court courthouse, above, on the evening of Sept. 15.

## WEDNESDAY, SEPTEMBER 15

- |             |   |
|-------------|---|
| 1 p.m.      | Joint meeting of Equal Justice Task Force, Access to Justice Committee & Commission on Self-Represented Litigants |
| 5:30-7 p.m. | Local Bar reception at the new Federal Courthouse   |

- |           |   |
|-----------|---|
| 3:45 p.m. | Probate & Civil Hearing Delays – <i>Chuck Willey, Esq., Missoula</i>  |
| 4:15 p.m. | Attorneys' Criticism of Judges: Professional Misconduct or Protected Speech? – <i>George Critchlow, Acting Dean, Gonzaga Law School</i> |

## THURSDAY, SEPTEMBER 16

- |           |  |
|-----------|--|
| 8:30-noon | Board of Trustees meeting. Bar members are invited to attend |
|-----------|--|

- |            |                                      |
|------------|--------------------------------------|
| 12:00-1:00 | New Lawyers Section luncheon meeting |
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- |          |  |
|----------|--|
| 1-5 p.m. | <b>Hot Topics CLE</b> (3.75 CLE credits, including 1.5 Ethics credits) |
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|-----------|--|
| 1 p.m.    | Opinions of Note: Supreme Court Update – <i>Justices</i>                   |
| 2 p.m.    | Ethics & Technology (1.0 Ethics credit) – <i>Professionalism Committee</i> |
| 3 p.m.    | Break  |
| 3:15 p.m. | Social Media in Employment – <i>Eric Nord, Esq., Billings</i>              |

- |           |  |
|-----------|--|
| 4:45 p.m. | Update from the MTLA   |
| 5 p.m.    | Uniform Laws – <i>Ed Eck, Esq., Missoula</i>   |
| 2:30 p.m. | Montana Justice Foundation meeting   |
| 4:30 p.m. | Resolutions Committee meeting – The Committee meets annually to review proposed resolutions and make recommendations at the annual business meeting on Friday, immediately following the awards luncheon |
| 5-5:45 pm | Gonzaga alumni reception   |
| 5:30 p.m. | President's Reception – <i>President Cynthia Smith, Missoula</i>   |
| 6:30 p.m. | <b>Annual State Bar Banquet</b> – The  |

Jameson Award will be presented, and we will honor the recipients of the Bar's 50-year membership pins

## FRIDAY, SEPTEMBER 17

8 a.m. **Candidates Forum** – Supreme Court Candidates Beth Baker, Hon. Nels Swandal & Hon. Mike Wheat invited

8:30 a.m.-noon **Hot Topics CLE** (3.0 CLE credits, including 1.0 Ethics credit)

8:30 a.m. Substance Abuse / Mental Illness (.5 Ethics credit) – *Mike Larson, Dillon*

9 a.m. Health Reform Act 101 for Lawyers – *Andy Haynes, Esq., Lee's Summit, Missouri*

9:30 a.m. Changes in Civil Procedure – *Randy Cox, Esq., Missoula*

10 a.m. Break

10:15 a.m. SAMI (.5 Ethics credit) – *Mike Larson, Dillon*

10:45 a.m. Health Reform Act 102 for Lawyers – *Andy Haynes, Esq., Lee's Summit, Missouri*

11:15 a.m. Hot Topics Facing the U.S. Attorney – *Mike Cotter, U.S. Attorney for Montana*

11:45 a.m. Update from the MDTL

Noon **Annual Awards Luncheon & Business Meeting** – The State Bar will present the Bousliman Professionalism

Awards, Haswell Award, Distinguished Service Awards and Haight Pro Bono Award. Also presented will be the Karla M. Gray Equal Justice Award. The gavel will be handed off from outgoing State Bar President Cynthia Smith to incoming President Joe Sullivan. The State Bar's Annual Business Meeting will follow immediately, with resolutions considered and voted upon by Bar members.

2 p.m.-5 p.m. **Hot Topics CLE** (2.75 CLE credits, including .5 Ethics credits)

2 p.m. Medical Marijuana: Dazed & Confused – *Panel Discussion (Alanah Griffith, Tom Singer, Merle Raph, Shane Vannatta & Mike Fanning)*

3 p.m. Changes in Federal Pleading Standards per *Ashcroft v. Iqbal* – *Katie Ranta, Esq., U.S. Law Clerk, Great Falls*

3:15 p.m. Break

3:30 p.m. Energy Blowing in the Wind – *Hertha Lund, Esq., Bozeman*

4 p.m. Federal Tax Update – *Martin Burke, Esq., University of Montana School of Law, Missoula*

4:30 p.m. Ethics 20/20 & Social Media (.5 Ethics credit) – *Irma Russell, Dean, University of Montana School of Law, Missoula*

5 p.m. Annual Meeting adjourns

5:30 p.m. Paralegal Section dinner

Ballots listing the candidates for this year's State Bar elections will be mailed to Bar members in early August. The ballots carry the names of 12 candidates who have filed nomination petitions for Bar officer and trustee positions.

Candidates for officer positions are:

■ Shane Vannatta, Missoula, for president-elect.

■ Damon Gannett (incumbent), Billings, and Antoinette (Toni) Tease, Billings for State Bar ABA delegate.

## Nominees listed for State Bar election

Candidates for trustee, voted on by attorneys in each of their Bar areas, are:

■ Area A (vote for one) – Randall Snyder, Bigfork.

■ Area B (vote for three) – Leslie Halligan, Matthew Thiel (incumbent), and Tammy Wyatt-Shaw (incumbent), all of Missoula.

■ Area C (vote for one) – Ellen Donohue, Anaconda.

■ Area D (vote for two) – Darcy Crum (incumbent) and Jason Holden (incumbent), both of Great Falls.

■ Area G (vote for two) – Jane Mersen (incumbent) and Lynda White (incumbent), both of Bozeman.

Members may also write in any other candidates of their choice.

Members must return the completed ballots to the State Bar by Aug. 31. The ballots will be counted on Sept. 10.

# IMPORTANT UPDATES\*

The Mid-Year update CD includes  
important updates and revisions to your 2010 Lawyers'  
Deskbook & Directory

Order yours by sending \$20 per copy to:  
State Bar of Montana  
P.O. Box  
Helena, MT 59624

Or online through the bookstore at  
[www.montanabar.org](http://www.montanabar.org)



\*Updates are in .PDF format.  
If you are unsure whether or not  
you have already purchased a copy,  
or for more information,  
call (406) 442-7660.

# Summary of May Board of Trustees meeting

*The following summary is from the minutes of the May 21 State Bar of Montana Board of Trustees meeting at Gallatin Gateway. The abbreviated meeting led the Board into a strategic planning meeting that lasted about eight hours.*

## REPORT OF THE PRESIDENT – Cindy Smith

Proposed changes to the Rules of Professional Conduct will be presented to the Board for review during the September meeting.

Ms. Smith attended an alternative bar exam conference in New Hampshire with UM Professor Greg Munro and Justice Pat Cotter. It was decided that such an alternative exam would not be a good fit for Montana at this time.

## REPORT OF THE SECRETARY-TREASURER – Paul Stahl

Mr. Stahl provided handouts to be used for the afternoon budget-primer discussion.

## REPORT OF THE PAST PRESIDENT – Chris Tweeten

**AT A SPECIAL** Board of Trustees meeting, via telephone on June 22, the Board considered nominees for the 2010 Bousliman Professionalism Award, and picked two winners. See who they are in the September Montana Lawyer.

The Board also unanimously approved the 2010-2011 strategic plan for the State Bar.

The Past Presidents Committee will meet in August at the Law School to select this year's recipient of the Jameson and Haswell Awards. The Committee will invite a member of the Board of Bar Examiners to present a proposed change to a uniform bar exam.

## REPORT OF THE PRESIDENT-ELECT – Joe Sullivan

Mr. Sullivan described the format for the strategic planning portions of the meeting and how it would involve everyone's participation as a group to be successful. ○

## State Bar to publish new Real Estate Transactions guide

The State Bar of Montana is scheduled to publish in August a new manual for attorneys titled "Montana Real Estate Transactions."

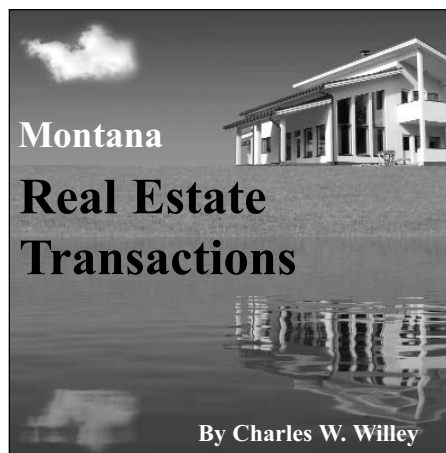
The 360-page manual is authored by Charles W. Willey, a Missoula attorney and a University of Montana School of Law adjunct professor.

The manual offers a comprehensive education on the history, statutes, and case law regarding any real-estate transaction that may take place in Montana. It provides in-depth coverage of legal issues involving water rights, seller's and realtor's duties, deeds, covenants, easements, oil, gas, and minerals interests, and much more.

The manual also offers sample real-estate transaction forms and discusses different types of real-estate agreements. The necessary environmental (and other) disclosures are also outlined. Indexed by a detailed and easy-to-use table of contents, the manual should become any Montana real-estate lawyer's No. 1 source for Montana-specific real-estate knowledge.

The Montana Real Estate Transactions manual was more than four years in the making, compiled from Mr. Willey's well-updated UM Law School lecture notes.

The manual will cost \$180 and can be ordered by calling (406) 442-7660.



## 17 suspensions for nonpayment of dues

The following attorneys were suspended from the State Bar of Montana, at *The Montana Lawyer* press time, for failing to pay their 2010 Bar dues:

Vivian Beaudoin, Plainfield, Mass.  
 Lewis E. Brueggemann, Billings  
 G. Richard Dzivi, Great Falls  
 Brent Erik Gess, Newport Beach, Calif.  
 Darel Adam Graves, Helena  
 W. Wayne Harper, Butte  
 Edward Hayes, Helena  
 M. Dean Jellison, Kalispell  
 Gilbert V. Kelling Jr., Venice, Fla.  
 Richard Klinger, Sherman Oaks, Calif.  
 Robert G. Mullendore, Missoula  
 Lawrence J. Nistler, Polson  
 Honorio Orlina, Gaithersburg, Md.  
 Jessica T. Owenboggs, Wichita, Kan.  
 Kimberly B. Proffitt, Winthrop, Me.  
 Keith Cameron Rennie, Polson  
 William W. Webb, Birmingham, Mich.

# Why I'm running for the Bar's ABA-delegate position

The purpose of this letter is to provide you with some background on the position of ABA delegate, and to ask for your vote in August.

As many of you know, I have been involved with the ABA Section of Intellectual Property Law (ABA-IPL) in a leadership capacity for nearly a decade. I have decided to run for ABA delegate because I believe my many years of service in the ABA-IPL Section have provided me with an understanding of the ABA as an organization that I could bring to bear in representing Montana attorneys before the ABA House of Delegates.

The ABA delegates play an important role in formulating ABA policy, which is the basis for the ABA's legislative efforts, amicus briefs, and other initiatives. ABA policy may also relate to ABA governance issues, such as membership and dues. Although many of the substantive policies are initially formulated at the section level, those policies are ultimately voted on by the ABA House of Delegates before they become official ABA policy. The only exception is when sections are given "blanket authority," which allows a Section to proceed (for example, with the filing of an amicus brief) in a given area of substantive law without having to go back to the House of Delegates for approval.

As stated by Carolyn Lamm, current ABA president, in an article appearing in the May 2010 issue of the *ABA Journal*, "The ABA advocates on behalf of all policies adopted by our House of Delegates, but most efforts focus on 10 federal governmental priorities based on factors such as breadth and strength of ABA interest, importance to the practice of law, timeliness and potential for impact." Among the 10 issues listed by Ms. Lamm include: (1) access to legal services; (2) anti-terrorism and preservation of civil liberties; (3) criminal justice system improvements and protection of rights; (4) independence of the judiciary; and (5) promoting international rule of law.

With nearly 400,000 members, the ABA is the largest voluntary professional membership organization in the world. Nearly one-third of all U.S. attorneys belong to the ABA. The ABA is typically dominated by larger, urban law firms, and I believe it is important for rural (and particularly small firm and solo) practitioners to have a strong voice in the ABA. Those of you who know me know that I am no wallflower. I would welcome your opinions on all issues involving the ABA and how those issues impact our state, and if given the opportunity, I would proudly represent the Last Best State before the ABA House of Delegates.

— *Antoinette (Toni) M. Tease*  
Billings attorney

## STATE BAR CALENDAR

### August 11

**Technology Committee** conference call, 10 a.m.

### August 13

**State Bar Executive Committee** meeting, 1 p.m.,  
UM School of Law, Missoula

### September 15

**Joint meeting** of Equal Justice Task Force, Access to Justice Committee, and Commission on Self-Represented Litigants, 1 p.m., Holiday Inn, Great Falls.

**State Bar Executive Committee** meeting, Great Falls

### September 16-17

**State Bar's 36th Annual Meeting**, Holiday Inn Hotel,  
400 10th Ave. South, Great Falls

### September 16

**State Bar Board of Trustees** meeting, 8:30 a.m.,  
Holiday Inn, Great Falls

**New Lawyers Section** luncheon meeting, noon,  
Holiday Inn, Great Falls

**Montana Justice Foundation** meeting, 2:30 p.m.,  
Holiday Inn, Great Falls

**State Bar Resolutions Committee** meeting, 4:30 p.m.,  
Holiday Inn, Great Falls

### September 17

**Paralegal Section** dinner meeting, 5:30 p.m., Holiday Inn, Great Falls

### September 24

**Board of Bar Examiners** meeting, 10 a.m., State Bar offices, Helena

### October 1

**State Bar Executive Committee** meeting, 10 a.m.,  
State Bar offices, Helena.

### October 8

**Construction Law Institute**, Hilton Garden Inn,  
Bozeman

### October 22

**New Lawyers Workshop**, 8 a.m.-1:15 p.m., Hilton Garden Inn, Missoula

### October 22-23

**Bankruptcy Section CLE**, Hilton Garden Inn, Missoula

# Upcoming CLE seminars for Montana lawyers

## CLEs with Ethics & SAMI\* credits

*\*Substance Abuse / Mental Impairment*

5.0 Ethics credits required every 3 years – 1.0 of them must be a SAMI credit. See [www.montanabar.org](http://www.montanabar.org) for SAMI updates.

September 6 Helena – Metcalf Building, Capitol Complex  
**State Ethics Law** 3.00 CLE credits, including 3.0 Ethics (no SAMI) credits. Presented by the state Personnel Division, (406) 444-3985

September 16-17

**State Bar Annual Meeting CLEs**, Holiday Inn, Great Falls. A flyer with registration form has been mailed to members. See the agenda on Page 10.

## All other CLEs

August 5-6 Big Sky – Big Sky Resort

**Seminar of the Masters – Annual Convention** 11.50 CLE credits. Presented by the Montana Trial Lawyers Association, 443-3124

August 10 Helena – Metcalf Building, Capitol Complex  
**Preventing Harassment** 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

August 17 – Teleconference

**Suing Estate Planners** 1.50 CLE credits. Presented by Cannon, (800) 775-7654

August 19 Helena – Metcalf Building, Capitol Complex  
**Writing Administrative Rules of Montana** 10.0 CLE credits.

## Other web & phone CLEs for Montana credit are:

■ For the State Bar of Montana's approved online CLEs, go to [www.montanabar.org](http://www.montanabar.org) and click CLE / Online CLE Courses

■ MTLA's SeminarWeb Live! Seminars at [www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=showAppPage&pg=semwebCatalog&panel=brokseLive](http://www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=showAppPage&pg=semwebCatalog&panel=brokseLive)

■ Lorman Education Services' teleconferences at [www.lorman.com/teleconferences/](http://www.lorman.com/teleconferences/)

■ The National Business Institute's live teleconferences at [www.nbi-sems.com/Default.aspx/?NavigationDataSource1=N:304](http://www.nbi-sems.com/Default.aspx/?NavigationDataSource1=N:304)

Presented by the state Personnel Division, (406) 444-3985

September 8 Helena – Metcalf Building, Capitol Complex  
**Privacy & the Right to Know** 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

September 10 Missoula – University Center Theatre  
**Child Development Principles for Court Partners in Dependent/Neglect Cases** 3.0 CLE credits. Present by Child & Family Services

## SAVE THE DATE

## CHILD ABUSE & NEGLECT CLE

A multidisciplinary education and advocacy training for attorneys representing all parties involved in abuse and neglect cases. The goals are increased communication, cooperation, and efficiency to provide for the best interests of the child

### Two dates & locations!

■ Friday, September 17, 2010 - Billings ■ Friday, September 24, 2010 - Helena

FREE CLE, including ethics, with presentations from Judges, the Department of Health and Human Services, Offices of the Public Defender and Attorney General and private counsel.  
Made possible by a Montana Supreme Court, Court Assessment Program Mini-Grant.



# State Bar of Montana Bookstore

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](http://www.montanabar.org).

## LEGAL PUBLICATIONS

### **Montana Citizens' Guide to the Courts**

2010, 20 pages, print copy \$10  
Free download at [www.montanabar.org](http://www.montanabar.org)

### **Montana Students' Guide to Turning 18**

2008, 22 pages, CD \$10  
Free download at [www.montanabar.org](http://www.montanabar.org)

### **Montana Probate Forms**

2006, 288 pages  
Book plus CD \$150

### **Civil Jury Instructions**

(MPI – MT Pattern Instructions)  
1999 w/2003 Update, 400 pages  
Book plus CD \$200

### **Criminal Jury Instructions**

New 2010 edition  
650 pages, on editable CD only  
CD \$130

### **Handbook for Guardians & Conservators**

2005, 60 pages incl. 5 forms  
Book plus CD \$150

### **2010 Lawyers' Deskbook & Directory**

Book, \$40  
Mid-year update CD \$20  
See order form on Page 15

### **MT Family Law Form Book**

2005, 93 pages incl. 26 forms  
Book and CD \$150

### **Public Discipline Under MT Rules of Professional Conduct**

2009, 115 pages annotated  
Book \$35

### **Public Information Flyers**

tri-fold brochures, \$10/bundle of 100

Client Bill of Rights  
Dispute Resolution  
Divorce in Montana  
How Lawyers Set Their Fees  
Purchasing Your Home  
Renting a House or Apartment  
Small Claims Court  
After an Auto Accident  
When You Need a Lawyer  
Wills & Probate

### **Statute of Limitations Manual**

1998, 95 pages w/2001 Update  
Book \$25

### **Step-parent Adoption Forms**

2003, 5 forms  
Book \$20

### **U.S. & Montana Constitutions**

Pocket-sized booklet  
\$4 each

### **University of Montana Law Review**

Subscribe at [www.umt.edu/mlr](http://www.umt.edu/mlr)

### **Public Lands Law Review**

Subscribe at [www.umt.edu/publicland](http://www.umt.edu/publicland)

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5 DVD set \$150 plus \$50 deposit  
or separately for \$35, plus \$25 deposit  
Includes written materials on CD

### **2009 Substance Abuse/Mental Impairment Presentation**

1.0 SAMI credit  
\$35, plus \$25 deposit  
DVD, print materials included

### **2009 Criminal Law Ethics DVDs**

6 DVDs may be rented as a set (\$150 plus \$50 deposit) or separately (\$35 each plus \$25 deposit)

1. Do Not Reveal Your Client's Perjury – 1.0 Ethics credit
2. Fairness & Due Process in Disciplinary Proceeding – 1.0 Ethics credit
3. In Praise of the Guilty Project – .75 Ethics credit
4. Loyalty Apocalypse – 1.25 Ethics credits.
5. Accountability for Prosecutorial & Defense Attorney Misconduct – .75 Ethics credits
6. Common Dilemmas in Criminal Ethics – 1.0 Ethics credit.

### **Malpractice Prevention Ethics Series**

6 DVDs may be rented as a set (\$150 plus \$50 deposit) or separately (\$35 each plus \$25 deposit)

1. Malpractice Traps - 1.0 Ethics credit

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**To pay by credit card**, please see the online Bookstore at [www.montanabar.org](http://www.montanabar.org)  
(Payment must accompany all orders)



2. Dancing in the Minefield: Ethics in the Electronic Era - 2.0 Ethics credits
3. The Ten C's to Malpractice Prevention - 1.0 Ethics credit
4. Malpractice and the Impaired Lawyer - 1.0 Ethics/SAMI credit
5. Risk Evaluation from an Insurer's Perspective - 1.0 Ethics credit
6. The Impossible Happens: Your Client Turns on You - 1.0 General CLE credit

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2 DVDs, print materials on CD included

**2007 Montana Ethics CLE, Butte**  
5.0 CLE credits, inc. 5.0 Ethics credits  
Set of 4 DVDs, print materials included

**AUDIO CDS**

1-hour length, 1.0 CLE credit, \$50 each  
Written material included

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- **Guardianship & Conservatorship**
- **ADA Update**
- **Divorces Involving State Retirement Accounts**
- **Using Discovery in Family Law Cases**
- **What Every Attorney Needs to Know About the HITECH Act**
- **Part I of two-part Health-Care Law phone CLE**

**CLE MATERIALS**

on CD or via e-mail, \$35

*CLE materials from 2010*

**Attorney-Paralegal Practice Tips**  
Malpractice & Impaired Lawyers, Going Paperless, Estate Planning, Ethics & Social Networking, Federal Rules Change, Employment ADA, Access to Justice for Aged

**Basic Office Practice**

Mtn. States Transmission Intertie, 2nd Amendment Law, Pitfalls into Windfalls, Real Estate, Ethics Tips, Malpractice & Impaired Lawyers

**Bench-Bar Conference**

Attorney-Client Privilege, Limited Representation, Civility, Bankruptcy Bomb, Oral Argument Tips

**CLE & SKI**

Ethics Opinions & Notary Opinion, Changes in Rules of Civil Procedure, Litigating in Economic Red Zone, Liability While Serving on Boards, Property Law

**Elder Law**

Mental Impairment Among Lawyers, Powers of Attorney, Conservatorship & Guardianship, MontGuides, Medicare 101

**Eminent Domain**

Its Legal Foundation, Constitution & Representing Landowners, Negotiating with DOT, Land Use Interaction, Recent Game Farm Cases

**Energy Update**

Wind development, NW Energy's Role, Federal Energy Regulatory Commission, Surface Access Rights, Oil & Gas Drainage, NEPA

**Foreclosure Update**

Conflict Check, Title Policy, Choosing Type of Foreclosure, Bankruptcy, Summary Judgment

**General Practice (Glasgow CLE)**

Public Roads, Rights of Way, Substance Abuse & Mental Impairment, Ethics, Federal Lands Planning, Family Law, Wind Power & Cell Towers, Mental Competency

**State and Federal Planning Rules**

FOIA & Sunshine Laws; DNRC, Forest Service & BLM Planning; MEPA, State Lands & Trust Obligations

*CLE materials from 2009*

**ABA Tech Road Show**

Practice-Management Software, Affordable IT Support for Small Practices, Hidden Windows & Office Tricks, 30 Websites, Getting to Paperless, PDF-ing for Lawyers, Conquering the E-mail Storm

**Annual Meeting**

Collections, Indian Law, Ethics, Substance Abuse & Mental Impairment, Criminal Law, Energy Law, IP Audits, Business Law, Employment Discrimination, Family Law, Insurance Law, Real Property

**Bankruptcy**

Chapter 13; Schedules, Statements of Financial Affairs, Means Tests, Fee Applications; Stay Relief & Adequate Protection

**Bucking Horse CLE**

New Privacy Rules; Unrepresented Opposing Parties; Americans With Disabilities; Business Law Update; Lawyer's Assistance Program; Legislative Update

**Civil Litigation**

Hardware, Software & Guidelines for Evidence & Argument in Court; Insurance; Safe Place to Work Claims; Litigation Dangers; Litigation Pitfalls

**Construction**

Global ADR, LEED, MT Case Law & Legislation, Project Manual, Subcontracting, Settlement Conferences

**Criminal Law Ethics**

Your Client's Perjury, Fairness in Disciplinary Proceedings, Innocence Projects, Loyalty Apocalypse, Attorney Misconduct, Ethics Dilemmas

**Easements**

*Our Lady of the Rockies v. Peterson* Oral Arguments & Decision; *Blazer v. Wall*; Ownership & Access Across Public Land & Waterways

**Family Law**

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**Law Office Management**

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Section 1983, School & Education Law, Gender Discrimination

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# MJF grants \$230,000 to legal-aid providers

Stories by **Amy Sings In The Timber**, executive director  
Montana Justice Foundation

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The Montana Justice Foundation (MJF) awarded \$230,000 in grants this year to legal service providers across the state serving the civil legal needs of low-income Montanans.

With a 22 percent decrease in Interest on Lawyers Trust Account (IOLTA) revenues, the MJF allocates the funding in a difficult fiscal year. The grantees of the 2009-2010 IOLTA grant cycle were:

- CASA of Missoula – \$3,500.
- Eastern Montana CASA/GAL – \$7,000.
- Domestic Violence Education & Services (DOVES) – \$1,000.
- Community Mediation Center (Bozeman) – \$7,800.
- Community Dispute Resolution Center of Missoula – \$2,800.
- Montana Innocence Project – \$2,000.
- Montana Legal Services Association – \$204,000.
- The Nurturing Center – \$1,900.

As civil legal aid's primary, non-federal funding source, the MJF uses IOLTA revenue to support legal services to the vulnerable and undeserved and promote equal access to the civil justice system. Since 2008 IOLTA revenue has decreased by 62 percent. In the coming year, without significant change,

IOLTA revenues will remain stagnant at best. The MJF, however, is mounting initiatives to combat falling interest rates and ensure adequate grantee funding.

In an effort to encourage private support, the MJF has organized a series of Lunch for Justice events in various cities around the state (see story below). The events have been incredibly successful in raising funding for and awareness of the need for increased civil legal aid – thus far engaging 630 members of the profession; 146 new supporters; and generating nearly \$125,000 in pledges.

The MJF continues to promote cy pres initiatives for the benefit of legal services. Last year the MJF received \$5,745 in residual monies resulting from two settlements. Since 2004, the MJF has received five cy pres awards totaling nearly \$253,000.

On the IOLTA front, the MJF persists in its communications with its financial partners to seek higher interest rates and educate both the legal and financial communities about the importance of the IOLTA program.

Especially in this time of financial stress and historically low IOLTA revenues, the MJF must look to members of the profession for support in its efforts. To learn how you can help, please contact the MJF at 406) 523-3920 or [MJF@MtJustice.org](mailto:MJF@MtJustice.org). ○

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## Luncheon raises awareness, bank raises IOLTA rates

On April 30, 2010, nearly 100 Flathead County attorneys, judiciary, lawmakers, and other community leaders gathered at the Hilton Garden Inn in Kalispell in support of the Montana Justice Foundation (MJF) and the access-to-justice cause. Among this group was Glacier Bank Senior Vice President Jim Ness.

The Flathead County Lunch for Justice, the fifth in a series of such luncheons hosted by the MJF, was designed to raise awareness of the access-to-justice cause and generate financial support for the MJF's comprehensive legal services grants program.

Local attorneys are strongly encouraged to invite their IOLTA (Interest on Lawyers Trust Accounts) bankers to attend the luncheons. Amy Eddy, of Bottomly & Eddy in Kalispell, recognized the importance of having her firm's bankers present when she invited Mr. Ness to be a guest at her table.

"The program is compelling; it gets down to the dollars and cents behind the issues – that was the most persuasive part for

the bankers at our table," said Ms. Eddy.

Financial institutions play an important role in the MJF's IOLTA grant program. Many of the banks who participate in the program have agreed to waive service fees on IOLTA accounts and a select few apply interest rates generally reserved for preferred accounts. These few outstanding financial institutions are recognized by the MJF as Leadership Banks.

In previous years, Glacier Bank was counted among these Leadership Banks; tying its IOLTA rates to a federal benchmark. However, in December 2008 the Federal Treasury slashed its benchmark rate to a staggering .0 percent to .25 percent in an effort to shore up the faltering economy, and rates on IOLTA accounts held with Glacier accordingly took a substantial downturn.

The Lunch for Justice events provide an opportunity to raise awareness among all community members of the importance of equal access to the civil justice system and the critical role that the IOLTA program plays in funding for access to justice programs in Montana. For local bankers like Mr. Ness, the Lunch for Justice Program helped to demonstrate the connection between IOLTAs and a real need in his own community.

"The work of the MJF is very important to me and to Glacier Bank. We want to do our part for the IOLTA Program

and, honestly, it had just fallen off our radar screen,” said Mr. Ness. “The luncheon brought it back to the forefront.”

In response to the Lunch for Justice, Glacier Bank has raised interest rates on IOLTA accounts to a 1.5 percent floor – no small gesture in today’s economy.

During a time when interest rates have been reduced to their lowest levels in more than a decade, a small number of Montana banks continue to make a significant investment in programs that serve the most vulnerable and underserved in Montana.

The current Leadership Banks, which pay a net yield of 1.5 percent or more and waive all service fees and charges on IOLTA accounts, include:

- Bitterroot Valley Bank.
- Community Bank of Missoula.
- Glacier Bank.
- Mountain West Bank.
- Yellowstone Bank.

Banks receiving an honorable mention for paying a net yield of 1.0-1.49 percent and waiving all service fees and charges on IOLTA accounts, are:

- Bank of Bozeman.
- Valley Bank.

Over the next few months, the MJF will continue to work with attorney account holders to educate financial institutions about the importance of waiving fees and offering prime rates on IOLTAs. As attorneys you can help with this effort. Consider some of these simple actions you can take:

- Know what interest rate you or your firms IOLTA account is earning from your bank.
- Compare your bank’s rate to the rates that MJF’s Leadership Banks are paying.
- If your bank’s rate comes in low, contact your bank to request a more favorable rate.
- If your bank denies your request, consider switching your IOLTA account to a bank that demonstrates a commitment to community-based banking by supporting the IOLTA program.

The MJF can assist you with any or all of the above.

**FOR MORE INFORMATION** on how you can help, please contact the MJF at (406) 523-3920. For a complete list of participating IOLTA financial institutions, please visit: [www.mjjustice.org](http://www.mjjustice.org)

## Pro bono stories

Patricia L. Fain

### Rescuing a girl’s big opportunity



*This begins a series of columns recounting success stories from Montana attorneys who have taken on cases pro bono for clients who cannot afford legal help. These are actual cases involving real clients and real (cool) pro bono attorneys. If you would like to submit a story, please e-mail me at [pfain@mt.gov](mailto:pfain@mt.gov) or call (406) 794-7824. We would all love to hear about the positive impact of pro bono work. We won’t use clients’ real names.*

Mary is the mother of Lucy, and Mary takes this role seriously. Mary works hard to provide for her family but still lives below poverty level. Despite having few financial resources, Mary believes helping her children obtain a good education is the key to ending the cycle of poverty. No one in Mary’s family had ever attended college and Mary is tenacious in her pursuit of a better life for her daughter that would include higher education.

Lucy is a bright articulate high school freshman. After winning a local speech contest, Lucy advanced to state competition, garnering a first place finish and a spot at the International meet in Canada. Mary soon learned that Lucy would require a passport to gain entry into Canada and a chance to win a college scholarship – a step closer to the life every child deserves if she is willing to work at it. Mary also learned the passport application needed the signature of Lucy’s father. Neither Mary nor Lucy had seen Lucy’s father since the day he left the family – five days after she was born more than 14 years ago.

Time was running out. Mary had less than a week to submit the passport application on behalf of Lucy. Mary desperately canvassed every possible avenue to obtain assistance. After finally tracking down the father, he refused to sign the necessary application consent. She visited the offices of Senators Baucus and Tester.

Out of ideas but still determined, Mary landed in the office of a local district court judge. After hearing Mary’s story, the judge’s assistant called me. I called Mary and the rest of the story is what reminds me every day why I do what I do.

An attorney agreed to take the case pro bono. A short 48 hours later, Mary walked out of the courthouse with an order that allowed her to submit the application and open wide the door of possibilities for Lucy.

Lucy won that International competition and the much needed scholarship. Mary gained a new trust in the justice system and the people who serve on its behalf. The attorney had a vivid recollection of why she went to law school. As for me, I find myself periodically and ashamedly weary of the indecencies and humiliations heaped upon those least likely to endure them only to be renewed by certainty of the difference made.

**PATTY FAIN** is Montana’s statewide pro bono coordinator.

# Major changes to lawyer-advertising rules

*On July 21, the Montana Supreme Court issued the following order revising the rules on advertising in the Rules of Professional Conduct. The changes, the order said, were effectively immediately.*

**AF 09-0688**

## **IN RE THE RULES OF PROFESSIONAL CONDUCT ON ADVERTISING**

On Nov. 30, 2009, the Trustees of the State Bar of Montana and the Ethics Committee (Petitioners) filed with this Court a Petition and Memorandum in Support of Revision of the Rules of Professional Conduct on Advertising.

The Petition alleges the proposed amendments would (1) clarify Montana disciplinary jurisdiction over attorney advertising; (2) specifically identify types of misleading lawyer communications; and (3) recognize that Montana does not have a procedure to “qualify” a lawyer referral service.

On Jan. 8, 2010, this Court ordered members of the bench and bar of Montana and any other interested persons 90 days to file comments and/or suggestions to the Proposed Revision to the Rules of Professional Conduct on Advertising.

We have reviewed the Petition, Memorandum and all comments and/or suggestions received and conclude that the attached amendments to the Rules of Professional Conduct on Advertising should be adopted. Therefore, good cause appearing,

IT IS HEREBY ORDERED that Rules 7.1 (Communications Concerning a Lawyer’s Services), 7.2 (Advertising), and 8.5 (Jurisdiction and Certification) of the Rules of Professional Conduct on Advertising are hereby amended in accordance with the attached, and by this reference made a part hereof. The deleted language of the attached, amended July 21, 2010 Rules is stricken and the underlined language is added.

### **Rule 7.1 Communications Concerning a Lawyer's Services.**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law. A misleading communication includes, but is not limited to those that:

- (a) omits a fact as a result of which ~~necessary to make~~ the statement considered as a whole net is materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve;
- (c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own

merits;

(d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(e) compares the quality of a lawyer's or a law firm's services with other lawyers' services, unless the comparison can be factually substantiated;

(f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;

(g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;

(h) contains any paid testimonial about, or endorsement of, the lawyer without conspicuous identification of the fact that payments have been made for the testimonial or endorsement;

(i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;

(j) provides an office address for an office staffed only part time or by appointment only, without conspicuous identification of such fact;

(k) states that legal services are available on a contingent or no-recovery, no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case; or

(l) advertises for legal services without identifying the jurisdictions in which the lawyer is licensed to practice.

### **Rule 7.2 Advertising.**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer’s services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service ~~A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;~~ and

(3) pay for a law practice in accordance with Rule 1.19.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

### **Rule 8.5 Jurisdiction and Certification.**

A lawyer who is not an active member in good standing of the State Bar of Montana and who seeks to practice in any

state or federal court located in this State pro hac vice, by motion, or before being otherwise admitted to the practice of law in this State, shall, prior to engaging in the practice of law in this State, certify in writing and under oath to this Court that, except as to Rules 6.1 through 6.4, he or she will be bound by these Rules of Professional Conduct in his or her practice of law in this State and will be subject to the disciplinary authority of this State. A copy of said certification shall be mailed, contemporaneously, to the business offices of the State Bar of Montana in Helena, Montana.

A lawyer not admitted to practice in this State is subject to the disciplinary authority of this State for conduct that constitutes a violation of these Rules and that:

- (1) involves the practice of law in this State by that lawyer; ~~or~~
- (2) involves that lawyer holding himself or herself out as practicing law in this State; ~~or~~
- (3) advertises, solicits, or offers legal services in this State; ~~or~~
- (4) involves the practice of law in this State by another lawyer over whom this that lawyer has the obligation of supervision or control.

A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur. ○

## DISCIPLINE

### Wrongful payment gets attorney admonished, placed on probation

The Montana Supreme Court has ordered that Missoula attorney Steven S. Carey be privately admonished for “improper monetary advances” among parties in an insurance case.

A complaint from the Office of Disciplinary Counsel said that Carey’s law firm improperly handled funds that flowed between the firm, two insurance companies, and its client, who was involved in a 2005 auto accident.

Although the Court dismissed, for lack of evidence of misconduct, three of four complaints filed by ODC, it did find that Carey violated Rule 1.8(e) of the Montana Rules of Professional Misconduct. That rule states: “A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation. . .”

The ODC complaint alleged that Carey’s firm violated the rule when it paid \$5,000 to an insurance company on its client’s behalf without notifying the client, and then sought to be reimbursed later by the client.

Mr. Carey also was placed on a one-year probation by the Court, and ordered to address a CLE seminar on the topic of Rule 1.8.

## Court appointments

● **Commission on Self-Represented Litigants** – Beta Lovett, judge of the 1st Judicial District small claims court, was appointed to a three-year term. State Law Librarian Judy Meadows and Belgrade Judge Michele Snowberger were reappointed to three-year terms.

● **District Court Council** – Missoula District Judge Robert L. Deschamps has been appointed to a three-year term, replacing Bozeman District Judge Michael Salvagni, whose term expired. Non-voting member Glen Welch, the Montana Juvenile Probation Officer Association representative, was reappointed to a three-year term.

● **Commission on Practice** – Jim Jacobsen of Helena, one of three non-attorney members, has been reappointed to a four-year term. Non-attorney Rich Osner and Great Falls attorney Ward E. Taleff were also reappointed to the Commission.

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By the **Billings Gazette**

## In primary, Baker pulls in more votes than Swandal

For the three candidates vying for spots on the Montana Supreme Court, the June 8 primary election wasn't exactly a nail biter.

Regardless of the primary, Justice Mike Wheat, who is running unopposed to keep his seat, and candidates Beth Baker and Nels Swandal, who are squaring off to replace retiring Justice William Leahart, are all advancing to the November general election.

Montana law holds that if there are fewer than twice the number of candidates to the number of elected seats, every candidate advances to the general election.

Still, the June 8 outcome came sweetly for Baker, a Helena lawyer, who beat Swandal, a district court judge from the Livingston area, by more than 9,000 votes.

"I'm extremely grateful for the votes cast by so many people across Montana for me," Baker said when reached at her law offices the morning after the election. "I think the results show a really broad-based support for my candidacy."

Baker snagged 84,929 votes compared with Swandal's 75,773, according to unofficial results reported by the Secretary of State's Office.

Wheat, who was running unopposed, garnered 147,828.

**ALL THREE RACES** are nonpartisan, which means the candidates are not affiliated with either party.

At least some trappings of partisan politics have found their

way into the race, however. Dustin Frost, the former state director for Republican Rep. Denny Rehberg, is running Swandal's campaign and his campaign finance records have more than their fair share of donations from GOP insiders and office holders, including Tim Fox, the unsuccessful

GOP candidate for attorney general in 2008, state Sen. Terry Murphy, R-Cardwell, and Chuck Denowh, former executive director of the Montana Republican Party.

Baker counts many Democrats among her donors, including Matt McKenna, former staff member for Democratic Sen. Jon Tester, and the Democratic county attorneys in Missoula and Lewis and Clark counties.

Given that breakdown, you might think Swandal would have cleaned up, given that Republican turnout was much higher than Democratic. More than 129,000 people cast for votes Republicans in the top-of-the-ticket congressional race, compared with just more than 63,000 cast for Democrats.

Baker prevailed in many Republican strongholds, like Yellowstone and Flathead counties. She also won many rural counties. In all, Baker won 36 counties to Swandal's 20.

Baker said that support shows that party affiliation — or perceived party affiliation — is not what motivates people in judicial elections.

"I think people realize that we have plenty of partisan politics in the other two branches of government," she said. "It doesn't really belong on the court. It really is about the person so much more in judicial races, the person and the skill they bring to the position."

**FROST, SWANDAL'S** campaign manager, said primary results show only that the race "is too close to call."

"I'm confident that our efforts to bring the judge's balanced and stable perspective to the court is on its way to success in November," he said.

Frost, too, said, that partisan tags in the Swandal-Baker showdown are not entirely accurate.

"We're seeing support from all across the political spectrum," he said, citing endorsements from former Democratic state lawmaker and gubernatorial candidate Dorothy Bradley, of Bozeman, and current state Sen. Larry Jent, another Bozeman Democrat. "It's a nonpartisan race and Montanans see it that way," he said.

Both Frost and Baker said the summer and fall will be busy months of campaigning.

History, too, holds some lessons: A primary victory in a Supreme Court race is not a lock-sure indication of victory in the fall. Just ask former Justice Terry Trieweiler. He beat Chief Justice Karla Gray in the June 2000 primary, but lost to her in November.

○

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## The top 5 law firm security essentials

From the **Legal Chamber Newsletter** of LegalMatch.com

**C**lient confidentiality is paramount among lawyers and involves daily vigilance even when it comes to throwing things away. The security of your office should extend further than a shredder, computer passwords, and your receptionist; data breaches can cost big bucks.

Furthermore, cyber threats like hacking and phishing are more prevalent than ever. And what happens if you simply lose your flash drive with all that important information?

Below are five ways to keep your clients, and your practice, safe from today's most common threats and avoidable data disasters.

**1. SHREDDING COMPANY.** Document disposal companies are more popular these days, and most offer eco-friendly recycling of your products. When those documents are made into pulp, rest assured: nobody can read them.

**2. FILE RECOVERY SYSTEM.** Many lawyers still think that having printed documents and giant filing cabinets are routine; however, paper is perishable and electronic data can be easily replicated. Top law firms have at least two sets of recovery files and backup tapes: one in the office and one stored off-site.

**3. ALARM SYSTEM.** Alarm systems are great for keeping your office and employees safe. While some people opt to have a private party do custom work, companies like ADT and Bay Alarm Systems offer a wide variety of installation options, system monitoring, and high tech stuff like keycards, motion detectors, and surveillance cameras.

**4. PROTECTED THUMB DRIVES.** USB thumb drives are everywhere. You probably have one in your pocket or briefcase right now. Their size is convenient, but they can easily be misplaced or stolen. Thumb drives that offer encryption and password protection are best if you're worried about security or have a busy travel schedule.

**5. LO-JACK FOR LAPTOPS.** Laptop theft doesn't just happen in airports and college libraries. The FBI Crime Information Center reported a 48 percent jump in laptop theft in the last two years alone and some stolen laptops caused notable headaches. Lo-Jack for Laptops claims a 75 percent recovery rate!



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- (3) ~~Send to~~ Provide the complainant access to a packet of written materials containing forms, instructions, and information about Montana's lawyer disciplinary process; and
- (4) Receive written complaints on the forms provided.

**B. Preliminary Review and Processing of Informal Complaints.** The Office of Disciplinary Counsel shall conduct a preliminary review of each written complaint received by the Office and determine whether the complaint involves a matter that is within the disciplinary jurisdiction of the Court.

**C. Investigation.**

(1) All investigations shall be conducted by or under the authority and direction of Disciplinary Counsel. Upon such investigation as Disciplinary Counsel deems appropriate, he or she may:

- (a)
- (1) Send the complaint to the lawyer against whom the complaint is made;
  - (2) Send the lawyer's response to the complainant and, if appropriate, request his or her reply to the lawyer's response;
  - (3) Prepare an intake summary; and
  - (4) Conduct an investigation and prepare an investigative report; or
- (b) With or without some or all of the process set forth in Rule 10C(1)(a), dismiss the complaint without prejudice, where the complaint does not appear to be within the disciplinary jurisdiction of the Court, or the facts do not appear to warrant disciplinary action.
- (c) Issue a letter of caution to a lawyer or take other corrective action when Disciplinary Counsel deems it

appropriate. Any such action by Disciplinary Counsel is not disciplinary action.

**(2) Notice of Disposition.** In the event of a dismissal, Disciplinary Counsel shall give written notice to the complainant and to the ~~respondent~~ lawyer of the dismissal, stating the reasons for the action taken, and advising the complainant of the right to request review of the dismissal, or to file an amended complaint.

**(3) Request for Review.** The complainant may file a written request for review of Disciplinary Counsel's dismissal within 30 days of the notice of disposition pursuant to Rule 10C(2). Disciplinary Counsel's dismissal shall be reviewed by a Review Panel upon the record before it. The Review Panel may approve, disapprove, or modify Disciplinary Counsel's disposition.

A lawyer against whom Disciplinary Counsel determines to take corrective action may file a written request for review of Disciplinary Counsel's determination within 30 days after Disciplinary Counsel notifies the lawyer of the corrective action. Disciplinary Counsel's determination shall be reviewed by a Review Panel upon the record before the Review Panel. The Review Panel may approve, disapprove, or modify Disciplinary Counsel's determination as to corrective action.

**D. Review Panel Proceeding.** Disciplinary Counsel shall:

- (1) ~~Prepare recommendations to a Review Panel;~~
- (2) ~~(1) Present the intake summary, investigative report and recommendations to a Review Panel, orally supplementing them at the Request leave of a Review Panel to file a formal complaint; and~~
- (3) ~~(2) Conduct further investigation at the request of a Review Panel.~~

**E. Adjudicatory Panel Proceeding.** Disciplinary Counsel shall:

- (1) Draft and prosecute formal complaints and complaints proposing interimsuspension before an Adjudicatory Panel;
- (2) Recommend discipline or other disposition of a case to an Adjudicatory Panel;
- (3) Conduct any discovery pursuant to Rule 19;
- (4) ~~At the request of an Adjudicatory Panel, [I]investigate all allegations in a petition for reinstatement and present relevant evidence at an Adjudicatory Panel hearing on the petition, and~~
- (5) ~~Advocate findings of fact and conclusions of law resulting from Adjudicatory Panel pro-~~

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ceedings.

## **RULE 11. REVIEW PANEL PROCEDURES**

A Review Panel shall:

- (1) Review the complaint, the response from the lawyer against whom the complaint was made, and any reply from the complainant, together with other relevant documents and Disciplinary Counsel's intake summary, investigative report and recommendations;
- (2) Determine any preliminary and procedural matters;
- (3) Refer complaint to Disciplinary Counsel for any further investigation;
- (4) Dismiss the complaint when the facts do not appear to warrant disciplinary action and notify the complainant and lawyer of the Review Panel's action;
- (5) Request Disciplinary Counsel to prepare and file a formal complaint when the facts appear to warrant disciplinary action;
- (6) Request Disciplinary Counsel to prepare and file a complaint proposing interim suspension in an appropriate case; and
- (7) When undisputed facts prove an ethical violation by clear and convincing evidence, recommend to an Adjudicatory Panel imposition of a private admonition in appropriate cases.

## **RULE 13. CLOSED ADJUDICATORY HEARINGS; PRIVATE ADMONITIONS**

At any time before initiation of formal disciplinary proceedings, an Adjudicatory Panel, in its discretion, may give a private admonition to the lawyer in the name of the Supreme Court, either orally or in writing, with or without imposition of costs of proceedings, and may require the lawyer to appear personally before an Adjudicatory Panel to receive the admonition. Thereupon, the matter shall be deemed terminated except that the Commission shall maintain a record of such admonition which record may be considered by Adjudicatory Panels and Review Panels in determining discipline to be recommended or imposed in any subsequent disciplinary proceeding involving the lawyer. Private admonitions are not appealable.

Following the filing of a formal complaint, an Adjudicatory Panel may determine to sanction a lawyer by the imposition of an admonition. The Adjudicatory Panel shall determine whether to impose the admonition publicly or privately after weighing, on a case-by-case basis, the

lawyer's privacy interests and the public's right to know. An Adjudicatory Panel may do so, however, only after consulting Disciplinary Counsel and the lawyer subject to sanction, to apprise the interested parties of its reasoning for such decision and to allow for comment.

An adjudicatory panel's decision to close an adjudicatory hearing and/or impose an admonition, either publicly or privately, shall be final unless, within 10 days of the adjudicatory panel's decision, the lawyer subject to sanction, Disciplinary Counsel, or a member of the public, files a petition with the Clerk of the Supreme Court asking the Court to review the adjudicatory panel's decision. The Court shall conduct an in-camera review of the adjudicatory panel's decision in which it evaluates the lawyer's privacy interest and the public's right to know.

A private admonition should be imposed only in cases of minor misconduct, when there is little or no injury to the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer. A private admonition informs the lawyer that his or her conduct is unethical, but does not unnecessarily stigmatize a lawyer from whom the public needs no protection.

## **RULE 20. ACCESS TO DISCIPLINARY INFORMATION**

**A. Confidentiality.** All disciplinary proceedings information provided to the Office of Disciplinary Counsel and proceedings before the Commission on Practice which are prior in time to the filing of a formal complaint with the Clerk of the Supreme Court shall be confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by Disciplinary Counsel may disclose information if:

- (1) The respondent has waived confidentiality;
- (2) The proceeding is based upon allegations that include either the conviction of a crime or reciprocal discipline;

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- (3) The proceeding is based upon allegations that have become generally known to the public; ~~or~~
- (4) There is a need to notify another person or organization, including the Lawyers Fund for Client Protection Board ~~or~~, the Commission on Character and Fitness, other lawyer disciplinary agencies, law enforcement agencies, and the Lawyer's Assistance Program, in order to protect the public, the administration of justice, or the legal profession; ~~or~~
- (5) There is a need to disclose information to third parties while investigating a complaint.

~~Upon the filing of a formal complaint, the Commission's entire file on the matter shall be subject to discovery.~~

**B. Public Proceedings Information.** Upon the filing of a formal complaint with the Clerk of the Supreme Court in a disciplinary matter, or upon the filing with the Clerk of the Supreme Court of a petition for reinstatement, the proceedings before the Commission and pleadings and other documents filed with the Clerk or Commission thereafter shall be public except for:

- (1) Deliberations and minutes of the Commission; ~~and~~
- (2) Information or proceedings with respect to which an Adjudicatory Panel or Supreme Court has issued a protective order; and
- (3) Conditional admissions and affidavits of consent submitted pursuant to Rule 26 of these Rules until, and if, approved by the Court and public discipline is imposed;
- (4) Hearings conducted pursuant to Rule 26 of these Rules.

~~**C. Violation.** Violation by any person of any confidential information under these rules shall be punishable as a contempt of the Supreme Court.~~

~~**D. Duty of Participants.** All participants in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by this rule.~~

**E. C. Admissibility in Other Proceedings.** The conclusions, opinions, and recommendations of Disciplinary Counsel or any investigator or special counsel acting on behalf of the Office of Disciplinary Counsel while acting in those capacities are not relevant or admissible for any purpose in any quasi-judicial or judicial forum, exclusive of the Commission on Practice and the Montana Supreme Court in a disciplinary action.

## **RULE 26. DISCIPLINE BY CONSENT**

**A. Adjudicatory Panel Approval of Tendered Admission.** A lawyer ~~concerning whom an investigation is being conducted because of allegations of misconduct, or~~ against whom formal disciplinary proceedings have been filed may tender a conditional admission to the complaint or to a particular ~~count~~ allegations ~~thereof therein~~ in exchange for a stated form of discipline. The tendered admission shall be submitted to an Adjudicatory Panel. An Adjudicatory Panel may refer the tendered admission to the Disciplinary Counsel for recommendations. The Adjudicatory Panel may either approve or reject the

tendered admission. The Adjudicatory Panel, ~~with the lawyer's consent,~~ may hold a private hearing for the purpose of obtaining information to aid the Adjudicatory Panel in determining whether to approve or reject the tendered admission. If the tendered admission is approved by the Adjudicatory Panel, such approval shall be final if the stated form of discipline is private an admonition, probation imposed by an Adjudicatory Panel as provided in Rule 9C of these Rules, or both, with or without imposition of costs of the proceeding; but, in all other instances, the tendered admission shall be subject to approval or rejection by the Supreme Court. If the stated form of discipline tendered admission is rejected by either the Adjudicatory Panel or the Supreme Court, the admission shall be deemed withdrawn and cannot be used against the lawyer in any subsequent proceedings.

**B. Affidavit of Consent.** ~~If the stated form of discipline A tendered admission is approved, the lawyer shall present to the Adjudicatory Panel~~ include an affidavit stating his or her the lawyer's consent to the discipline and that:

- (1) The lawyer's consent is freely and voluntarily tendered, and that the lawyer is not being subjected to coercion or duress, and that the lawyer is fully aware of the implications of submitting the consent;
- (2) The lawyer is aware that ~~there is presently pending an investigation into, or proceeding involving, allegations that there exists grounds for discipline~~ has been a formal charge filed against the lawyer, the nature of which the lawyer shall specifically set forth;
- (3) The lawyer acknowledges that the material facts so alleged are true or the lawyer submits his or her consent because he or she knows that ~~if charges predicated upon the matters under investigation were filed, or if the pending proceeding were prosecuted~~ the case proceeded to a formal hearing, he or she could not successfully defend himself or herself.

The final order of discipline shall be predicated upon the ~~formal~~ complaint, ~~if any,~~ the conditional admission, the affidavit, and such other information and evidence to which the Disciplinary Counsel and the lawyer may have stipulated, or which may have been elicited at a private hearing referred to in Rule 26A.

**C. Order of Discipline.** If the discipline by consent is ~~a private admonition~~ a form of discipline that may be imposed by the Adjudicatory Panel, the Adjudicatory Panel shall enter the order. In all other instances in which the proposed discipline has been approved, the Supreme Court shall enter the order. The order of discipline by consent shall be filed with the Clerk of the Supreme Court, and a copy thereof shall be served upon the lawyer, the lawyer's counsel, the Commission, Disciplinary Counsel, and the complainant.

**D. Confidentiality.** All tendered admission proceedings prior to entry of a consent discipline order shall be confidential and subject to the provisions of Rule 20 of these Rules. Upon entry of an order by the Supreme Court imposing public discipline, the conditional admission and affidavit of consent shall be filed with the Clerk of the Supreme Court and made public. ○

## Karla Gray receives honor from National Center for State Courts

Retired Chief Justice Karla M. Gray receive a 2009 Distinguished Service Award, one of the highest recognition given by the National Center for State Courts.

The award is presented annually to those who have made significant contributions to the judicial administration field and who have supported the mission of the National Center for the Courts.

"Throughout her nearly 18 years of service to Montana's highest court, and particularly during her eight years at its helm, Chief Justice Gray championed equal access to justice for all Montanans and spurred the legal community to pro bono service," said Mary C. McQueen, president of the Center. "Her character, commitment to the highest ideals of the justice system and hands-on approach to effecting change set an example for judges not just in Montana, but throughout the country."

She was to receive the award July 28 during the Conference of Chief Justices and Conference of State Court Administrators Annual Meeting in Vail, Colo.

Justice Gray retired from the Montana Supreme Court in December 2008. Following her 1991 appointment by then-Gov. Stan Stephens to the court as an associate justice, she went on to become the first woman elected to the Montana Supreme Court in 1992. In 2000, she was the first woman elected chief justice of the Montana high court.

Under her leadership, Montana's court system underwent a sweeping restructuring in 2001-02 that placed all of the state's trial courts under state funding and allowed the system to run more efficiently.

Recognizing the relationship between judicial independence and accountability, Justice Gray implemented the use of CourTools, the center's nationally acclaimed set of court performance measures, in Montana's Supreme Court. She was instrumental in developing CourTools for appellate courts across the nation.

Justice Gray also volunteered with many national judicial organizations, including the Conference of Chief Justices, which she served as on its board of directors and numerous committees, the American Judicature Society and the National Association of Women Judges. Gray served on the American Bar Association's Standing Committee on Legal Aid and Indigent Defense, and is a lifetime fellow of the American Bar Foundation.

**Wilton Strickland** has joined the Missoula law firm of Bohyer, Simpson & Tranel. Mr. Strickland Wilton graduated from the University of Virginia School of Law in 2000 after obtaining a bachelor of arts in International Relations from the College of William & Mary in 1996. He recently relocated to Montana

having worked with the firm of Conroy Simberg in Hollywood, Fla. He is a member of the State Bar of Florida, has successfully completed the Montana Bar Exam and is working towards his Montana licensing. His areas of practice include insurance defense, insurance coverage issues, and all other areas of the firm's practice. Mr. Strickland has a number of publications including the December 2009 issue of the *Florida Bar Journal*, "Premises Liability: A Notable Rift in the Law of Foreseeable Crimes." He helps conduct the annual Jessup Moot Court Competition, which focuses on international law and draws competitors from law schools around the world. Mr. Strickland participated in the competition while he was a law student, and he served as a judge for many years after graduating. He now helps coach the team from the University of Montana School of Law.

**Karen P. Kane** has joined the Connell Law Firm in Missoula as an associate attorney. Ms. Kane received her law degree with honors from the University of Montana in 1999. After graduation, she clerked for Judge Thomas Honzel and Judge Jeffrey Sherlock in Helena, and has been in private practice since 2001. She is admitted before the state and federal courts in Montana as well as the 9th Circuit Federal Court of Appeals. Her practice with Connell Law Firm will concentrate on representing clients in civil litigation with an emphasis on serious personal injury, wrongful death, and commercial cases.

**Susan Fisher Stevens**, formerly of the Billings firm of Wright Tolliver Guthals from 1983-1999, has been elected to a three-year term on the 12-member governing committee of the American Bar Association Forum on the Construction Industry. Ms. Fisher Stevens is employed as the in-house construction law attorney for Sprint Nextel Corporation in Overland Park, Kan., and is admitted to practice in Kansas and Missouri as well as Montana.

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## Otto Habedank, Sidney attorney

Former Sidney attorney Otto Theofield Habedank, 92, died of natural causes at his home near Dunnellon, Fla., on July 10.

Mr. Habedank was born in Phillips County, Mont. In 1936, he attended Billings Polytechnic Institute, after which he was employed by the Northern Pacific Railway and advanced to private secretary to the Yellowstone Division Superintendent. He married Arleen Miller in 1938, and moved to Glendive.

Mr. Habedank was a court reporter, studied law, and passed the Montana Bar Exam in 1946 to become a practicing attorney. In 1947, he moved his family to Sidney, and partnered with Carl L. Brattin. The firm of (Brattin) Habedank, Cumming, Best & Associates was the oldest law partnership east of Billings, his obituary said.

During his 50 years in Sidney, Mr. Habedank served as member and chairman of the Sidney School Board, and president of the Montana School Boards Association. He served on the board of Community Memorial Hospital of Richland County and was chairman of the hospital when the new facility was built. He served in every office at Pella Lutheran Church, and was involved in Kogodus Renewal Ministry. He was the first scoutmaster of the Lutheran Boy Scout troop in Glendive, and was instrumental in organizing a Kiwanis and Lutheran Scout troop in Sidney. In 1957, he led a Yellowstone Valley delegation to the National Boy Scout Jamboree at Valley Forge, Pa. For his scouting service, he was awarded the distinguished Silver Beaver Award and Lamb Award.

Mr. Habedank joined Kiwanis Club of Sidney in 1947 and served all offices except secretary. In 1961, he was governor of the Montana District of Kiwanis and a founding board member of the Kiwanis Foundation of Montana. He served several

terms as president of the Richland County chapters of the American Red Cross and the Salvation Army. He was awarded "Boss of the Year" by the Jaycees and "Citizen of the Year" by Kiwanis.

The Montana Supreme Court appointed Mr. Habedank to the Montana Constitutional Revision Commission that prepared the people of Montana to vote on whether to call a Constitutional Convention. In 1972, he was elected as a delegate, where he served on the General Government Committee.

Mr. Habedank is survived by his wife, Arleen, two sons, and two daughters.

## William James Speare, district judge

Former Billings District Judge William James Speare, 81, died July 12 of respiratory failure at St. John's Lutheran Home Heritage Place in Billings.

Judge Speare was raised in Laurel, graduating from Laurel High School in 1947. In 1981, he gave the commencement address to the school's graduating class. He attended Montana State University in Bozeman, majoring in engineering, for two years and then transferred to the University of Montana, where he graduated from the School of Law in 1952. Through ROTC, he was commissioned and served on active duty for four years in the Judge Advocate General Corps of the U.S. Air Force at F.E. Warren Air Force Base, Cheyenne, Wyo., and in Goose Bay, Labrador.

Judge Speare and Lt. Shirley Murbach were married in Sioux City, Iowa, in 1954. They returned to Laurel in 1956 and Judge Speare opened his private law practice in Billings. In 1958, he was elected Yellowstone County attorney, re-elected twice and served through June 1965. He returned to private

law practice and was elected in 1968 to the Montana State Legislature as a Democrat. He served in the 1969 session and declined to run for re-election.

In October 1979, he was appointed as District Judge for the 13th Judicial District, and was re-elected twice until he retired in January 1995.

Judge Speare was active in the Yellowstone County Bar Association, serving a term as president and received its Lifetime Achievement Award; was secretary of the Montana State Bar Association; and a member of the Montana Judges Association and the Democratic Party. He also served on the Vestry of St. Luke's Episcopal Church, and was a member of Laurel Masonic Lodge, Al Bedoo Shrine, the Elks Club, and the



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American Legion. Judge Speare is survived by his wife, Shirley, two daughters and a son.

### Other deaths

- **Mona Metcalf** of Philipsburg, who retired in 1988 after 17 years as assistant to Granite County Attorney J. Allen Bradshaw, died April 29 in Philipsburg at age 90.

- **Dwight Owen Burton**, 69, who served three terms as justice of the peace in Circle, died May 16 in Billings.

- **Susan Wenger Duffy**, 64, of Missoula, wife of Patrick Duffy, clerk of the U.S. District Court of Montana, died June

6. Among her accomplishments was a decade spent as the parent advocate to the Mountain States Genetics Foundation.

- **Carl Francis Eaton**, 92, who was a justice of the Peace in Phillips County, died on June 19.

- **Romona Ryder**, 49, who had been a legal secretary for the Darland Law Firm in Plentywood, died June 22 when a severe thunderstorm destroyed her home west of Froid.

- **Rita Ricker**, 80, who had been a "very active" volunteer with the Yellowstone CASA (Court-Appointed Special Advocates) in Billings, died July 13.

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