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THE STATE BAR OF MONTANA

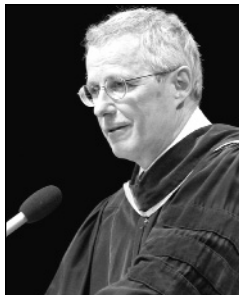
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JULY INDEX

PLEASE NOTE: There will be no separate issue of *The Montana Lawyer* in September this year. Next month's issue will be the August/September issue. The issues will resume in October.

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PRESIDENT'S MESSAGE

Get out of your rut

What I did on my summer vacation, amended

Chris Tweeten

Summer is the tourist season in Montana. Hordes of visitors are descending on all parts of our wonderful state, intent on enjoying everything our state has to offer. Sadly, we Montanans sometimes take our state for granted. We spend our summers in the same places engaging in the same activities as we did last year.

Studies have shown that for we lawyers, maintaining a healthy work-life balance is one of the most important things we can do to enhance our satisfaction with our jobs. So, here's a non-exhaustive list for lawyers including, but not limited to, the fun things you may never have thought of doing with your summer.

■ **Learn a new sport.** I confess with some embarrassment that until last year I had never held a fly rod. Last spring, I decided to remedy this situation by giving my wife his-and-hers fishing lessons for her birthday. We spent four nights in class learning to tie knots and looking at cartoons showing where fish were likely to be hiding.

On the following Saturday, the first one in June, we spent four hours standing in barely liquid water and snow flurries, flailing the water into a white froth in a largely vain attempt to avoid hypothermia. Since then, we've learned that there are few things nicer than being out in the woods at sunrise taking in the scenery and trying to catch a fish.

No self-respecting trout would demean itself by letting us catch him, but we've gotten over the idea that catching a fish is the point.

■ **Visit as many of our state parks as you can.** They are scattered across Montana, and visiting them will give you an opportunity to visit parts of the state you may never have seen before. The spooky scenery of Makoshika State Park near Glendive may even convince a western Montanan that there is something worth seeing east of Helena.

■ **If you don't want to concentrate on state parks, find another reason to tour the state.** You might want to look up the list of the 35 places you must see in Montana, which includes events like the Crow Fair that most Montanans have never seen. My personal favorite is a list found a couple of years ago in *Montana Magazine* of the 35 best pieces of pie in Montana. The chosen pie shops are spread from Polebridge to Baker and all points in between. We have decided to make it our mission to sample each of the 35 pies.

The 35 best pieces of pie in Montana are spread from Polebridge to Baker. We made it our mission to sample all 35 pies.

■ **Visit a summer theater.** If there's one in your town, see all of the shows it presents. There are professional companies, like the famous Big Fork Summer Playhouse, but I think the local amateur companies are every bit as interesting.

If you happen to be in the Deer Lodge area some night this summer, see if the Deer Lodge Players are on stage presenting "Same Time, Next

Year," featuring Powell County Attorney Lewis Smith.

■ **Visit Missoula July 15-18 for the International Choral Festival.** Begun in 1987, the festival has attracted singing groups of all kinds from around the world to Missoula. Admission to all concerts is just \$10. This year there will be 14 groups from China, the Republic of Georgia, and the Democratic Republic of Congo, among many others. The outdoor finale on Saturday evening is an amazing cultural event, even if you thought choral singing was not your thing.

If none of these events interest you, I'm sure you can find others that are worth your while. So keep your life in balance. Spend time with your family. Stop spending so much time on the same old activities. Get out there and find what Montana has to offer.

○

2009 grads drafted into the 'battle for justice'

The hooding-ceremony speech delivered by Justice Leaphart

The following address was delivered by Montana Supreme Court Justice William Leaphart at this spring's graduation ceremony in Missoula for the School of Law's Class of 2009:

I want to say that I'm truly honored for the opportunity to give this address. I am, of course, a proud '72 graduate of this school. Furthermore, my grandfather was the dean of this Law School for 36 years, from 1916 to 1952 – back when the Law School was in what is now the Jeanette Rankin Hall, the building with the two pillars on north edge of the oval. And I know that he would be proud that his grandson is giving the commencement address some 93 years after he started teaching here – and even more proud to see what the Law School has grown into, both in terms of reputation and now the new building.

I want to thank Dean Eck for his tremendous work in spearheading the drive to build the new addition to the school. I had a tour of the facility about a month ago. Although it was far from completed, I am enough of a visionary to see that it will be a beautiful facility – certainly a source of pride and a tribute to your deanship.

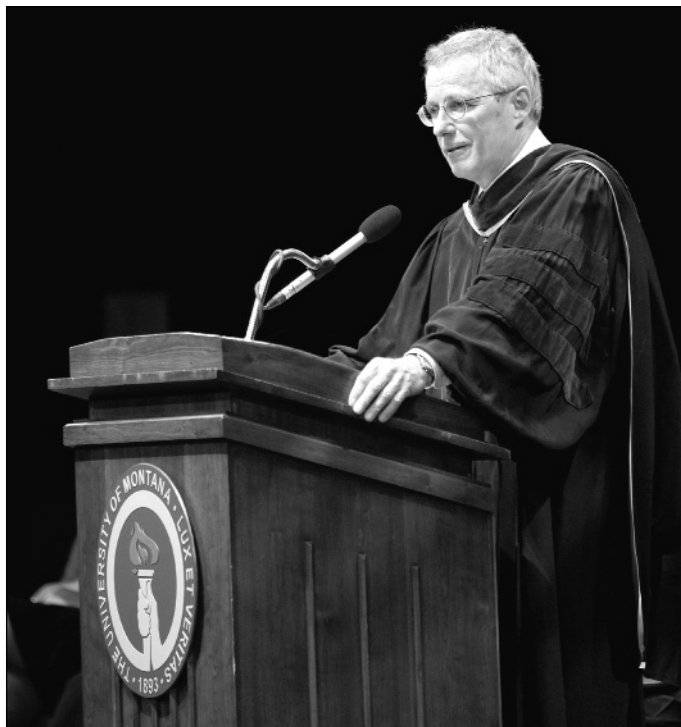
I do understand that the class of '09 has sacrificed the most during the construction, having to attend class at various locations throughout the city. In fact, I wasn't sure whether to address my remarks to the graduates of the Law School or the Missoula Children's Theatre.

AS AN APPELLATE JUDGE, I have been able to maintain energy and enthusiasm in my chambers by rotating clerks. I've had the pleasure each year of reviewing 25 to 40 applications from all around the county, primarily from the University of Montana Law School.

Over the years, I'm always been impressed with the resumes I receive, and their contrast with the make-up of my own Law School class.

When I graduated, it was an all-male class made up essentially of students who had either an English degree or a Business degree. The few of us who had traveled had perhaps been to Western Europe.

In today's classes, there is much more diversity – certainly in terms of gender, but also in their undergraduate background. I see bachelor's degrees in everything from engineering, medicine, foreign affairs, math, city planning, and oceanography (that latter student was obviously not a graduate of the University of Montana). The depth of experience is equally amazing – many students have spent a year or semester abroad in locations all over the world, not just in Europe but



in Third World countries in Asia, Africa, and the Middle East.

Most importantly, there is generally a record of public service: having worked in VISTA, Peace Corps, Big Brothers & Sisters, environmental causes, Legal Services, Women's Law Center, ACLU, etc.

When I interview applicants, I ask them what they see themselves doing after the clerkship. I'm always pleasantly surprised by the number of graduates who would like to practice in the public sector or for non-profits.

I WAS AT A LAW DAY luncheon the first of May in Bozeman. The district judges there were recognizing the attorneys who had given their time in providing pro bono services – but at the same time, putting the Bar on notice that the need for legal services was way up and that the demand was not being met.

I know these concerns are not limited to Bozeman. They are a concern nationwide.

In the May edition of *The Montana Lawyer*, there's an article about the Montana Justice Foundation's unprecedented drop in funding – a 54 percent decline. Two years ago, the funds were earning 5 percent interest. Now, with the economic downturn and the Fed's dropping of interest rates, it's rare to get more than 0.5 percent. As a result, Montana Legal Services has been forced to let go eight staff members, forcing

More LEAPHART ADDRESS, Page 30

Green law firms can save greenbacks

I recently attended the ABA's 38th Annual Environmental Law Conference in Keystone, Colo. While the substance of the conference addressed current environmental issues, policies, and laws, I was particularly excited to find information in my CLE materials about what law firms can do within their own offices to attack climate change by reducing their enormous impact on greenhouse gas emissions.

Even if you don't believe everything you read about global warming, the following article is an important resource for your law office to begin saving "green" by "going green."

Many of us already know that being a lawyer means we are a part of one of the most paper-intensive professions in the U.S. The EPA's website reports that an informal survey of six small to large firms across the U.S., conducted by Arnold & Palme, LP, discovered that paper usage per attorney ranged from 20,000 to 100,000 sheets per year. The high range of this finding is the equivalent of one-half ton of paper per year for one attorney. I don't know about you, but that is an inconceivable amount of paper for one person to consume per year.

Therefore, the ABA and the EPA have designed a program to challenge law firms to reduce their paper usage and the resulting greenhouse gas emissions associated with production of paper, as well as to increase energy efficiency and to purchase green energy from renewable sources. The ABA-EPA Law Office Climate Challenge began in 2007. However, only two law firms in Montana currently participate in any of the Challenge's three programs. The purpose of this article is to challenge every law firm in Montana, large or small, to take part in at least one component of the Challenge.

The paper problem

According to the EPA, the life-cycle of a ton of paper, from birth to death by recycling, generates approximately nine tons of carbon dioxide emissions. Disposal of the same paper in a landfill instead of recycling results in an additional two tons of carbon dioxide emissions per year.

Not only does production of paper from non-recycled sources generate carbon dioxide and other greenhouse gas emissions, but it consumes trees, a process that also releases carbon dioxide and reduces sources for natural carbon dioxide

Two Montana law offices participate in the ABA's and EPA's Climate Challenge. Will yours?

By
Merianne A. Stansbury, attorney
Brown Law Firm, Billings

sequestration. Paper production also generates wastewater, waste products, and hazardous pollutants, which are released into the air and water.

In addition to paper for court briefs, discovery responses, internal memoranda, and correspondence, law offices purchase and use large quantities of binders, folders, journals, newspapers and magazines. Paper and paperboard make up the largest single compo-

nent of municipal waste in the United States (for more information on paper use and waste management, visit www.epa.gov/epawaste/index.htm).

So how can law firms fix the enormous problem of paper usage? Certainly, one way is to go "paperless." The federal court system has already begun to reduce its large amount of paper by implementing the electronic filing system. Additionally, more and more courtrooms have electronic systems for publishing exhibits at trial, thus reducing the amount of physical paper the parties need to bring into the courtroom. The more your firm can use computers for reading internal documents and research, the better.

However, let's be honest here. It's doubtful that any law firm can be completely "paperless." First, you still have to print paper copies of court filings in order to sign and file them in state court. Second, until Montana state courts go "paperless" like the federal courts, we will still need to serve paper copies of briefs and discovery on opposing counsel and, many times, to our clients as well. Moreover, associates doing research for hours upon end can only stare at the computer screen for so long before our eyes and head start to hurt; thus, it is often necessary to print paper copies of cases and statutes in order to rest these very important resources. Thus, it simply is not realistic to expect law firms to go completely "paperless." Thankfully, the ABA and the EPA have teamed up to offer firms different ways to supplement the "paperless transition."

Best management practices

The first option of the Challenge is simply to sign up with the ABA and adopt Best Practices for Office Paper Management. All an office has to do is implement at least two of the three following practices:

■ **Purchase office paper with at least 30-percent post-consumer recycled content.**

This practice does not just mean the paper on which you print briefs and exhibits. It includes all types of copier, printer, letterhead, and bond paper, as well as envelopes, including manila envelopes. Your firm can meet the Challenge by either: 1) ensuring that at least 90 percent of all types of paper is at least 30 percent post-consumer content; or 2) ensuring that 100 percent of copier and printer paper has at least 30 percent post-consumer content.

■ **Recycle mixed office paper.**

Another easy practice to adopt is recycling nearly all “mixed office paper.” This includes nearly all types of paper used in a law office: white paper, colored paper, file folders, and envelopes. Simply provide attorneys and staff with convenient access to recycling bins, establish a centralized collection center and a system for transferring the paper to a recycling station.

■ **Use double-sided copying and printing.**

It is true that all “papers” that are filed with the court must be single-sided; Uniform District Court Rule 1(a) (6) says so. But did you ever notice what else UDCR 1(a) says and does not say? First, it excludes exhibits and court records on appeal from the definition of “papers.” It also only includes documents “presented for filing.” Therefore, any documents that are not actually filed with the court are not required to conform to Rule 1(a) (6).

Therefore, I would like to make the following additional challenge to the Montana Bar: If it is not being physically filed with the court, double-side it. You will probably begin to notice the difference in your bills for office supplies if you start double-side printing and copying every document that is not being filed with the court. Drafts of motions and briefs. Internal memoranda. Settlement brochures. Discovery requests. Discovery responses. Letters to the client. Letters to opposing counsel. Copies of motions and briefs being served on opposing counsel or your client.

If you’re worried about the effect this may have on the recipient, simply add a sentence or two about your new firm policy and commitment to combating climate change. I suspect they will understand. Also, electronic communications should

be used as much as possible.

And while we’re at it, let’s challenge the courts to amend their rules to allow attorneys to file double-sided documents.

WasteWise

Additionally, firms can become part of the WasteWise program. A WasteWise Partner not only adopts at least two of the three Best Practices, but also registers with the EPA in addition to the ABA. Each year, you must submit a report to the EPA that quantifies the amount of paper waste avoided and the amount of greenhouse gas emissions avoided. The EPA’s website provides helpful information on how to quantify these savings. For more details, visit www.epa.gov/epawaste/partnerships/wastewise/about.htm.

The greatest thing about the paper reduction and WasteWise components of the Challenge is that they emphasize practices

that many law firms probably already implement.

Therefore, they can easily be implemented with little to no cost to your firm. Before I learned of this program, my firm already purchased paper with at least 30 percent post-consumer content, and recycled most of its mixed office paper. We have now begun to implement the third practice, by adopting a policy that at least all internal documents, settlement brochures, and discovery documents are printed and copied double-sided.

For all the necessary documents to get started, visit



A good place to start: cut down on your practice’s paper use. The legal profession is the most paper-intensive profession going. An attorney uses anywhere from 20,000 to 100,000 sheets of paper a year, a survey found.

www.abanet.org/envirom/climatechallenge/wastewise.shtml.

Green Power

The second component of the Challenge is the EPA’s Green Power Partnership Program. This is the most straight-forward part of the Challenge, in that all it requires is the firm to commit to purchasing a minimum percentage of the firm’s energy from renewable sources. Firms that purchase the minimum amount will be recognized as Green Power Partners, while firms that go above and beyond the minimum will be recognized by the EPA as Green Power Leaders. Even if your current utility company does not provide for the direct purchase of renewable energy, your firm can still participate.

Here’s how it works. First, the minimum amount of megawatts to be purchased each year is calculated by reference to your firm’s annual electricity use. If your annual elec-

tricity use is relatively low, your minimum amount could be as much as 10 percent of your total electricity usage. If your annual electricity use is relatively high, your minimum could be as low as 2 percent. The EPA provides helpful guidance on how to calculate this minimum at www.abanet.org/environ/climatechallenge/GreenPower.pdf.

Next, you sign a Partnership Agreement, which basically states that you will reach your minimum purchase of renewable energy within one year of joining the Partnership. The final step is to start purchasing green power from your utility provider. Upon enrollment, the EPA will provide an account manager who can provide information about the availability of green power products in your area. Upon acceptance into the program, your firm is authorized to use the EPA Green Power Partner logo, which will convey to clients and the general public your dedication to renewable energy, thus establishing your firm's reputation as a good energy steward.

Additionally, your firm must provide a Partner Yearly Report documenting how you have met your requirements for the year. Each year, the firm must purchase at least the minimum amount of renewable energy in order to remain a Partner.

To get started on the Green Power Program, visit www.abanet.org/environ/climatechallenge/greenpower.shtml.

Energy Star

Did you know that energy represents about 30 percent of a typical office building's operating costs? You probably don't realize it on a conscious level, but energy is also the single largest controllable operating expense. Commercial businesses generate 18 percent of U.S. carbon dioxide emissions, and 30% of the energy consumed by buildings is used either unnecessarily or inefficiently.

Therefore, the final component of the Law Office Climate Challenge is the Energy Star program. Energy Star is a joint Department of Energy and EPA program that encourages businesses and governments to increase energy efficiency and promotes energy management planning. A law firm may join the program by implementing an energy management strategy that seeks, through good faith efforts, to reduce the firm's total energy consumption or electricity use by at least 10 percent, depending on whether it owns or rents its office space.

To join, all a firm has to do is sign and submit a Partnership Letter, stating that the firm will:

- Baseline, track, and benchmark its energy performance.
- Implement a plan to reduce energy intensity across its facilities.
- Educate staff and the public about its partnership in the program and its achievements.

A great way to start developing your energy management

plan is to contact your local utility provider and request an energy audit. Most utilities will conduct an energy audit free of charge. The audit will be able to tell you how much energy you consume and will recommend ways to improve the efficiency of your office building. For example, if you are a Northwestern Energy customer, all you need to schedule an audit is the total square footage of the subject building, the age of the building, and the type of heating system used for space and water heating.

Once your firm has achieved measurable reductions in energy or electricity use, all you have to do is report the reductions to Energy Star. There is no standard form or deadlines for filing the report. If you have reached a reduction of at least 10

percent, you should also submit a copy of the report to the ABA Section of Environment, Energy & Resources (SEER), and

the corresponding reductions in greenhouse gas emissions will be reported on the Challenge website. Your firm will then be recognized by the EPA as a Climate Challenge Leader.

So, what kinds of things can your firm do to reduce its energy consumption? SEER and Energy Star have developed a "Law Office Guide to Energy Efficiency," which offers many suggestions that law offices can use to develop energy management plans and provides valuable resources for current owners of offices, tenants, and firms looking to renovate or transfer buildings. The Guide is available at: www.abanet.org/environ/climatechallenge/lawofficeguide.pdf.

In addition to the Guide, Energy Star has a "Building Upgrade Manual" which describes strategies for upgrading existing buildings to be more efficient. The manual can be found at: www.energystar.gov/index.cfm?c=business.bus_upgrade_manual.

Even if you are not ready to replace old equipment or renovate your building to install the most energy efficient technology, there are many ways to make a difference in your energy consumption. Some of the strategies are rather obvious and actually can make quite a difference in your energy bills, such as:

- Turn off computers, printers and copiers at night or during periods of non-use.
- Use duplex features of copiers and printers where practical.
- Unplug appliances such as microwaves and coffee makers when not in use.
- Turn off lights when not in use, such as when leaving the office for lunch or other periods longer than one hour (see www.energysavers.gov/your_home/lighting_daylighting/index.cfm/mytopic=12280 for an explanation of when this is energy efficient based on the type of lights).

Check out the "Law Office Guide to Energy Efficiency" at

www.abanet.org/environ/climatechallenge/lawofficeguide.pdf

Some strategies are not-so-obvious, although once considered, make a lot of sense (and cents):

- Install motion or occupancy sensors in rooms that are not used continuously, such as bathrooms, kitchens, and copy rooms;
- Install electronic thermostats that automatically reduce the temperature in the office at the end of the work day, and increase the temperature at the start of the work day;
- Replace annoying overhead fluorescent light bulbs known as T12's with more energy efficient and less bothersome T8 or T5 lamps;
- Encourage use of natural daylight when possible.

The most interesting discovery I made when I read the "Law Office Guide to Energy Efficiency," other than the fact that there are other kinds of overhead fluorescent light bulbs, is that there are also more efficient lamps for illuminated exit signs, which I never really thought about before. Typical exit signs use between \$11 and \$28 of electricity per year. New LED technology can not only reduce this cost to \$4 or less per year, but can also extend the life of the lights to 10 years. Resources on where to purchase these bulbs and other helpful information are all readily available through the "Law Office Guide to Energy Efficiency," which, again, can be found at www.abanet.org/envirom/climatechallenge/lawofficeguide.pdf. The Guide also provides links to a directory of service providers, Energy Star success stories, and Energy Star Award recipients.

If your firm leases, rather than owns, its current building, it can still take steps to reduce energy consumption. Not only can it take simple steps like turning off lights and computers when not in use, or upgrading existing equipment. The Guide also provides ways for a firm to work with the building owner to improve energy efficiency and pass the savings on to the law office, or to more fully consider energy efficiency goals if considering different office space.

Proof that it works

As a testimonial as to how effective some of these practices can be, I began implementing a policy in my home last year of: 1) unplugging the microwave and espresso machine when they are not in use; 2) closing our main laptop when not in use; and 3) replacing all the light bulbs with new energy efficient CFL bulbs. In only one month, my electricity bill had dropped \$9, for a total electricity savings of \$108 per year. Imagine the results when more strategies are implemented on a larger scale in your law office.

The following is an excerpt from one of Energy Star's Small Business Success Stories:

Manko, Gold & Katcher
Bala Cynwyd, Pennsylvania
Building Size: 20,500 Sq. Feet
Employees: 50
Annual Cash Savings: \$11,407
Payback period: 18 months

Says John Kirk, director of administration for MGK, "Upgrading to energy-efficient technologies is a no-brainer. For years to come we will reap the economic and environmental benefits of what we accomplished in three nights."

To complete its energy upgrade, MGK hired a local lighting contractor to survey the office, provide upgrade recommendations, install the new lighting, and handle disposal. The upgrade was completed in just three nights, after office hours, to avoid disrupting employees.

Before the upgrade, MGK had relied on 256 forty-watt, T-12 standard fluorescent lamps with inefficient magnetic ballasts to provide light to 32 offices, 5 conference rooms, and 7 printer rooms. MGK replaced these T-12 lamps with efficient 30-watt, T-8s with extended output ballasts. Because T-8s produce more light using less energy than T-12s, MGK was able to de-lamp 120 fixtures (from four to two lamps per fixture) while maintaining appropriate light levels. MGK also added reflectors to all fixtures, increasing light levels and making the lighting more direct. The company also upgraded 13 exit signs from 50-watt incandescents to 2-watt LEDs and installed 37 infrared occupancy sensors in office and conference and printer rooms. The entire retrofit has saved MGK over \$11,000 annually.

To read the rest of the story, and to see other Success Stories, visit www.energystar.gov/index.cfm?c=sb_success.sb_successstories.

To get started with the Partnership Letter, visit: www.energystar.gov/index.cfm?c=business.bus_commit.

Other office best practices

Paper, although the primary waste product of law offices, is not the only thing you can begin to recycle. For example, when replacing or upgrading new office computers, best practices include purchasing equipment based on its environmental qualities, such as Energy Star rating, and selling, donating or recycling used equipment.

The EPA also has a Resource Conservation Challenge, which is designed to facilitate purchasing of computers based on their environmental qualities.

There is also the EPA's Plug-in to eCycling program, which promotes recycling of computer equipment. See www.epa.gov/epawaste/rcc/index.htm for more details.

Additionally, firms should sell or donate used furniture when updating offices.

Finally, keep recycling those plastics and aluminum cans from your office kitchens.

Additionally, firms could offer incentives to employees who choose alternatives to traditional work transportation. Walk, bike, bus, or carpool to work and to the courtroom. Firms could offer to subsidize public transportation or offer other incentives to carpool, bike, or walk. Not only can you save gas, but you can get exercise as well.

Why should your firm participate?

After all of these exciting revelations, why on earth would your firm not choose to participate?

There are plenty of reasons why you should accept the

Challenge, and not all of them have to do with a dedication to environmental protection. Regardless of your political beliefs about climate change, it will save your firm money in the long run, and even in the short term. You will begin to notice savings in some of these areas after only a few months of implementing the Challenge or one of its components.

I am always told not to forget that the legal profession is also a business, and the bottom line counts. This should be reason enough for all the firms in Montana, large or small, to sign up for WasteWise and Energy Star, and it is as good a reason as any to sign up for all three programs. The motivation should not matter; it is the actions taken that count.

However, as lawyers, we also have a fundamental responsibility as officers of the legal system and "public citizen[s]" having special responsibility for the quality of justice." What good is our dedication to quality justice and the rule of law if we just sit idly by and allow our daily practices to compromise the quality of life for our past, present, and future clients?

I came to Montana primarily because of its citizens' love for

and dedication to preserving the natural resources and beauty that makes Montana "the last best place." I firmly believe that Article IX, Section 1 of the Montana Constitution, which requires all citizens to maintain and improve a clean and healthful environment for present and future generations, is not just a lofty aspiration with no real substance. Rather, it is a responsibility that Montanans take seriously, and meeting the Challenge will only benefit the Montana legal profession and our clients if we become leaders in environmental protection and energy conservation.

I hope that each of you reading this article will now bookmark your place in the *Montana Lawyer*, head to www.abanet.org/envirom/climatechallenge, download the Climate Challenge Enrollment Form, and get started saving!

MERIANNE A. STANSBURY is a third-year associate with the Brown Law Firm in Billings. She is building her practice in all aspects of environmental, natural resources, and land use planning law.

STATE BAR NEWS

Summary of May Board of Trustees meeting

By **JILL DIVELEY**
Bar Membership Coordinator

The State Bar Board of Trustees held an overnight long-range planning session at the Double Arrow Ranch at Seeley Lake on May 29-30. A half-day presentation was made by Montana experts on diversity (see story on Page 12), followed by a Board meeting that yielded the actions summarized below:

President's Report – Chris Tweeten

Mr. Tweeten attended the ABA Summit meeting that focused on creating awareness of how government and legislatures work. He also attended the swearing-in ceremony for the successful February bar exam applicants.

Secretary-Treasurer's Report – Joe Sullivan

The State Bar sections will be asked to look into their current budgets. Sections with fund reserves will be presented with suggestions on ways to use that money – such as donations, grants, waiving dues for members for a year, or helping sponsor the printing costs for the "Guide to Turning 18" and "Citizen's Guide to Montana Courts."

Past President's Report – Jock Schulte

Mr. Schulte is still working on the ABA membership drive which is specifically focused towards newer attorneys.

There will be a Past Presidents Committee meeting in August to select the winner of this year's Jameson and Haswell awards.

President-Elect's Report – Cindy Smith

Planning for the Annual Meeting is coming along nicely. The meeting will be held at the Holiday Inn Downtown at the Park in Missoula on Sept. 17-18 and will feature the Celtic Dragon Pipe Band as part of the Thursday night banquet. CLE speakers will include the dean of Gonzaga Law School and the new University of Montana Law School dean. (Look for your Annual Meeting registration flyer in the mail in July, and the Annual Meeting program in the August *Montana Lawyer*).

Board Chair's Report – Shane Vannatta

Mr. Vannatta reminded the Board to fill out a petition for re-election for those whose area trustee terms expire in September. All Bar members, of course, can seek election as Bar trustees and officers by completing the nomination form presented in the June *Montana Lawyer*. The petition also can be found at www.montanabar.org at Bar Groups > Board of Trustees.

Reports requiring Board action

■ **By-laws revised concerning legislative bills.**

The Board adopted revisions to Section 3-108 of the Policies of the Board of Trustees. The revisions require any legislative bill-drafting by Bar sections and committees to be approved by the Board of Trustees before being given to the Legislature.

■ **Montana values resolution.**

The Board discussed whether the Values for Montana Lawyers that were recommended by a State Bar task force last

year should be adopted by the Board, or presented to the entire State Bar membership for a vote first. Some Board members felt that Board adoption may be seen as the Board mandating to members values they already possess and base their practices on. Others felt that an enunciation of lawyer values would be a good thing for the public to see. The Board finally decided to ask the Past Presidents' Committee to develop an informal statement of Montana values and diversity.

■ **Senior-status age requirement and review of membership categories.**

The Board discussed dropping the age requirement for senior membership to 65. They also discussed the idea of creating a subcommittee to explore and re-examine the current Bar membership categories, based on responses by members to the latest dues-increase proposal. The Board voted to leave the membership categories as they are for now.

■ **George L. Bousliman Professionalism Award.**

The Board moved the deadline date for nominations for the award back to May 15 (from June 15), so that the Board could decide the winner at its May/June meeting. This year, as in the past, the award is decided during a special Board conference call.

■ **The proposed 2009-2010 Strategic Plan.**

The Board was presented with a proposed 2009-2010 Strategic Plan with suggested changes by Executive Director Chris Manos. The Board adopted the plan after approving the following amendmendments:

- Adding "Encourage sections and committees to develop and incorporate programs that promote diversity and address unique legal problems of minorities and others who face barriers in the access to justice" as a new section 1.5.
- Adding "Work to increase the diversity of the Bar membership" as section 2.6.

The 2008-2009 Strategic Plan is on www.montana-bar.org under Bar Groups > Board of Trustees. The 2009-2010 plan will be added soon.

■ **Montana Justice Foundation Report – Damon Gannett**

The Foundation is working on a campaign to encourage lawyers who have IOLTA accounts to ask their banks for an interest-rate increase. With IOLTA funds deteriorating, it has become apparent there is a need to generate a regular stream of income rather than rely solely on various fund-raising efforts. There also needs to be more awareness of the program made within the membership.



Photo by Mark Parker

With the Swan Range in the background and the Double Arrow Resort golf course just below, State Bar trustees and spouses gather on the resort's deck following the first afternoon of their meeting in late May.

■ **ABA Delegate Report – Damon Gannett**

Mr. Gannett will attend the ABA House of Delegates Annual Meeting in August. Some of the preliminary agenda items are an amendment protecting the rights of the unborn; an amendment extending approvals to several paralegal education programs; and an amendment that would adopt the ABA Model Act Governing the Representation of Children.

■ **Lawyers Assistance Program – Betsy Brandborg**

Ms. Brandborg advised the Board that there is a lack of structure defined within the proposed LAP Policies & Procedures on how to handle the files of a solo attorney that dies or leaves his law practice unexpectedly. For those who volunteer in the clean-up and organization of those attorneys' cases, there are concerns over compensation for time, storage, shredding, copying fees, etc. The Board appointed a committee to develop a rule that would be presented to the Montana Supreme Court on the closing of a law practice due to abandonment, death, or disability. Volunteers for the committee were Mark Parker, Bruce Spencer, Lynda White, and Betsy Brandborg.

■ **Executive Director's Report – Betsy Brandborg**

Executive Director Chris Manos was unable to attend because of a death in his extended family. Ms. Brandborg reported that next year's IOLTA and pro bono reporting forms will be online.

A Chinese delegation of lawyers will visit the State Bar offices in Helena on Aug. 14.

Bar Counsel's Report – Betsy Brandborg

There is currently a push for a national bar exam that, if adopted, would put greater pressure on the character and fitness process. Bar President Chris Tweeten noted that new Chief Justice Mike McGrath is open to re-examining the pro hac vice and reciprocity issues. Proposed revisions to the Rules of Professional Conduct have received a large volume of comments. A reply brief has been written (see Page 20) and will be submitted to the Court.

The proposed revisions to the Fee Arbitration Rules were adopted by the Supreme Court and are now in effect. They can be found under the "For the Public" link at www.montanabar.org.

Equal Justice Coordinator Report – Janice Doggett

A self-help law center is being established in Helena that will be staffed by Carroll College students.

A new Vista volunteer has been selected to replace current Vista Abigail Houle, whose last day is July 16th.

Area E Local Bar Report – Ryan Rusche

Current Board member Pete Helland will not be running again for Area E, so a replacement is needed.

Area H Local Bar Report – Pam Bailey.

The Yellowstone Area Bar Association had a very active year under the leadership of its president, John Crist. YABA has monthly luncheon membership meetings, monthly CLE programs and a monthly e-mailed newsletter.

YABA held a Habitat for Humanity Day and assisted with building two new homes in Billings. The annual Turkey Drive raised \$4,760 for the Food Bank. There were morning coffees with the Yellowstone County judges and the 9th Circuit panel that were in town for an oral argument.

An Access to Justice Forum and luncheon was held which raised a significant amount of donations for the Montana Justice Foundation.

YABA held an annual golf scramble and BBQ; Oktoberfest party; St. Patrick's Day party; and a Christmas Open House.

YABA also created a mentoring committee. The YABA Annual Meeting was held in May. The Professionalism Award was given to Sherri Matteucci, and the Lifetime Achievement Award went to Bob Laroche.

The new YABA president is Dennis Paxinos.

Technology Committee Report – Ryan Rusche

The Committee has invited the ABA to bring its popular Tech Show to Bozeman and Billings in October.

New Lawyer's Section Report – Alanah Griffith

The Section's various socials have been successful and positive. The Section is working on revamping its webpage with the State Bar.

Dwight Schule will succeed Ms. Griffith as the new section president. The Section will hold its 2nd annual CLE in Missoula on Nov. 13.

Paralegal Section Report – Barbara Bessey

HB 301, drafted by the Section, passed with a governor's amendment requiring a paralegal to work under the supervision of an attorney. HB 301 allows paralegal costs to be awarded with attorney costs.

A subcommittee is being formed to amend the Section by-laws and to review the current application form.

The Montana Paralegal Newsletter will be distributed again soon after assistance is obtained with the writing and drafting.

Ms. Bessey will attend the National Association of Legal Assistants (NALA) convention in San Diego.

THE NEXT MEETING of the Board of Trustees will be held Sept. 16th at the Holiday Inn Parkside in Missoula.

TO REVIEW a full version of the Board-meeting minutes, see Bar Groups > Board of Trustees at www.montanabar.org

Board gets some Montana lessons on issue of diversity

By **Jill Diveley**

State Bar membership coordinator

The State Bar Board of Trustees, during its long-range planning meeting in Seeley Lake on May 29, summarized above, received a half-day lessons from four of Montana's top experts on the incorporation of "diversity" in Bar membership, board makeup, the legal profession and its clients.

The speakers were Amie Thurber, executive director of the National Coalition Building Institute's Missoula chapter; Klaus Sitte, director of Montana Legal Services; Ryan Rusche, a Native American and county attorney at Wolf Point; Missoula attorney Susan Ridgeway; and Helena attorney Julianne Burkhardt, chair of the Montana Supreme Court's Gender Fairness Commission. Bar President-Elect Cynthia Smith was moderator.

Ms. Thurber led the Board through an exercise that shows that factors beyond race and gender create our resistance to diversity – factors such as cultural heritage, income, sexual orientation, generational differences, religion, education levels, and disabilities. She encouraged more self-awareness of personal factors that could be barriers to acceptance of others.

Mr. Sitte discussed poverty as a barrier to access to justice, especially when legal-aid groups are facing their own economic hardships. He said preliminary results from the recent survey of users of the Montana Legal Service Association services show that a majority (53 percent) have had trouble getting through to the organization via its telephone HelpLine; although 57 percent said MLSA's website and brochures were helpful. Eighty percent of the respondents feel that MLSA is an important community resource. Mr. Sitte also said that U.S. Senator Tom Harkin (D-Iowa) and other senators have proposed the Civil Access to Justice Act of 2009, which would

By **Abigail Houle**, coordinator
Law-Related Education Center

Law Day, the ABA's designated day for studying the American legal system, is celebrated annually in May in schools across the country. This year, numerous Montana communities held educational events in honor of Law Day.

■ **IN BILLINGS**, Billings Catholic High School hosted guest speaker U.S. Magistrate Carolyn Ostby. Attorney Ronald Youde taught two classes at Skyview High School about Lincoln's suspension of habeas corpus and the extent to which the government can restrict civil liberties in order to protect the public as a whole. Attorney Jeffrey Weldon presented at Blue Creek Elementary School.

■ **IN BOZEMAN**, Montana State University planned several events to recognize Law Day. The Montana Supreme Court heard an oral argument at the MSU Strand Union. The event was open to the general public. Following the Supreme Court, University of Montana School of Law Professor Eduardo Capulong introduced several notable Bozeman cases.

MSU's Law Day lunch featured Chief Justice Mike McGrath as keynote speaker, and the winner of the

Lawyers, judges and teachers hold 2009 Law Day activities

Gallatin Bar Association's essay scholarship competition for high school seniors read his entry. Annual pro bono awards were presented at the lunch.

Professor Phyllis Bock and adjunct professors Paul Luwe and Terry Schaplow were helpful in promoting the events to MSU students.

Also in Bozeman, winners of the Rural Declaration Contest presented their entries on May 12 in district court. Organized by Mary Ellen Fitzgerald, the Gallatin County Superintendent of Schools, the contest required participants to identify what, in their opinion, had been the "Greatest Event in the History of the United States."

■ **IN HELENA**, attorneys from the Attorney General's Office gave presentations at Capital High School. Among the presenters were John Paulson, Chris Buslee, Anthony Johnstone, Jay Weiner, Mardell Ployhar, Jonathan Krass, Sarah Bond, and Mark Mattioli. The attorneys spoke on topics of their choosing, some simply leading open discussions about law and the courts.

■ **IN MISSOULA**, the University of Montana School of Law celebrated by hosting a Supreme Court oral argument, open to the public. The event was advertised in the newspaper and through invitations to social studies teachers and students in western Montana. A law faculty member introduced the case.

Attorney Bob Campbell organized other Law Day events in Missoula. The day began with mayor John Engen and the Missoula City Council proclaiming Law Day as a time for the community to review our basic rights.

Lawyers spoke at government classes at Sentinel, Big Sky, and Willard Alternative high schools, and Mountain View SDA Elementary School. Students participated in discussion about the federal and state constitutions, and the importance of citizens' basic knowledge of government. Attorney Brenda Desmond, previously recognized for her work in diverting mentally ill individuals from the criminal justice system into treatment courts, was chosen as the best speaker of the day.

■ **In GREAT FALLS**, Jason Holden, chair of the Cascade Country Bar, organized attorneys to speak in classrooms in Great Falls. ○

increase the authorized funding level to MTLA and other legal services programs.

Mr. Rusche, who also serves on the Montana Human Rights Commission, said there still needs to be more consideration of minorities in the legal community. Mental illness is often overlooked in discussing minority issues, he said, and mental illness prevents clients from understanding their rights and responsibilities. He called for better access to mental health care in rural areas of the state.

Ms. Ridgeway described a compelling case she is handling involving a bitter custody battle between same-sex partners who are splitting up. She said there are no domestic relationship laws for same-sex partners concerning division of property, child custody and adoption, dissolution of marriage, and

insurance or medical decisions. And, she said, there is a lack of knowledge of rights and laws that may already exist. She said the gay and lesbian communities are reluctant to use the legal system out of "fear."

Ms. Burkhardt said the Gender Fairness Commission's most recent report concluded, among other things, that (1) there should be a standing commission on gender bias issues; (2) pamphlets or some other form of publication educating on gender bias should be available in the courts; and (3) there should be proposed amendments to the canons of judicial ethics because current rules do not contain a specific section

More DIVERSITY, Page 24

Upcoming CLE seminars for Montana lawyers

July 6-10 Missoula – UM Law School

Taxation & Finance in Indian Country 15.0 CLE credits.
Presented by the University of Montana School of Law, (406) 243-6781

July 6-17 Missoula – UM Gallagher Building

Veteran's Law Course 30.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6788; umt.edu/law

July 7-8 Helena – Great Northern Hotel

Spring Education Seminar 12.0 CLE credits. Presented by the Montana Land Title Assn., (406) 443-5694

July 9 Missoula – DoubleTree Hotel

Land Use Law 6.0 CLE credits. Presented by the National Business Institute, (800) 930-6182

July 13-14 Missoula – UM Gallagher Building

Veterans' Law CLE 6.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6788; umt.edu/law

July 15 Helena – Metcalf Building, Capitol Complex

Investigating Personnel Issues 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

July 16 Helena – Holiday Inn Downtown

Oil, Gas & Mineral Land Law 6.0 CLE credits. Presented by HalfMoon LLC, (715) 835-5900

July 16 Teleconference

Paralegal's Guide to the Discovery Process 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

July 17 Chico Hot Springs

School Law Workshop 5.0 CLE credits. Presented by Michael Dahlem Esq., (406) 862-2430

July 21 Teleconference

Beneficiary Rights: Fact or Fiction? 1.50 CLE credits. Presented by Cannon, (706) 353-3346

July 23-24 Bozeman – Christus Collegium

Family Mediation 13.25 CLE credits, including 1.0 Ethics credit. Presented by the Center for Collaborative Solutions, (406) 587-2356

July 23 Teleconference

Paralegal Seminar on Jury Selection 1.00 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

Other web & phone CLEs for Montana credit are:

■ For the State Bar of Montana's approved online CLEs, go to 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=browseLive

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

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

July 30 Teleconference

Paralegal Seminar on Foreclosure Alternatives 1.00 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

August 5 Billings – Rocky Mountain College

The Parenting Plan A - Z 7.50 CLE credits, including 1.50 Ethics credits. Presented by Montana Mediators, (406) 839-3323

August 6 Teleconference

Paralegal Seminar on Pleadings & Motions 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

August 6 Teleconference

Paralegal Seminar on Ethics for Litigation 1.0 CLE credit, including 1.0 Ethics credit. Presented by the Institute for Paralegal Education, (800) 793-5274

August 11 Helena – Metcalf Building, Capitol Complex

Preventing Harassment 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

August 13 Helena – Metcalf Building, Capitol Complex

Privacy & the Right to Know 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

August 19 Miles City – Guest House Inn

Effective Disciplinary Action 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

August 20 Miles City – Guest House Inn

State Ethics Law 3.0 CLE credits, including 3.0 Ethics credits. Presented by the state Personnel Division, (406) 444-3985

Members may be due lobbying refund ... a very small one

The U.S. Supreme Court has ruled that unified bar associations, in which membership and dues are mandatory, must refund a portion of those dues when the association lobbies on a legislative bill in a stance with which a member doesn't agree.

During the 2009 Montana Legislature, the State Bar of Montana actively supported:

SB 125 – Judicial Nomination Commission clarification.

SB 158 – Addition of district judges.

The State Bar sought modification of:

HB 301 – Awarding of paralegal fees.

HB 322 – Fair Arbitration Act.

The State Bar did not actively oppose any bill in 2009.

The State Bar had very few lobbying expenses (about \$550), since most of its lobbyist worked pro bono. Divided by 3,372 active members, the refund amount for each of the bills listed above is quite small, 17 cents.

Resolutions for Annual Meeting due at State Bar office Aug. 1

Proposed resolutions for presentation and voting at the Annual Meeting can be submitted to the State Bar of Montana only through Aug. 1, so that the proposed resolution can be published on our website. Board of Trustees policies provide that a resolution must reach the Bar 45 days in advance of the Annual Meeting, which will be held on Sept 17-18 in Missoula this year.

To present a resolution, consult the requirements in Board of Trustees Policy 1-108 on Page 208 of the 2009 Lawyers' Deskbook & Directory. Please note that the policy requires resolutions to address items concerning the mission of the State Bar, presented on Page 198 of the Deskbook under Article III of the State Bar Constitution.

To receive a refund, list the bills on which you disagreed with the State Bar's stance and send the list to: **Lobbying Refund, State Bar of Montana, P.O. Box 577, Helena MT 59624.**

STATE BAR CALENDAR

July 10

Advertising & content deadline for *The Montana Lawyer* magazine August/September edition (there will be no separate September edition this year)

July 27-29

Bar Exam, DoubleTree Hotel, Missoula

August 14

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

September 14

Board of Bar Examiners pass-fail grading meeting for July Bar Exam, 10 a.m., State Bar offices, Helena

September 16

State Bar Executive Committee and Board of Trustees meetings, Missoula

September 17-18

State Bar Annual Meeting, Holiday Inn Downtown at the Park.

September 18

Dedication of new Law School Building, UM campus, Missoula

September 25

Construction Law CLE, Bozeman

August 20 Whitefish – Grouse Mountain Lodge
Boardsmanship Workshop 5.0 CLE credits. Presented by Michael Dahlem Esq., (406) 862-2430

August 21 Missoula – DoubleTree Hotel
Family Law Litigation 6.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

August 21 Whitefish – Grouse Mountain Lodge
Labor & Employment Law Workshop 5.0 CLE credits.

Presented by Michael Mike Dahlem Esq., (406) 862-2430

August 25 Teleconference
Conflicts Between Federal & State Laws-Unfriendly Encounters 1.50 CLE credits. Presented by Cannon, (706) 353-3346

August 27 Helena – Metcalf Building, Capitol Complex
Writing Administrative Rules of Montana 10.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

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.

LEGAL PUBLICATIONS

2008 Guide to Montana's Local and County Community Foundations

2008, 54 pages
Print only, free

Montana Students' Guide to Turning 18

2008, 22 pages, CD \$10
Free download at 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

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

Handbook for Guardians & Conservators

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

2009 Lawyers' Deskbook & Directory

Available now, book \$40
Mid-year update CD (July) \$20

MT Family Law Form Book

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

Public Discipline Under MT Rules of Professional Conduct

2006, 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
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2003, 5 forms
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2006 State & Federal Court Decisions Affecting Criminal Law

2.0 CLE credits

DVD, print materials included

2005 Chapter 13 Bankruptcy CLE

5.0 CLE credits

Set of 4 DVDs, print materials included

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2007 Inheriting Indian Land conference

2 DVD set, QuickTime format

2007 MT Leadership Summit on the Protection of Children

2-DVD set,

2.75 CLE credits

2006 Early Childhood Development 'Implications for Court'

1.5 CLE credits

2006 Streamlining Treatment & Legal Requirements

1.5 CLE credits

2006 Building a Case for Permanence

2.75 CLE credits

2005 Adolescent Brain Development

1.0 CLE credit

CLE MATERIALS

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CLE materials from 2009

Bench-Bar Conference

Abuse of Process, Malicious Prosecution & the *Seltzer* Case; Court Performance Measures Program; New Federal Rules of Procedure; Settlement Conferences; Pro Se Litigants; Courtroom Technology

Civil Litigation

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

CLE & Ski

Land Use; Case Update; New Canons of Judicial Ethics; Technology; Employment Law; Business Law; Post Courtal Separation Anxieties; Ethics

Easements

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

Family Law

Prenuptial Agreements; Teachers' Retirement Accounts; State Retirement Accounts; Discovery; New Public Access Rules; Ethics in Working with Unrepresented Opposing Party

Law Office Management

Closing, Retaining & Destroying Client Files; Workers' Compensation; Intellectual Property; Privacy in Family Law; Attorney-Paralegal Ethics

Malpractice Prevention

Malpractice Traps; Electronic Ethics; Risk Evaluation, Lawyers' Assistance Program; Your Client Turns on You

Oil, Gas & Wind Leasing in Montana

Wind Leases & Options; Federal Oil & Gas Leasing & Operation; When You Find a New Natural Gas Field; CO2 Sequestration; Title Problems; Coal Bed Methane; Appearing Before the Oil & Gas Board

On the Water Front

Stream Setback; New Historical Consumptive Use Formula; Water Quality; Adjudication; Water Right Fundamentals; Ditch Easements; Water Commissioners & Enforcement

CLE materials from 2008

Administrative Law & Procedure

Judicial Review of Agency Cases; Contested Case Procedures Before Dept. of Labor & Industry; Social Security Administrative Procedures; Ethics; Federal Tort Claims; Administrative Tax Appeal

Annual Meeting CLEs

Professionalism; Technology; Federal Tax Update; Family Law Update; Stress & Depression; Law Practice Business; MTLA Update; Land Use; Judicial Conduct Rules; MDTLA Update; Depositions; Rules of Appellate Procedure; Criminal Law Update; Federal Court Rules

Bankruptcy

Litigating Consumer Claims; Risk Management;

Best Practices; Chapter 13 Update; Judges Panel; Means Testing; Case Update

Bench-Bar

Motions; Limited Representation & 'Unbundled' Legal Services; Stress

CLE & SKI

Effective Mediation Techniques; 2007 Supreme Court Update; Montana Stream Access; Complex Real Estate Cases; Structured Settlements

Construction Law

Life Cycle of a Project; Defect Claims & the Prompt Payment Act; Workers' Compensation; ADR; Pursuing Payment; Contracting for Energy Projects; Perspectives of Owners, Buildings and Design Professionals on Design-Build Projects

Family Law

Common Mistakes in Calculating Child Support; Why We Practice Family Law; Special Issue Parenting Plans; Ethics; Depositions & Evidentiary Issues; Military Benefits; New Public Access Rules

General Practice

Indian Probate Reform Act; Impaired Practitioners; Criminal Law Update; Judges: What to Do; Ethics; Medicaid; Privacy & Public Access

Leap Into Litigation

All Law, On All Matters; Who Wants to be Stress Free?; Subpoenas: 3rd Party, State; Federal & HIPPA; Settlements & Mediation; Legal Investigation

Oil & Gas

Elm Coulee Field; Right to Access & Surface Damages; Leasing from a Lessor's Perspective; BLM's Leasing Program; Lawyer-Created Title Problems; Natural Gas Power Plant Development; Joint Ventures & Audits

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Justices set standard for care of kins' assets

Seen as a 'welcome strike' against financial abuse of the elderly

By **Mike Dennison**
Lee Newspapers State Bureau

In less than four years, a Missoula woman converted some \$400,000 of her elderly, bedridden mother's assets primarily for her own use, including bank accounts, income and property, court records say.

The Montana Supreme Court this spring upheld a ruling that said she improperly took the money – and established a new, stronger standard for those entrusted with their relatives' finances, says an attorney involved with the case.

"It's really the first statement of a fiduciary duty between family members," said Richard Reep, a Missoula lawyer who represented the mother's other three children, who sued to uncover what happened to their late mother's assets. "This will hold (relatives) to a stricter standard ... and I think it should."

Others familiar with elder-abuse cases also hailed the high court's April 21 decision as a welcome strike against financial abuse of the elderly.

"Any Montana Supreme Court decision in favor of protecting the elderly ... gives more tools to civil attorneys to stop perpetrators who take advantage of the elderly," said Rick Bartos, chief of the state Adult Protective Services Division.

An attorney for the daughter, Melissa Marsden, agrees that the ruling set a new standard - but not for the better.

Richard Buley, also of Missoula, said his client took good care of her elderly mother but made the mistake of not keeping good records of financial transactions that were made to support the household.

"This case is an object lesson to those who would want to take care of their parents, and who have other siblings who may live out of town," he said. "You'd better get it all in writing or get some sort of employment contract, because somebody later will come in and say, 'How did you spend each and every dime of your money?'"

Buley said he thinks the high court ignored related rulings and legal standards to "get their desired result."

The Supreme Court's 5-0 decision upheld a 2007 District Court ruling against Marsden and her husband, John Worley, both of Missoula.

In late 1999, the couple began taking care of Marsden's elderly mother, Josephine Marsden, after she had been hospitalized with numerous health problems.

Josephine's other three children agreed to the arrangement, in which she moved in with her daughter in Missoula.

After Josephine died in June 2004, her other children began

asking questions about their mother's estate and property.

Jody Connell of Las Vegas said her half-sister Melissa had virtually no financial records from the previous several years and was "very uncooperative" about producing any papers they requested.

The siblings then hired Reep, who filed suit on behalf of the brother, Robert Monroe of Florence, who was executor of his mother's will, and the other sister, Leatha Cancelosi of Reno, Nev.

The case took more than three years to go to trial, after which District Judge Doug Harkin issued a strongly worded decision against Melissa Marsden and her husband.

The decision said the couple had taken Josephine Marsden's income as their own and spent it, run up thousands of dollars in credit-card debt in her name, sold pieces of her property and spent the proceeds, taken out large loans on her property and spent the cash or used it to buy other property, and forged her signature to cash a certificate of deposit.

Harkin awarded Monroe and Cancelosi at least \$290,000, placed the properties in a constructive trust and ordered them to be sold, with the proceeds going to the estate, and said Marsden must pay her siblings' attorney fees.

He said Melissa Marsden had a "fiduciary relationship" with her mother and owed her "a duty of loyalty, prudence and utmost good faith" in taking care of Josephine's finances - and that Melissa clearly failed that duty.

"Josephine's life was built upon impeccable honesty, and for Melissa to draw her enfeebled mother into such financial skullduggery is do an unforgivable disservice to Josephine's memory," Harkin wrote.

The Supreme Court upheld Harkin's ruling in its entirety, rejecting an appeal by Marsden and Worley.

Naomi Karp, an attorney and strategic policy adviser for AARP's Public Policy Institute in Washington, D.C., said last week that the ruling is "a terrific decision" that should encourage people to seek legal remedies if they suspect elder abuse.

"I was stunned by the fact that it was such a tremendous misappropriation of property, without any legal authority by the family member at all," Karp said. AARP is the national membership group representing people 50 or older.

While the courts ruled in their favor, the other siblings doubt they'll see much of the money and assets that were spent or sold.

Connell said they might get one-fifth of what her mother's estate would have been worth, estimated at \$500,000, if it had been properly managed and not stolen.

"There is no way we're going to recoup all of that money, because it's just not there," she said. "When I think of how my mother saved - she was a single mother for many years - to see her whole life go down the toilet, it's heartbreaking."

○

The Montana Supreme Court, in an order issued May 22, has proposed revisions to the Rules on Substitution of District Judges.

The Court accepted written comments on the proposed rules through June 22.

The Court last revised the rules in 1995.

"The primary purpose of the revised rules is to make the rules easier to read and understand. In addition, the revised rules restate the times within which a motion for substitution must be filed in both civil and criminal cases," the Court said in its order.

The Court also is considering eliminating the right to substitute a district judge when a new trial has been ordered by the district court. That provision is set forth as subsection (11) of the proposed revised rules shown in their entirety below:

3-1-804. Substitution of district judges.

SUBSTITUTION OF DISTRICT JUDGES

This section applies to judges presiding in district courts. It does not apply to any judge sitting as a water court judge or to a workers' compensation court judge.

(1) Each adverse party is entitled to one substitution of a district judge.

(a) In a civil action, a motion for substitution by the party filing the action must be filed within 30 calendar days after the district judge is assigned. A motion for substitution by the party served must be filed within 30 calendar days after service has been made.

(b) In a criminal action, a motion for substitution by the prosecution must be filed within 10 calendar days after the district judge is assigned. A motion for substitution by the defendant must be filed within 10 calendar days after the defendant makes an initial appearance in the district court.

(2) (a) When an initial pleading is filed, the clerk of court shall stamp the name of the district judge to whom the case is assigned on the face of the original and all copies of that document.

(b) A motion for substitution of a district judge shall be made by filing a writ-

Court proposes revisions on rules for district-judge substitutions

ten motion with the clerk, as follows:

The undersigned hereby moves for substitution of District Judge _____ in this case.

The moving party shall serve copies of the motion for substitution upon all other parties to the proceeding. The clerk shall immediately notify the district judge of the motion and, if there has already been a substitution, the first district judge to whom the case was assigned.

(3) In civil cases, the motion for substitution shall not be effective for any purpose unless the filing fee for a motion for substitution required by 25-1-201 is paid to the clerk of the district court. No filing fee is required in criminal cases.

(4) Any motion for substitution which is not timely filed is void. The district judge for whom substitution is sought shall have jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall make an order declaring the motion void.

(5) After a timely motion has been filed, the substituted district judge shall have no power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10) below.

(6) The first district judge who has been substituted or disqualified for cause shall have the duty of calling in all subsequent district judges. In a multi-judge district, all other district judges in that district shall be called before a district judge from another district is called.

(7) When a new district judge has accepted jurisdiction, the clerk of court shall provide a copy of the assumption of jurisdiction to the first district judge to whom the case was assigned and to each attorney or party of record. A certificate of service shall be attached to the assumption of jurisdiction form in the court file.

(8) If the presiding judge in any

action removes himself or herself, or if a new district judge assumes jurisdiction in any action, the right to move for substitution of a district judge is reinstated, except as to parties who have previously obtained a substitution. The

time periods shall run anew from the date of service of notice or other document identifying the new district judge.

(9) After the time has run as to the original parties to the proceeding, no party who is joined or intervenes shall have any right of substitution, except as provided herein. A third party defendant, who is not an original party in the case, may have a right of one substitution. That motion must be filed within 30 calendar days after the service upon the third party defendant of a third party complaint.

(10) A district judge who has previously been substituted from the case may agree to set the calendar, draw a jury, conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases, and other matters which do not go to the merits of the case, if the district judge in jurisdiction authorizes the same.

(11) When a new trial is ordered by the district court, each adverse party shall be entitled to one motion for substitution of district judge. Such motion must be filed, with the required filing fee, within 20 calendar days after the district court has ordered a new trial.

(12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause remanded, each adverse party shall be entitled to one motion for substitution of district judge. Such motion must be filed, with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been filed with the district court. No other right of substitution shall arise in cases remanded by the supreme court.

In criminal cases, no right of substitution shall arise when the cause is remanded for resentencing. ○

Commission answers comments on unauthorized-practice rules

More clarity sought on definition of practice

The members of the Unauthorized Practice Commission responded in early June to the comments submitted to the Commission's petition to adopt revisions to the Rules on the Unauthorized Practice of Law.

See the proposed revisions at <http://courts.mt.gov> under Orders > Proposed Rules.

That petition, filed with the Montana Supreme Court, reflects what the Commission "believes it can accomplish within resources available: preliminarily investigate complaints of unauthorized practice and refer those of confirmed validity to other entities with prosecutorial authority." For procedural clarity, the Commission proposed incorporating the indicia of the practice of law from Montana Supreme Court *Commission on the Unauthorized Practice of Law v. Jerry O'Neil*, 2006 MT 284.

Excerpts from the Commission's response follows:

I. The Definition of the Practice of Law May Require Further Consideration.

Of the 118 comments submitted to the Court, all but a handful address the various definitions of the practice of law available from court cases, statutes, State Bar information and the Commission's revised rules of operation. Many of the comments refer to a memo available on the State Bar's website (www.montanabar.org; then the tab "For the Public" and then the "Unauthorized Practice of Law" tab) that includes the following parameters beyond the proposed definition:

Whether or not they constitute the practice of law, the following are permitted:

- (a) Acts or actions performed for and on behalf of him/herself as an individual.
- (b) Acting as a lay representative if authorized by administrative agencies or tribunals to do so.
- (c) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.
- (d) Acts or actions performed by a guardian, conservator, guardian ad litem or other lay representative authorized by a court, administrative agency or tribunal.
- (e) Acting as a legislative lobbyist.
- (f) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.

As noted by the commentators, the language quoted above was contained in the District Court decision in the *O'Neil* case, but *O'Neil* did not raise these parameters from the District

Court's decision in his appeal to the Montana Supreme Court. The Commission has used the District Court's language in processing complaints of unauthorized practice.

While the District Court language may address the concerns of a large number of the commentators, it does not thoroughly address the concerns raised by many others. For example, the U.S. Department of Justice

Antitrust Division's concerns would not be alleviated (comment 65). [Those] comments conclude:

The choice of whether to use a lawyer or non-lawyer service provider should rest with the consumer unless it is clear that specialized legal skills or training are required.

Lawyer/non-lawyer competition benefits consumers, particularly when there is no evidence that consumers have been harmed by non-lawyer service providers. We urge the Court to revise the proposed definition to preserve competition in service areas for which the knowledge and skill of a lawyer is not required.

A comprehensive effort to define the practice of law was referenced in former chair and current member of the Unauthorized Practice Commission Patrick Dougherty's comment (comment 80). In 2004, then State Bar President Robert Sullivan, acting on a resolution of the American Bar Association (ABA), convened a statewide representative Working Group to respond to this ABA resolution:

RESOLVED, that the American Bar Association recommends that every jurisdiction adopt a definition of the practice of law.

FURTHER RESOLVED, that each jurisdiction's definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objections of another person or entity.

FURTHER RESOLVED, that each jurisdiction should determine who may provide services that are included within the jurisdiction's definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public. The determination should include consideration of minimum qualifications, competence and accountability.

[. . .]

Included in the Montana Restatement of the Practice of Law Workgroup were Patrick Dougherty, a CPA and attorney who served as chair; State Law Librarian Judy Meadows, also a member of the Commission on Self Represented Litigants (which submitted comment 87); Montana Legal Services paralegal Janet Ludwig; Paralegal Section representative Carol Bronson; 12th Judicial District Judge David Rice; title company owner and lawyer Mark Josephson; banking and financial industry representative Ruth Reineking, and State Bar

The paralegal-fee bill's legislative history

By the **Paralegal Section**
of the State Bar of Montana

Early in 2008, the Paralegal Section Board was approached by some of its Section members – and by various attorneys – requesting us to look into amending MCA 25-10-302. That amendment would include reasonable paralegal fees as a component of attorney fees that are payable to a prevailing party in a lawsuit.

In our research, we assessed that the judges had issues in defining what a qualified paralegal was and, therefore, we determined we needed to include a definition of paralegal. The intent has never been to regulate who can practice as a paralegal in Montana, only those whose fees may be included as a component of attorneys fees in cases where attorney fees are awarded.

As was testified to at the hearing

before the House Judiciary Committee, paralegal fees as a component of attorney fees is a way for law firms to use cost-effective management of fees, especially if their clients find themselves the prevailing party in the suit.

The Section Board and legislative committee were confident that they wrote a fair and just definition of "paralegal." At all times, the language "under the supervision by a licensed attorney" was located in HB 301 New Section, subsection (2) on Page 1, line 17. Companion language is now located in New Section 2, subsection (3).

The members of the Board of the Paralegal Section and legislative committee are proud of the legislation. Feedback from paralegals within the state has thus far been positive. The Board also had support from attorneys across the state, as well as, the legisla-

tors. The bill passed both the Senate and the House by impressive margins. NALA Region VIII Director, Annette R. Brown, ACP, with the support of NALA, testified before the House Judiciary Committee regarding the benefits of NALA certification. The Paralegal Section also had the support of NALA's affiliate association, Montana Association of Legal Assistants.

The Paralegal Section Board and Legislative Committee members would like to thank all the individuals that assisted or supported HB 301, including but not limited to the paralegals and attorneys who testified before the Legislature. The Paralegal Section and legislative committee would further like to thank the State Bar Executive Committee, Board of Trustees and staff for their assistance and perseverance while working with them to make strong, effective bill. ○

Executive Director Chris Manos.

The Working Group developed a comprehensive definition that would, in the current Unauthorized Practice Commission's opinion, address the balance of concerns raised by the commentators. [...] For reasons that included the fact that the O'Neil litigation was likely to be appealed to the Supreme Court, the Working Group was asked to stop and the proposals were set aside without any Court action.

Clearly, many entities would appreciate clarity in the definition of the practice of law. Many non-lawyer professionals need to give general advice regarding the law. Unions, employment and human resource managers, accountants and CPAs, realtors, insurance companies, hospitals, cities and towns, schools, newspapers, state government, association managers, mediators and the access to justice entities are some of the categories of those submitting comments to this Court.

II. The Procedural Aspects of the Unauthorized Practice Rules Require Further Consideration.

Only a handful of comments concerned the procedural aspects of the proposed rules. The Montana Attorney General is concerned about the added burden mandated on its Office of Consumer Protection and proposes alternatives (comment 94). Montana Legal Services is concerned about confidentiality of the procedures, with an eye to protecting victims of abuse (comment 7). Attorney Mark Parker suggests clarification on

jurisdiction (comment 29). Rather than push forward without additional input on these issues, the Commission would prefer to develop Rules that address the issues raised by these and other groups and individuals.

III. Direction from this Court is Requested.

The Commission recognizes that the proposed revisions are a work in progress. To that end, the Commission sees several alternatives available to this Court:

1. Reconvene a working group or special commission to examine the issues raised by the Commission's proposed rules with the direction that it make recommendations to address the issues.
2. Submit the work of the 2004 Working Group for comment in accord with Section VI (5) of the Montana Supreme Court Internal Operating Rules, which provides: "If substantive changes are made to the proposed rule or program by the applicants, the Court may re-open the comment and response periods."
3. Dismiss the pending petition with no action.
4. Clarify that the Unauthorized Practice Rules are simply Commission operating and procedural rules, not intended in their scope to define what is and what is not the unauthorized practice of law.

○

James Park Taylor

Bringing law clinics to China



Twenty-nine years ago, almost to the day, I graduated from law school at the University of Montana. There have been many times over those years that I questioned both what I was doing and why I was doing it. Grey hair and experience come with 29 years of practice, and some understanding of what it is that we as lawyers do. I am not a quick study and have had to learn many lessons the hard way, yet I am grateful for what I have learned from those years about the role of the lawyer in society.

When I graduated from law school in the summer of 1980 I did not imagine myself on the 21st floor of a skyscraper in Beijing, overseeing the programming of an international NGO (non-governmental organization) engaged in rule-of-law reforms. Life is full of surprises.

Over a period of eight weeks this spring I participated in six clinical training programs. Five of the trainings were in law schools in China, and one training was in Dubai.¹ For the first two I traveled with Professor Peggy Tonon, the director of Clinical Education at the University of Montana School of Law. We went first to Guangxi University in Nanning, China, and from there to East China University of Political Science & Law in Shanghai.

CLINICAL LEGAL EDUCATION is a relatively new concept in China, and has its beginnings after the turn of the century. In 2002 the Committee of Chinese Clinical Legal Educators (CCCLE) was formed, as part of the China Law Society. In the nine years since CCCLE was formed, it has grown remarkably. Beginning with only a handful of universities, CCCLE now has 96 member schools.

In 2007, International Bridges to Justice (IBJ) began a partnership with CCCLE to offer financial and technical support to law schools that establish criminal defense clinics. Legal education in China, as in most parts of the world, is an undergraduate degree, although many graduate degrees in law are also available.

The first year of the IBJ/CCCLE program there were three schools in the IBJ program – Renmin University (Beijing), Northwest University of Political Science & Law (Xi'an), and Sichuan University (Chengdu). The second year, beginning September of 2008, five new schools were added: Beijing Normal University, China University of Political Science & Law (Beijing), Qinghai University of Nationalities (Xining), Guangxi University (Nanning), and East China University of

Political Science & Law (Shanghai).

Through the good graces of IBJ and the Mansfield Center at the University of Montana, Prof. Tonon and I went to conduct training on how to prepare lesson plans for a clinical program, a new concept to Chinese legal education.² The traditional model in China for legal education does not require much lesson planning. The model is that the instructor lectures and the students take notes with little or no interaction, a methodology that is particularly ill-suited for clinical education. Neither of the first two schools we visited had considered doing any kind of formal kind of preparation beyond preparing a syllabus for their courses.

OUR FIRST STOP was at Guangxi University, a university with an enrollment of about 30,000 students in 18 different colleges. This university is in Nanning, only 120 miles from the border with Vietnam; the climate and the foliage are tropical. Our training at Guangxi University was for clinical professors from that school, a few of their graduate students, and a few clinical professors from a nearby university in Guilin. The clinic at Guangxi, like almost all criminal clinical programs, does not allow the students to appear in court on criminal cases, since China has no student-practice rule. Instead, the students work with lawyers who are representing persons charged with crimes.

We had the chance to observe a clinical class at Guangxi, in which a local attorney gave a lecture to the students about what it takes to be a successful criminal defense attorney. Afterwards, Prof. Tonon and I spoke with a group of graduate students about the U.S. criminal justice system. They wanted to know many things, including:

- The impact of the global financial crisis on the U.S. juvenile justice system.
- How our plea-bargaining system operates.
- How much discretion both prosecutors and judges have.
- Whether or not prosecutors could exercise any control over police conduct.
- Why police stay involved in a case after the investigation was over.



Peggy Tonon, the director of Student Affairs, clinical director, and clinical supervisor at UM School of Law, conducted the clinical training in China with Mr. Taylor.

■ How law students make the decision to either become a prosecutor or a defense attorney.

■ If it's difficult for women to become prosecutors in the U.S.

FROM GUANGXI, WE WENT to Shanghai to repeat the training at East China University of Political Science & Law (ECUPL). Their campus was very new, and looked like a scene from southern California. ECUPL has two campuses in Shanghai, a new one to the south of downtown, and an older campus in the heart of downtown Shanghai. Our training took place in the downtown campus, and was attended by professors from ECUPL and two other Shanghai law schools.

The idea of a formal lesson plan was very strange to the Chinese clinicians. We returned to the same concepts again and again to try to put them into a context that would work in China. Some aspects of the training seemed to resonate well with the professors, such as including other university departments in their clinical instruction and having a timed agenda for the class. The idea of having a written learning objective that described the precise purpose of an individual class was more difficult to translate, and harder for the clinicians to absorb. But they were quite game for it, and pitched into the training with great enthusiasm. They were eager to learn new teaching practices and concepts.

After the Shanghai training Prof. Tonon returned to Montana while I continued conducting the trainings, an experience that was both frustrating and inspiring.

AMONG THE MOST advanced clinical programs in China is the one run by Sichuan University. Although there is no student practice rule in China, under Chinese law, an individual is entitled to be represented by a "friend" in a criminal prosecution. One cooperating court in Sichuan province has allowed the law students from Sichuan University's clinical program to represent juveniles charged with crimes under this provision. One limitation of the representation by a "friend" is that individual is not entitled to view the entire court file, unlike attorneys who are allowed to view the court file. This particular court has gone so far as to allow the students to view the entire file even though their status is just the "friend" of the defendant.

While this is all well and good and would appear to lead to a good clinical experience, the students are not allowed to meet with the accused until minutes before the trial begins, since they cannot as "friends" meet with the client in detention. For a variety of reasons, the students also do not conduct any independent investigation. They do not generally view the crime scene or interview witnesses. Their view of the criminal system is therefore quite skewed. They believe

the cases are all very simple and straightforward, and indeed they are if one accepts the prosecution's evidence and never interviews the clients or conducts investigation.

On the other hand, when I later conducted the same clinical training at Sichuan University, one of the participants had a remarkable reaction to the training. After an introduction from our Chinese partner, CCCLE, each of the participants described who they were, gave a brief description of the state of clinical education at their university, and their reasons for coming to the training.

IF CLINICAL LEGAL EDUCATION is relatively new in China, it is in its infancy in Afghanistan. In April, I had the opportunity to assist Prof. David McQuiod-Mason (South

Africa), and Mariana Berbec and Merit Ulvik (Hungary) with the first clinical education training for Afghan law professors. Due to security concerns, the training was held not held in Afghanistan but was held in Dubai, United Arab Emirates. Attending the training were law professors from Heart, Kabul, Mazar-e-Sharif, and Naranghar.

The law schools in Afghanistan have two parallel faculties; the Sharia faculty who teach Sharia law, and the law faculty, who primarily teach international law. Each of the two separate faculties also has its own dean. The deans from each of the four schools attended the training, along with a number of faculty mem-

bers, practicing lawyers, and attorneys working for the NGO called International Legal Fund-Afghanistan.

China's lack of attorneys for its population is mirrored and exaggerated in Afghanistan. While China has 130,000 (or thereabouts) lawyers for 1.3 billion people, Afghanistan has 700 lawyers for 25 million people. Afghanistan's laws offer a surprising number of procedural protections for the accused in their criminal justice system.³ As with so many countries, however, the existence of procedural protections is not equated with the enforcement of those protections. Seven hundred lawyers can do only a little towards the guarantee of civil liberties.

THE QUESTIONS FROM the three-day workshop in Dubai ran the gamut. Some professors came to find out what clinical education is, some came to find out how to set up a clinical program, some came to find out how to improve their existing program.

The participants in the training obviously came from many different backgrounds. Some wore traditional Afghan garb, some wore Armani suits, and some wore a combination of traditional garb and an Armani sport coat. There were rivalries between the cities, and between the faculties. Even though they were all very proud and serious people, they interacted well and laughed often. For the group exercises, several groups refused to follow the directions, and came up with their own criteria for the exercise. But those were minor differ-

A graduate student was so overcome with emotion she couldn't speak. She later said that she just couldn't believe how fortunate she was to attend such a training. China is like that, one moment you are discouraged, the next uplifted.

ences – the more powerful impression was that here were people that were trying to make a difference. And our hope is that the training we provided advanced that effort.

At the end of the day I am no longer at a loss to understand what it is that we as attorneys do. Our work, done properly, makes us agents of change in the cause of justice.

JAMES PARK TAYLOR is a Missoula attorney and co-director of the Mansfield Legal Reform Initiative, who is in China attempting to improve the Chinese justice system on behalf of

the group *International Bridges to Justice*.

NOTES

1. The Dubai training was for Afghan law professors who are just beginning clinical education in several law schools in Afghanistan.

2. These were part of a series of six clinical trainings I did this spring, five in China, and one in Dubai. The Dubai training was for Afghan law professors that are just beginning clinical education in several law schools in Afghanistan.

3. Sharia law includes the presumption of innocence and the right to counsel. Afghan law prohibits the use of a confession obtained by compulsion, and has a protection against double jeopardy.

CASA bicycle ride from Glacier to Yellowstone starts on Sept. 7

CASA of Montana is looking for riders to cycle from Glacier to Yellowstone to raise money and awareness of CASA (Court Appointed Special Advocates) programs across the state.

The Fifth Annual Park-2-Park event also is seeking sponsors to support the 400 mile, five day ride. Sponsor levels are Platinum, \$1,000; Gold, \$500; and Silver, \$250. Businesses also are encouraged to sponsor a local bike rider. A special category for sponsoring bike riders has been added this year.

CASA volunteers throughout the State speak for nearly 900 Montana children who are in the court abuse and neglect system through no fault of their own.

Called “a ride of a life-time through spectacular scenery” by previous riders – including many Montana lawyers – some 18 riders from California, Massachusetts, and Washington State as

well as Kalispell, Billings, Great Falls and Helena, have already registered via CASA’s website www.Park2ParkMontana.org or www.casagal.org.

Only 50 slots are available. Last year 47 riders raised \$47,000 for CASA. This year’s goal is \$50,000. Proceeds will benefit CASA of Montana and the non-profit network of 15 local CASA programs.

The 2009 ride is planned for Sept 7-11. The route will take cyclists from St. Mary – on the eastern side of Glacier National Park – down the length of U.S. 89 through Dupuyer, Choteau, Great Falls, White Sulphur Springs and Livingston, and Gardiner, the original entrance to Yellowstone National Park.

Sponsors include the Helena Bicycle Club, BlueCross BlueShield, New West Health Plans, Valley Bank, and the Neighborhood Office. St. Mary’s/East

Glacier KOA provides the headquarters for the beginning of the ride.

The registration fee for the ride is \$450 before July 15 and \$550 after that date. It includes four nights of lodging, meals and rider support. Riders are expected to raise \$250 or more in pledges. Those who raise \$800 or more receive a custom bike jersey.

Daily ride distances are 55-100 miles. The ride begins at the St. Mary’s/ East Glacier KOA campground in St. Mary.

Local CASA programs, including CASA for Kids (Kalispell), Front Range CASA/GAL, Great Falls CASA CAN, Gallatin County CASA/GAL, and the 6th Judicial CASA in Livingston will provide meals, snacks and support services for the riders as they come through their area.

FOR MORE INFORMATION or to register for the ride, go to www.Park2ParkMontana.org. For more details on CASA of Montana go to www.casagal.org. Call 866-863-2272 or e-mail info@casagal.org.

DIVERSITY, from Page 13

on gender bias or discrimination.

The discussion concluded with ideas on what role the State Bar plays in promoting diversity. First, Board members agree that diversity of Board membership should include the expansion of legal-practice categories represented on the Board – trial lawyers, for example, are underrepresented.

The board felt it should narrow its “diversity” focus towards encouraging diversity within its membership (although limited by the kinds of people who apply for admission to the Montana Bar), and to increase resources allotted to improve the quality of law for everyone.

The Board generated a preliminary list of ideas for further steps of addressing diversity issues. ○

ABA commission visits Montana

The ABA Commission on Lawyer Assistance Programs met in Bozeman in late May, the first time the Commission has convened a meeting in Montana.

The commissioners came to the state because the State Bar of Montana’s Lawyers Assistance Program is being used as a model for such programs in rural areas, said LAP Coordinator Mike Larson. Representatives of several states without lawyer assistance programs were invited to attend. Commission members and other directors from across the country also attended.

Justice Foundation distributes \$283,000 in grants to groups

By **Amy Sings In The Timber**, Executive Director
Montana Justice Foundation

At its May meeting, the Montana Justice Foundation (MJF) Board of Directors awarded \$283,500 to legal service providers across the state. The total amount of grant dollars reflects a greater than 60 per cent decline in Interest on Lawyers Trust Account (IOLTA) revenues in the past fiscal year.

The MJF awarded IOLTA grants to the following service providers:

- CASA of Missoula – \$4,000
- Cascade County Law Clinic – \$6,000
- Community Dispute Resolution Center of Missoula – \$3,000
- Community Mediation Center, Bozeman – \$8,750
- Domestic Violence Education and Services (DOVES) – \$1,000
- Eastern Montana CASA/GAL – \$7,750
- Montana Legal Services association (MLSA) – \$250,000
- The Nurturing Center, Kalispell – \$3,000

It is an understatement to say that this year has been difficult for IOLTA programs and legal aid providers nationwide. Hundreds of law clinics, legal aid organizations, pro bono programs, self-help law programs, Court Appointed Special Advocates (CASA), community mediation centers, and domestic violence education and service provider programs throughout the country have been drastically cut or eliminated. These organizations provide core legal services such as: preserving housing, protecting subsistence income, obtaining access to health care, family law matters, and protection from abuse and discrimination. National data for 2008 is not yet available, but it is clear that the down cycle we are currently experiencing is far more severe than such cycles have been in the past.

IOLTA funds are a primary funding source for civil legal aid to the poor in Montana. State legal aid providers rely on IOLTA funding to assist low-income families to obtain and preserve the most basic of human needs: shelter, food, clothing and safety. The number of

THE MONTANA JUSTICE FOUNDATION SOCIETY OF JUSTICE: HON. WILLIAM J. JAMESON CIRCLE

These donor's gifts, over the course of their lifetime, meet or exceed \$10,000

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The MJF gratefully acknowledges those who have made gifts in memory or in honor of colleagues, family, and friends.*

Bolded names are those being honored or remembered.

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More MJF GRANTS, Page 29

The Montana Justice Foundation Board of Directors gratefully acknowledges the following donors for their support of the MJF and the access to justice cause*.

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Art taught at the University Of Montana School Of Law, Masters of Communication, MBA, and other Graduate School programs for twelve years before "following the grandchildren to Billings in late 2008. Art taught basic and advanced mediation skills, family mediation, special topics, and directed the Law School's Mediation Clinic. His negotiations course was adopted by the School of Business in their MBA program. This course will continue to be taught by Art during summer session at UM. In 2008 Art was honored at Law School graduation with the "Outstanding Adjunct Professor Faculty" award and received his "Scholars Brick" in front of Main Hall for his Fulbright Senior Specialist activities for the past 7 years in South America. Kitty has been an accredited mediator for 18 years, specializing in organizational conflict from large companies to government agencies to middle and high schools across the state. With Art, she co-founded the Community Dispute Resolution Center of Missoula County and still serves on the board of directors.

O'Neil loses legal-practice case in federal court

The U.S. District Court for Montana has dismissed the case brought by Columbia Falls paralegal Jerry O'Neil over the state's findings that he was engaged in the unauthorized practice of law, and affirmed the permanent injunction the state district court issued enjoining O'Neil from practicing law.

Plaintiffs Jerry O'Neil and others, who claim they are entitled to have O'Neil represent them in court proceedings, sought a declaration that the judgment of the Montana Supreme Court in 2007 was unconstitutional. The appeal was referred to Magistrate Judge Jeremiah Lynch, who issued findings on March 17, 2009.

Federal Judge Donald Molloy said in his June 19 order that the plaintiffs filed timely objections to Judge Lynch's ruling, but did not identify specified proposed findings or recommendations.

Instead, the plaintiffs withdrew their challenge to the Supreme Court's judgment, Judge Molloy said, "apparently recognizing the soundness of Judge Lynch's conclusion that the *Rooker-Feldman* doctrine deprives this [federal] Court of jurisdiction over their claims. See *Carmona v. Carmona*, 544 F.3d 988 (9th Cir. 2008)."

O'Neil and the others asked Molloy for leave to file two amended complaints, on the basis of "the wrongs that defendants are doing to [plaintiffs] in defendants' ongoing conspiracy to maintain their monopoly" over the practice of law in Montana, Judge Molloy wrote, and that the state is interfering with O'Neil's tribal law practice.

The defendants were the State Bar, Bar Counsel Betsy Brandborg, the state's Commission on the Unauthorized Practice of Law, the 11th Judicial

District Court, Montana Supreme Court, Attorney General Steve Bullock, and the state Dept. of Health & Human Service Office of Fair Hearing.

Judge Molloy rejected both those further complaints. "This case is closed," Molloy wrote in his order.

The U.S. Supreme Court had denied O'Neil's petition for certiorari in 2007.

"His honor [Molloy] makes it quite plain that in his court, at least, this is the end of the line for the plaintiffs," said Kalispell attorney Don Murray, who defended the case for the state. ○

MJF GRANTS, from Page 25

Montanans in need of legal services increases as the economy continues to falter. It is now more important than ever to preserve existing legal aid programs in Montana.

The MJF has already begun to enlist the assistance of attorney and law firm account holders in an effort to bolster the IOLTA program in Montana. Additionally, we are exploring alternative measures to mitigate further revenue declines. However, because of the depth of the current recession, 2008 may not represent the floor of the present IOLTA down cycle. Several IOLTA programs throughout the nation are projecting much steeper declines than usual

in IOLTA revenue through 2010. Accordingly, the MJF is working to strengthen and expand its efforts to raise revenue from non-IOLTA sources including private sector fundraising, cy pres, state appropriations, filing fees, and other means.

These labors will require a collaborative effort between the MJF, legal service providers, bar leaders, and state access to justice groups to be successful. It will be a difficult journey, but together we can work to eliminate systemic barriers to access to justice.

FOR MORE INFORMATION about the MJF and how you can support the access to justice cause please visit www.mtjustice.org or contact the MJF at (406) 523-3920.

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an even larger gap between the need for legal services and the availability.

You all are entering the profession in difficult economic times – times which are particularly tough for low-income people and for non-profit organizations. More and more people are in need of legal advice and fewer are able to afford it. I note that in yesterday's news, the Salvation Army soup kitchen in Butte had to close due to lack of funding. This is a very telling indicator that charitable organizations are in dire straits. As more and more factories and businesses are forced out of business or into bankruptcy, there are fewer resources and dollars available for charitable, or as your law professors would say, *eleemosynary* organizations.

WHEN YOU ARE SWORN IN as attorneys in Helena, you will be bound by the Rules of Professional Conduct. RULE 6.1 is titled "Pro Bono Publico Service." In short, the Rule provides that "every lawyer has a professional responsibility" to provide legal services to those unable to pay – and to do so for no fee or a reduced fee. You can do this through donating your time and talent to legal services or working through organizations that promote and protect civil liberties and access to the court.

I would suggest to you that you should look upon Pro Bono

Publico not only as an ethical "obligation," but also as a personal opportunity. Obviously, there is no direct financial incentive to taking court appointments or doing pro bono work. You can, however, gain a wealth of invaluable experience.

I know that I can trace my present position as an appellate judge to the first couple of months that I was in practice, when I accepted a court-appointed case. The district court in Helena appointed me and another young attorney to represent two defendants in a high-profile, white-collar crime case.

As the prosecution geared up and it became apparent how time-consuming and demanding the case was going to be. It became questionable as to whether a small two-person firm could withstand the costs of the representation, both in terms of time and money. Although our firm was small, my senior partner – who just happened to be my father – said despite the time demands and the cost I had an obligation to see the case through. So I stuck with it and survived a three-week jury trial – and ended up arguing the case in the Montana Supreme Court, the 9th Circuit Court of Appeals, and had two oral arguments before the U.S. Supreme Court.

THE FINAL CHAPTER in the case, although the least significant, is perhaps the most entertaining and goes to prove that no matter how hard they may try, your law professors can't prepare you for every eventuality.

After surviving a three-week trial and a whirlwind tour of the appellate courts, I ended up having to sue in order to recover my costs. This proved to be an education in itself.

The County of Lewis & Clark and the State of Montana were battling over who owed the fees. Since neither would pay, I had to file a declaratory judgment action. Since Lewis & Clark County was a party, it had to call in Judge Lessley from Bozeman to hear the case. It is only because Judge Lessley has since passed on to a "higher court" that I'm at liberty to tell the story.

Judge Lessley ruled that the State owed the money. The State disagreed and appealed. So we were back up to the Montana Supreme Court again.

My attorney and I appeared at the appointed time for the argument. When the judges marched in, there was a substitute judge. My attorney looked and said, "Isn't that Judge Lessley?"

I said, "Yes."

He said, "What do we do about that?"


I replied, "Nothing. See what the other side does."

No one said anything and the Court heard the argument. Then a month later, we got the opinion affirming Judge Lessley's decision.

The best part is, the Supreme Court decision was written by Judge Lessley – he had affirmed himself. I've never heard of a district judge affirming himself on appeal before or since – anywhere in the country.

Lesson: Sometimes being "quick on your feet" means staying seated.

THESE WERE EXPERIENCES which I would never have had otherwise and which sparked my keen interest in



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appellate advocacy – and inspired me some 20 years later to go into public service and seek election to the Montana Supreme Court. I was fortunate to be elected.

The experience as a judge has been easily the most rewarding experience of my professional career – despite the fact that we judges in Montana are ranked 52nd in pay, which, when you live in a country of 50 states, is a little disconcerting.

The other lesson that I learned from that initial court appointment was that although I was a very green, inexperienced lawyer from a small law school in a rural state, the faculty at UM law School had given me the tools and the confidence to go head-to-head with special prosecutors and ultimately with the Office of Solicitor General of the United States.

You too should rest assured that you've been well-prepared to leave academia- and take on real-world legal problems, no matter how demanding.

THEY SAY AN APPELLATE JUDGE is like a military general who sits on the hill and watches the battle, and then when the fighting is all over he comes down and kills all the survivors. Well – I'm not here to put you out of your misery, but to welcome you to the battle for justice.

With your law degree in hand, you may not be able to change the world, but you can make a significant difference.

With a law degree to complement your enthusiasm, you can now challenge authority "with authority."

I encourage you, the Class of '09, to live up to your promise. Be generous with your time and talents in helping the less privileged and in working with NGOs and public interest groups like the Montana Justice Foundation to assure access to the courts and to improve the lot of others.

Look at pro bono work not only as a professional obligation but as an opportunity for personal fulfillment and for invaluable courtroom experience.

Congratulations – and welcome to the legal profession. ○

DISCIPLINE

Conflicts get county attorney ousted from job

By **Greg Tuttle**
of the Billings Gazette

Granite County Attorney Mark E. Jones has been ordered by the state Supreme Court to resign and not seek re-election after a finding that he violated rules of attorney conduct.

Jones has been ordered to resign by Jan. 1, 2010, as part of a disciplinary order issued May 19 and signed by six of the state's justices. His four-year term was due to expire at the end of 2010.

Jones also was ordered to appear before the Supreme Court in Helena on June 24 to receive a public censure, and he has been placed on probation for two years.

According to documents filed by the state Office of Disciplinary Counsel, which investigates complaints of attorney misconduct, Jones was accused of representing clients as a defense attorney in another county while working as the Granite County attorney.

Jones also was accused of using his position to benefit former clients in

Granite County after he took office in January 2007.

Jones signed a "conditional admission" to the allegations, a procedure under the Supreme Court's rules that provides confidentiality to an attorney in exchange for an admission. The process includes a prior agreement on the discipline an attorney will receive.

Jones recently declined to comment on the specific allegations made against him, referring questions to his attorney.

"This has been ongoing since the day I was elected, and I'm glad to put it behind me," he said.

Missoula attorney Douglas Harris, who represented Jones, called the Supreme Court's order an "appropriate disposition of the case." He said Jones reached an agreement that allows him to remain in office long enough for the county to find a suitable replacement.

According to court records, Jones, shortly after taking office as county attorney, filed a motion to dismiss a criminal charge against a man he previously represented in a civil case. In another instance, Jones was accused of filing a motion as a prosecutor in a criminal case in which he had previously been involved as a defense attorney. A third allegation accused Jones of representing criminal defendants in Missoula County while working as a full-time prosecutor in Granite County.

The Granite County attorney job was

a part-time position when Jones was elected, but it became a full-time job about six months later.

According to the Supreme County order, Jones violated rules relating to conflict of interest and the administration of justice.

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Trial lawyers answer critics of WR Grace trial

The undersigned are members of a national trial lawyer organization, the American Board of Trial Advocates (ABOTA), whose mission is to preserve and protect the 7th Amendment right to a jury trial and to foster understanding of and respect for America's justice system.

ABOTA members represent both plaintiffs and defendants and some have experience in both criminal prosecution and defense. Membership is limited to those who satisfy stringent qualifications for experience and character.

We have read and heard criticism of the jury's verdict in the criminal trial involving W.R. Grace's mining operations at Libby and criticism of U.S. District Court Judge Donald W. Molloy for his handling of the case.

ABOTA members, like all citizens in Montana, are saddened by the tragedies in Libby. It is natural, when a tragedy of that magnitude occurs, to blame someone. Certainly, no one – including lawyers, jurors, or judges – is immune from legitimate criticism for inappropriate or illegal conduct. But where criticism arises largely from disappointment in or disagreement with the end result, it is necessary to respond.

AS ATTORNEYS WITH substantial trial experience in federal and state courts, we believe public criticism of judges or juries who faithfully discharge the obligations of their respective roles is unfair and misleads those who did not participate in or fully observe the trial itself. As in every case, there were a small number of people with a sworn duty to con-

sider and pass judgment solely on the testimony and evidence presented in the courtroom – the 12 jurors and the presiding judge. The rest of us, including the press, did not have access to or fully participate in the entire process.

Indeed, the jury was instructed daily to avoid press accounts because even skilled media personnel do not have time or space to report important facts presented to or excluded from the jury's consideration. Nor can press accounts make non-participants aware of the difficult legal and factual nuances presented to a principled trial judge with a sworn obligation to both uphold the law and, at the same time, protect the rights of citizen defendants.

MUCH OF THE CRITICISM seems based upon misconceptions about the difference between criminal and civil law. Unlike a civil case, the judge and jury in the Grace criminal trial were required to find "beyond a reasonable doubt" that corporate employees conspired to violate a criminal law that was not even enacted until after a number of the industrial activities and business decisions had already occurred. Both federal and state constitutions prohibit the enactment of ex post facto laws that criminalize conduct retroactively.

In addition, the criticism appears based upon a misconception about the role of the criminal and civil laws as they pertain to the Libby tragedy. Whether or not the corporate defendant and its individual employees are ultimately liable in money damages for the indisputably terrible consequences of asbestos mining has nothing to do with the results of the criminal case. The criminal "not guilty" verdict does not make the defendants more or less vulnerable to civil law claims for money damages. Those issues are governed by civil law courts, workers compensation courts, and environmental agencies.

From a recent report of the Montana Trial Lawyers Association, it is clear there have already been civil actions with results in favor of injured Libby residents, including punitive damages. The result in the criminal trial will have no effect on future civil claims against Grace by Libby residents.

ANOTHER COMPLICATING FACTOR, as disclosed by news accounts, was the government's decision, inadvertent or otherwise, to withhold evidence that might favor the individual defendants. That Judge Molloy was critical of these actions – a violation of basic constitutional rights and rules of criminal procedure and evidence – should be reassuring to all citizens. Judge Molloy has an obligation to protect the rights of all citizens – no matter their station in life – against the power of the federal government.

While we cannot comment on whether the judge, the jury or prosecutors made mistakes in their handling of this case, we can say from our experience that whether or not a case can be

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successfully prosecuted is often more complicated than simply a person's "gut reaction" to the result. That is so because the rules of law and evidence are sometimes difficult to understand or have not been fully explained in news accounts. The Grace criminal prosecution was, in many ways, unprecedented in terms of the difficulty of the legal issues presented. Indeed, one can review the judge's legal instructions to the jury and, by that review, gain an appreciation for the complexity of the job performed in this case by Judge Molloy. (The instructions can be accessed at www.mtb.uscourts.gov/mtd/imagines/1187.pdf).

It is vital that non-litigants – as well as litigants – know and believe the courts, their procedures and their decisions are fair and impartial, even if we disagree with a specific result. Because it is unethical for a judge or jury to directly answer criticism of their actions, those of us who work within the system have the right – and the obligation – to make our best efforts to respond on their behalf. In this case, the criticism of the Grace trial judge and the Grace jury is unwarranted and unfair.

We hope that the media and others would use some wise restraint in analyzing the issue. Jumping to conclusions and placing blame on any particular participants in our criminal justice system does little good and can undermine confidence in a system that, while not perfect, is nevertheless a guardian of our constitutional rights and the best system in the world.

THIS LETTER IS SIGNED on behalf of the Montana ABOTA chapter by its president and national representatives. Not all members of ABOTA share the opinions expressed and at least three have specifically declined to support it because of their representation of Libby residents. Nevertheless, a substantial majority of ABOTA members have endorsed the views stated herein and all ABOTA members endorse and defend the right to jury trial and preservation of that right for all American citizens. Individual signers are listed below by hometown.

– **Randy J. Cox**, attorney, Missoula (president)

– **Donald Robinson**, attorney, Butte (chapter delegate to National ABOTA)


– **Robert J. Phillips**, attorney, Missoula (chapter delegate to National ABOTA)

List of individual ABOTA members endorsing this letter:

Mikel Moore, Kalispell
Robert James, Great Falls
Doug Wold, Polson
Jim Goetz, Bozeman
Alexander "Zander" Blewett, Great Falls
Jim Regnier, Lakeside
Dave McLean, Anaconda
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Bill Rossbach, Missoula
Jake Heckathorn, Kalispell
Ronald Bender, Missoula

ABOTA is dedicated to preservation of the right to trial by jury guaranteed to all citizens under the 7th Amendment to the United States Constitution. ABOTA engages in a number of national and local programs to educate school students and the public generally about this important provision of the Bill of Rights.




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Self-Help Program is a bad idea



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When ipsie dixit is not enough

I read your article promoting the Self-Help Law Program in the April 2009 issue of *The Montana Lawyer*. There was also an article about it in the April 10th edition of the *Billings Gazette*. I strongly oppose this ill-advised program for the following reasons:

First of all, a person seeking help from this program does not have to show financial need. He/she could have sufficient funds with which to hire an attorney in private practice. How many lawyers are going to lose business because many financially able persons take advantage of this? Why not? It's a freebie.

The members of the licensed legal fraternity paid their dues by spending time and money to get a law degree and now will have their time and money downgraded and earnings lost to someone with the resources to hire a lawyer.

Next, guess what? A new bureaucracy has been born. I was in the Montana State Senate for 12 years and I know firsthand, like all such programs, this program will grow and grow, and eat up

hard-to-come-by tax dollars, as well as divert fees from deserving private practice lawyers. Just what we need in this economy.

Also, I have a strong feeling that this Self-Help Law Program constitutes practicing law without a license. Think about it. What do you think?

Next, don't we have pro bono lawyers who can help those really in need, the indigent who honestly can't afford a lawyer? I did pro bono work, as did most lawyers practicing in my time. I can't believe there still aren't pro bono services being offered.

To sum up: I remember reading in Shakespeare's *Henry VI*: "First let's kill all the lawyers." You don't have to kill them. Instead, take away enough of their clients with this Self-Help Law Program and you will find them flipping burgers at the Golden Arches.

— *Al Bishop*
Billings attorney (retired)
1952 UM Law School graduate

Clinic's challenge

Due to the economic downturn, funding for the Cascade County Law Clinic has drastically decreased. Attorney Zander Blewett took the initiative to contact the clinic and the Cascade County Bar Association and challenge member lawyers and/or firms to meet his firms' \$1000 donation to the Law Clinic. I would encourage firms and lawyers statewide to donate their time and money. Demand for legal assistance to the poor is on the increase and no individual or organization that I have contacted foresees this changing anytime soon.

— *Michael R. Tramelli*
executive director, Cascade County Law Clinic

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NEWS ABOUT MEMBERS



University of Montana Law Professor **David Patterson** has announced his retirement effective on the completion of the fall 2009 semester. "Professor Patterson has served our School for 41 years and has taught many of Montana's attorneys," said UM School of Law Dean Ed Eck in announcing the professor's decision on June 16. Prof. Patterson teaches Legal Ethics, Family Law, Workers' Compensation, Local Government Law, and Elder Law. For many years, he has been general counsel to the Montana Association of Counties. He chaired the State Bar's Ethics Committee between 1972 and 1992, and is now a member of and special counsel to that committee and is liaison to the Commission on Practice of the Montana Supreme Court. He also serves on the State Bar's Elder Assistance Committee. Prof. Patterson serves as an appellate mediator in cases on appeal to the Montana Supreme Court. He is a charter member of the American Association of Professional Responsibility Lawyers and the ABA Center for Professional Responsibility; he has authored numerous ethics opinions and participates as an expert in professional matters. He was also the author of the State Bar's "Montana Family Law & Practice" manual in 2000. This year he has been appointed reporter to the recently created Commission on Judicial Conduct. Prof. Patterson additionally provides professional responsibility advice and opinions to public prosecutors and other local government officials. Prof. Patterson received his JD from the Detroit College of Law at Michigan State University and his LL.M. from the University of Michigan Law School.

Gary Walton and **Paul Luwe** have formed the law firm of Walton & Luwe, with offices in Butte and Bozeman. Mr. Walton and Mr. Luwe are 1982 graduates of the University of Montana School of Law. Mr. Walton has practiced in Butte for 27 years and for the past 10 years as Gary L. Walton PLLC. Mr. Walton will continue to limit his practice to litigation. Mr. Luwe served as the Bozeman city attorney for 17 years. Mr. Luwe also retired as a lieutenant colonel from the Army where he served as a JAG lawyer on active duty and then with the Army National Guard and Army Reserve. Mr. Luwe's areas of practice are litigation, employment, military, municipal, and land use.

Richard Gordon, general counsel at TOC Holdings Company (formerly named Time Oil Co.) in Seattle, has returned again from Beijing, China, where he lectured at Peking University Law School on "Water Law of the Western U.S." and on "Regulation of the Petroleum Industry in the U.S." He previously gave a two-week seminar at Peking University Law School titled, "The Development of Environmental Law & Practice in the U.S. – A Practical Primer."

Jamie Young has joined the law firm of Chris R. Young in Havre as an attorney. Ms. Young graduated with honors from MSU-Northern with a BA in Liberal Studies (with a minor in Native American Studies) and a BS in Business Technology. She attended law school at the University of North Dakota and received her JD in 2008. While in law school, Ms. Young worked as a law clerk for the Tribal Judicial Institute which provides legal services, training, and technical assistance to tribes nationwide. Prior to attending law school, Ms. Young worked as a paralegal for the Chris R. Young law firm.



Guthals, Hunnes & Reuss Law Firm announced the association of **Elizabeth S. Stuckey**. Ms. Stuckey joined Guthals, Hunnes & Reuss after working for the Public Defenders Office of Billings. Ms. Stuckey graduated from Appalachian State University, North Carolina, in 2001 and from the University of Montana School of Law in 2006. She also is a graduate of the National Outdoor Leadership School and enjoys hiking the mountains of Montana. After law school graduation, she clerked for Judge Russell C. Fagg for a year. Ms. Stuckey will focus her practice on business law.

DEATHS

Rich Llewellyn, attorney for state, county

Boulder attorney Richard J. "Rich" Llewellyn died June 15. He was raised in the Spokane Valley where he graduated from East Valley High School in 1963 as class valedictorian. He graduated with honors from Washington State University in 1967, where he was inducted into numerous national scholastic honorary societies, including Phi Beta Kappa. In 1971, he graduated with honors from the University of Montana Law School, having been awarded the Dean Leaphart Scholarship for his efforts on behalf of indigent criminal defendants. He was also inducted into the Order of the Barrister after participating on a championship moot court team.

After law school, Mr. Llewellyn worked in the offices of governors Forrest H. Anderson and Thomas L. Judge, where he became director of the Government Operations Unit, forerunner of the modern Office of Budget & Program Planning, which he conceived. During this time, he drafted and lobbied the Montana Water Use Act and worked on other significant environmental legislation.

Mr. Llewellyn later served as Jefferson County attorney from 1975 to 1979, and again from 1987 to 1995; in that

capacity, he prosecuted a number of cases which received statewide and national attention.

He loved to hunt, fish, camp and drive around in the mountains of Montana and Idaho in his old pickup truck. He fished only with fly tackle for 48 years, and he tied his own flies. He fished the Livingston spring creeks with the best flyfishers in America, starting in the 1960s with *Outdoor Life* fishing editor Joe Brooks, and he more than held his own, his obituary said.

Mr. Llewellyn was preceded in death by one son. He is survived by his wife Colleen of Boulder, one son and two daughters.

Debra Gilcrest, Missoula attorney

Missoula attorney Debra Thatcher Gilcrest, 46, died on June 16 at the Community Medical Center Rehabilitation Unit in Missoula after a brief bout with cancer.

Ms. Gilcrest was born in Missoula. She graduated from Sentinel High School (1981) and Dartmouth College (1985). In 1990, she earned a juris doctorate with high honors from the University of Montana School of Law, where she was an editor of the *Public Land Law Review*.

Her legal practice included a clerkship with the U.S. District Court for Vermont and positions with law firms in

Eugene, Ore.; Waukesha, Wis.; Washington, D.C.; and in Missoula, most recently with the Connell Law Firm.

Ms. Gilcrest was an accomplished vocalist and trombonist. She played regularly with both the Missoula Community Concert Band and the Missoula City Band. During her rehabilitation, she was looking forward to marching again with the University of Montana Alumni Marching Band at Homecoming. She was an avid camper, canoeist, and birder.

She is survived by her husband, David, a son, and a daughter.

Other deaths

● **Jim Phair**, 86, a former deputy clerk of court in Cascade County and a former justice of the peace in Froid, died at his home in Billings on June 5.

● **Nancy Eileen Dusenberry**, who had been a legal secretary for several attorneys and law firms – including H.A. Bolinger; Drysdal, Anderson & Sabo; and James A. McLean – died in Bozeman May 27 at age 79.

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