

# Lawyer

THE STATE BAR OF MONTANA

The University of Montana School of Law

## Building for its 2nd century



*Meet  
the new  
UM Law  
dean*

Bar Annual Meeting  
tied to Law School  
building dedication



### On replacing Souter:

Look outside the federal courts for  
candidates, State Bar president tells Obama



**New program  
gives lawyers  
a great way  
to assist  
veterans**

**Officer & trustee elections: nomination forms inside**



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## PRESIDENT'S MESSAGE

# A letter to Obama

## *My advice on filling Justice Souter's seat*

Chris Tweeten

### DEAR MR. PRESIDENT:

I wanted to write because I think you would need some unsolicited advice about choosing someone to fill Justice Souter's seat on the Supreme Court. I have some perspectives that might be helpful to you as you make this most important decision.

Specifically, you should rethink the idea that in order to be "qualified" a nominee must come from a particular elite background.

Today, all nine members of the Court were appointed from positions on the federal courts of appeals. It has been almost 30 years since an appointee joined the Court without first having served on the federal bench, and that appointee, Sandra Day O'Connor, had served as a trial and appellate judge in the state courts of Arizona. To find the last appointee who came to the Court with no prior judicial experience, one would have to go back to 1965 when Lyndon Johnson appointed the lawyer who fought off the legal challenges to his election in the bitterly contested Senate race of 1952, Abe Fortas.

The sameness of the Roberts Court does not end with their prior judicial service. Eight of the nine justices graduated from Ivy League law schools. The outlier, Justice Stevens, graduated from Northwestern. Six of the nine justices served as lawyers in the federal government, and five of the six served in the Justice Department.

This kind of homogeneity has never occurred before in the history of the Republic. Sixty-five years ago, President Roosevelt chose consecutive nominees – James Byrnes and Robert Jackson – who did not even graduate from law school. President Eisenhower appointed Earl Warren chief

justice of the United States in 1953. Warren was serving as governor of California at the time of his appointment. He had never held judicial office prior to his appointment.

The Court that Warren led was very different in background from today's Court. Of the 16 associate justices who served on the Warren Court, only six had prior judicial experience (Minton, Harlan, Brennan, Whittaker, Stewart, Marshall). An equal number came to the Court from federal executive branch positions (Reed, Douglas, Jackson, Clark, White, Goldberg). Two were United States Senators (Black, Burton), one was a law professor (Frankfurter), and

one came from private practice (Fortas). At no time did more than four ex-judges serve with Chief Justice Warren.

President Bush did try to break the mold with his abortive nomination of Harriet Miers, his White House counsel. Miers graduated from the Southern Methodist University Law School and had no prior judicial experience. Her appointment was ridiculed for her perceived lack of experience, and she ultimately with-

drew her name from consideration, but is significant that, however briefly, the president was willing to try to change the uniform face of the Court.

I confess I have a tendency to yearn for the good old days, but in this case I think I have good reason to do so. It simply cannot be healthy when all nine members of the Court share a largely identical educational and professional background.

The last appointee chosen from outside the ranks of the federal appellate courts was Sandra Day O'Connor in 1981.

**The present U.S. Supreme Court's homogeneity has never occurred in the history of the Republic. It's time to look outside a particular elite background.**

**More LETTER TO OBAMA, Page 6**

### An important correction

A couple of months ago, I wrote that the coming referendum regarding the upcoming 20-year referendum on the calling of a Montana constitutional convention was scheduled for 2014. I was wrong. The Legislature used the

1970 referendum that produced the 1972 Constitutional Convention as the beginning of the 20-year cycle. This means that the referendum will be here before we know it, in 2010. So get out there and start talking about it.

# 2nd century for UM Law School

## New dean takes over on July 1

**P**ledging to continue to build the strong relationship between the University of Montana School of Law and Montana's bench and bar, Irma Russell, a legal scholar and national leader in environmental and energy law, was named the next dean of the Law School on May 1.

Professor Russell will be the school's first female dean.

Russell was a law professor at the University of Tulsa College of Law, serving as a National Energy-Environment Law & Policy Institute professor. She will begin her new UM duties July 1.

"This is a particularly exciting time to be at the Law School," she said. "I look forward to continuing the leadership Dean Eck brought to the role of dean. The new building provides a wonderful setting for learning and teaching and a uniquely situated environment to continue outreach and collaboration with alums, judges, practicing lawyers, and other leaders of the area."

E. Edwin Eck, dean of the School of Law since 1995, announced last fall that he will step down from his position at the conclusion of this academic year and return to the law fac-

ulty. The search process to replace Dean Eck began last fall. A committee led by UM Associate Provost Perry Brown brought five candidates to campus to meet with law school faculty, staff, students, and the broader legal community.

"We had a full slate of excellent candidates from across the country and virtually every legal field," Dr. Brown said. "In the end, I think we found the very best."

Prof. Russell is chair of the innovations committee of the ABA Section of Environment, Energy & Resources and chairs the Professionalism Committee of the ABA Section of Legal Education & Admission to the Bar. She also has held leader-



Irma Russell

**More NEW LAW DEAN, Page 25**

## New building expected to be completed in August

By **Shelley Hopkins**, director of external relations  
UM School of Law

The University of Montana School of Law was founded in 1911. Its current building was constructed in 1961 and the last major renovation of the building was completed in 1978. The new building renovation and addition will be completed in August and dedicated on Sept. 18, 2009.

The mission of UM School of Law is to prepare students for the people-oriented practice of law by integrating theory and practice in a competency based curriculum. The School serves as the academic legal center in Montana and contributes to the development of national, state, and tribal law and legal institutions through teaching, scholarship, and service.

The School initiated a major fundraising campaign for the renovation and expansion of the law building. Specifically, the building project addressed the following:

- Additional classrooms with better acoustics, current technology, and audio-visual equipment.
- Better accessibility for students and visitors who are



Law School construction in early spring.

physically disabled.

- Additional small and mid-sized classrooms to accommodate an increasing number of elective courses designed to prepare lawyers to serve clients in specialized areas of the law.

- Additional space for the School's clinical program including its Land Use, Indian Law, Criminal Defense, and Mediation clinics. This clinical space includes client interview rooms, student workrooms, and office space. As one of the

few schools in the nation with a mandatory clinical program, these clinical experiences prepare lawyers for the practice of law immediately upon graduation.

■ An expanded library that is current with today's technology to serve the needs of students, faculty, the judiciary, the practicing bar, and the public.

More than \$13 million has been raised for the building project. Fundraising has been a grassroots effort. More than 250 private donors have contributed – \$500,000 is the amount of the largest gift. Montana and the federal government have made appropriations for the project. Some funding is provided by bonds.

Fundraising continues to complete this project. Funds are still needed for classroom audio-visual equipment and for classroom and moot-courtroom furniture. Individuals and firms who wish to join in Building for Our Second Century may contact Shelley Hopkins, director of external relations at (406) 243-4319 or [shelley.hopkins@umontana.edu](mailto:shelley.hopkins@umontana.edu). ○



Architect's drawing of south face of new UM Law building.

## The timeline to a celebration

**July 1** – Irma Russell becomes new dean of Law School.

**August** – New Law School building construction completed.

**Aug. 26** – Introductory program for first-year law students begins, kicking off the fall semester.

**Sept. 16** – Reception honoring retired judges in Western Montana, organized by the State Bar and Western Montana Bar Association. At the Missoula Art Museum.

**Sept. 17** – State Bar 2009 Annual Meeting begins. At Holiday Inn Downtown at the Park.

**Sept. 17** – State Bar Annual Banquet honoring UM School of Law.

**Sept. 18** – UM Law School Building dedication. At the Law School.

**Sept. 18-19** – Class reunion activities for Law Classes of 1959, 1964, 1974, 1979, 1984, 1989, and 1994.

**Sept. 19** – Law School tailgate party.

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### LETTER TO OBAMA, from Page 4

The last person appointed to the Court from private law practice was Lewis F. Powell Jr. in 1971. The last nominee who graduated from a public university law school was Charles Evans Whittaker in 1957. It has been 70 years since a law professor – Felix Frankfurter – took a seat on the Court.

I know that some observers argue that the choice of a nominee should be focused on finding the one “best qualified” candidate, without regard to where that candidate comes from or what the candidate believes. I think, however, that you understand that the law is an art as well as a science. There is not one, but many lawyers who can fit the mold of a great justice. They don’t call judges “judges” for nothing. Most legal issues require the exercise of legal judgment to sort between competing rules and precedents. For most questions, there is no single “right” answer, only a best one. It is foolishness to believe that there is only one “best qualified” nominee.

It’s time for a change. I humbly suggest that it is time to

look outside the federal appellate courts for your nominee. There are dozens of qualified lawyers in private practice, academia, or politics, lawyers who could bring a new, fresh perspective to the Court’s conferences. It’s encouraging to see that some of your potential nominees being discussed in the press are law professors, state court judges, lawyers in private practice, and executive branch officials. To make it even better, consider nominating someone who attended law school somewhere other than Harvard, Yale, or Stanford.

You have committed to making our government look more like the nation. The nation would be well served if you would also take a step toward making the Supreme Court look more like the nation’s bar. If you need help finding some names, please feel free to call.

*Respectfully,*  
**Chris D. Tweeten**  
*President, State Bar of Montana*

# The State Bar's Annual Meeting to honor the School of Law

*Will coincide with dedication*

The State Bar's 2009 Annual Meeting will take place in Missoula Sept. 17-18 to help the UM School of Law dedicate its new building on Sept. 18.

The meeting's banquet on Thursday evening, Sept. 17, will honor the Law School. Banquet master of ceremonies District Judge Douglas Harkin will present anecdotes of lawyers' UM Law School days (UM Law grads can send their stories to Cynthia Smith at [cks@montanalaw.com](mailto:cks@montanalaw.com)). Other entertainment will be provided by the Missoula Celtic Dragon Pipe Band. Most of the Annual Meeting events will be at the Holiday Inn Downtown at the Park.

A reception at the Missoula Art Museum on Wednesday evening, Sept 16, will honor retired Montana attorneys and judges.

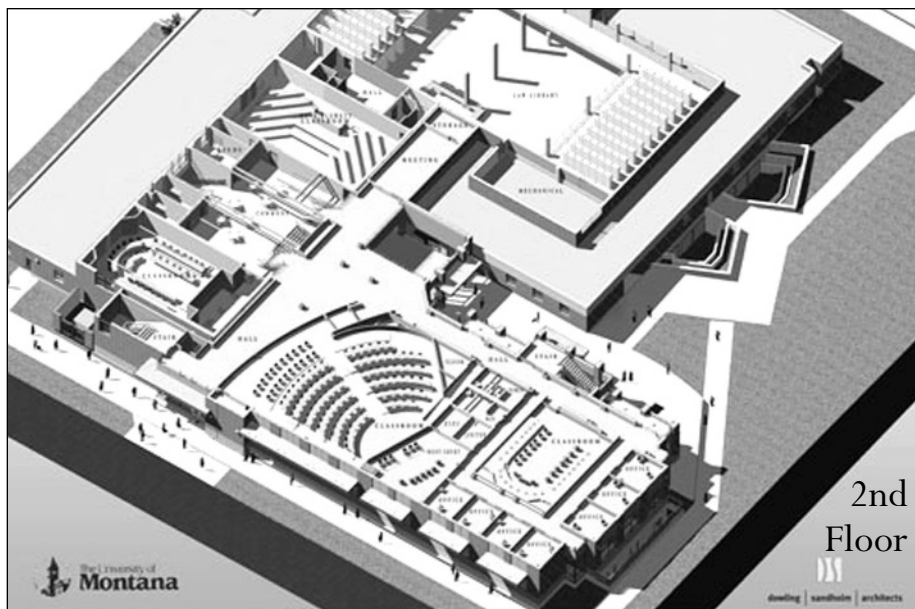
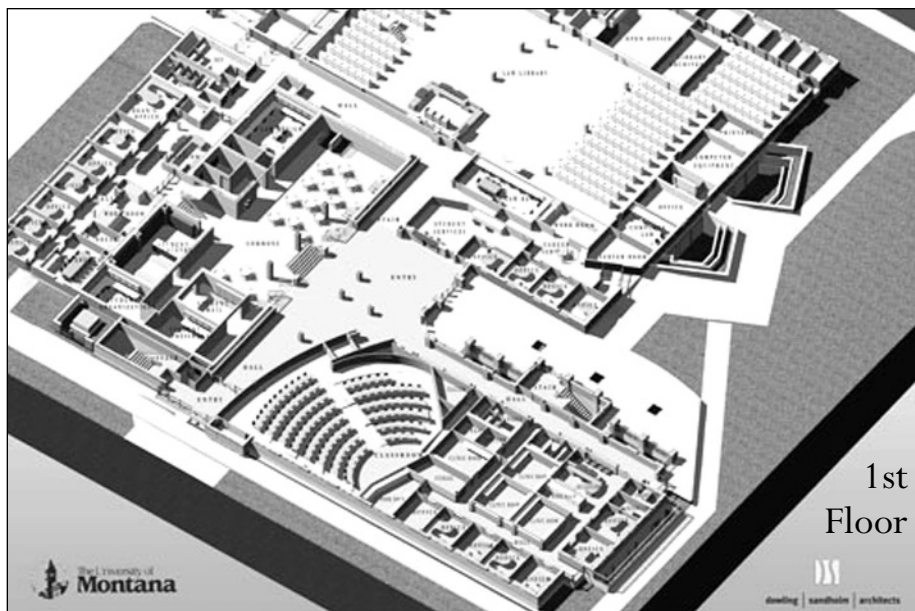
The CLE program will be held Thursday and on Friday morning. "Hot Topics in Law" will be worth 9.50 CLE credits, including 1.0 SAMI credit.

The Law School Building dedication will then be held on Friday afternoon.

## Bar, UM Law students hold discussion events

The State Bar continued its series of discussions with UM Law students this year, bringing experts to the School to talk about the State Bar, pro bono and community involvement, and judicial clerkships.

The three events in the 2008-2009 school year marks the second year that the Bar, the school's Career Services and Student Bar Association have collaborated to present the discussions. In the previous year, five discussions were held. The average attendance has been 40 or more students at each event, with more than 100 attending the discussion about non-traditional lawyering.



**Note:** The basement floor is not shown.

# A new way for lawyers to assist veterans

By **Hillary Wandler**, legal writing fellow  
University of Montana School of Law

*Did you know:*

■ *As of Sept. 30, 2008, Montana had approximately 104,000 veterans. Montana has the second highest per capita veteran population in the nation. One in every six adults in Montana is a veteran.*<sup>1</sup>

■ *Several Montana counties have more than 20 percent veteran populations.*<sup>2</sup>

■ *10,698 Montanans served in the military between 2001 and 2008. In the past three years, over 80 percent of men and women in the Montana National Guard have been deployed.*<sup>3</sup>

■ *For every fatality in Iraq and Afghanistan, 16 service members are wounded.*<sup>4</sup> *This statistic does not take into account the 20 percent of soldiers returning from Iraq and Afghanistan who suffer from symptoms of PTSD or major depression.*<sup>5</sup>

The VA adopted President Abraham Lincoln's words in his second inaugural address as its motto: "To care for him who shall have borne the battle and for his widow, and his orphan."<sup>6</sup> To fulfill this mission, the VA committed to "care for those injured in our nation's defense and the families of those killed in its service."<sup>7</sup> As a result, any person who has served in "active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable" is qualified to receive benefits from the VA.<sup>8</sup> A veteran's family members and survivors are also entitled to certain VA benefits.<sup>9</sup>

The VA offers two major benefits programs to qualified veterans: disability compensation for diseases or injuries incurred or aggravated in the line of duty (service-connected disability), and a pension program for disabilities not connected to active service.<sup>10</sup> If a veteran establishes a service-connected disability, the severity of that disability is assigned a percentage evaluation. The veteran's disability rating corresponds to a set monthly compensation rate.<sup>11</sup> A veteran can appeal a denial of benefits or a disability rating to the Board of Veterans Appeals (BVA). The United States Court of Appeals for Veterans Claims reviews the BVA's decisions.

From the initial claim to the final appeal, the veteran seek-

ing benefits has the burden of proving he or she is eligible for VA benefits and entitled to a particular benefit.<sup>12</sup> Upon entering the VA claims process, a veteran encounters a 16-page initial claims form (with 7 pages of instructions), an often confusing network of statutes and regulations, and seemingly endless paperwork from the VA regarding the claim.<sup>13</sup> The veteran is dealing mostly with lawyers who have years of experi-

## Your opportunity to serve those who served us

The Montana Supreme Court, through its statewide Pro Bono Program in partnership with the University of Montana

School of Law, announces formation of Montana Attorneys For Montana Veterans (MAMV). MAMV is designed as a pro bono program to assist Montana Veterans with claims for disability benefits.

Here is how it works:

- Attorneys must be accredited by the VA Office of the General Counsel.
- To become initially accredited, you must fill out a short 3-page application (VA Form 21a).
- An attorney's character and fitness to practice before the VA is presumed by certifying membership in good standing with the bar on Form 21a.
- For a fillable Form 21a, follow the link on the State Bar's website ([www.montanabar.org](http://www.montanabar.org)) or go to [www.va.gov/vaforms/va/pdf/VA21a.pdf](http://www.va.gov/vaforms/va/pdf/VA21a.pdf).

**More YOU CAN HELP, Page 21**

ence advancing the VA's position in statements to veterans and before the BVA.<sup>14</sup>

Not surprisingly, the VA Inspector General has reported that the single most important factor contributing to a veteran's successful benefits claim is that the veteran was represented by an advocate.<sup>15</sup>

Only attorneys and non-attorney agents who are accredited by the VA General Counsel can represent veterans at the regional level. Attorneys and non-attorney agents must be admitted to practice before the U.S. Court of Appeals for Veterans Claims before taking a veteran's appeal before that Court.

## Montana's veterans service officers – powerful advocacy for veterans

Veterans service officers (VSOs) are non-attorney advocates who provide free representation to veterans preparing and fil-

**More on VETERANS PRO BONO, Page 19**



## 3 new judges, but no further delay

From Lee Newspapers State Bureau

Montana will get three new District Court judges and support staff under a bill that became law without Gov. Brian Schweitzer's signature.

Senate Bill 158, by Sen. Greg Barkus, R-Kalispell, provides for elections for the new judges in November 2010. The judges elected would take office in 2011.

The law adds these new judgeships:

- A sixth district judge in the Yellowstone County district.
- A fourth judge in the Flathead County district.
- A fourth judge in the district that takes in Lewis & Clark and Broadwater counties.

Because of budgetary concerns, Gov. Schweitzer had proposed an amendatory

veto to delay the election of the three new judges by four years until 2014. The Senate and House rejected his proposed amendments by large margins.

The law as funded is expected to cost about \$1.9 million over two years when the judges and their staffs take office.

Supreme Court Chief Justice Mike McGrath said passage of this bill was the Montana judiciary's top priority in the 2009 legislative session.

"There have been substantial delays in conflict resolution in each of these communities," said McGrath.

Sen. Barkus said he didn't expect Schweitzer to veto the bill after the Senate turned down the governor's amendment, 44-6, while the House did likewise, 88-12.

His original bill called for six new

judges, but that number was cut in half because of the state's fiscal problems. "So I think it's a fair compromise to go with three now," Barkus said. "The next session can deal with the other three."

Co-sponsor Sen. Dan McGee, R-Laurel, said he was pleased that more judges were added. "It's probably not as many as the system needs, but it will make a big difference," McGee said.

The original bill to add six judges was requested by the Montana Supreme Court after the National Center on State Courts did a workload study among Montana's judges.

The bill originally called for adding a fifth judge in Cascade County, a seventh judge in Yellowstone County, and a fourth judge in Gallatin County. Those were dropped, but likely will come before the 2011 Legislature.

## Court budget wins some, loses some

The Montana Courts had mixed success in attaining legislative funding for its major proposals, the Court Administration Office reported.

Major Supreme Court projects that were funded were the drug courts (at about \$751,000 over the next two years), and the Self-Help Law Program for Montanans who wish to do simple legal work pro se (\$500,000 over the two-year period).

Along with the three new judges and support staff (see story above), the district courts receive funding to ensure at

least a minimum staffing level in rural judicial districts (about \$370,000 over the biennium).

**NOT APPROVED** by the Legislature were Supreme Court proposals for:

- An appellate mediator and part-time staff.
- A civil writ and motion law clerk.
- Funding for the state pro bono

coordinator. The position remains intact, however, through a grant from the Montana Board of Crime Control.

Funds for a program to facilitate the calling in of retired judges to serve when needed by the district court were also rejected by the Legislature.

In a positive note, the Legislature rejected a proposed \$2 million reduction in the juvenile-placement budget.

In all, there was a \$2.3 million reduction in the Courts' proposed budget. Those cuts included 2 percent in personnel-vacancy savings, a fuel-inflation reduction, and a 2 percent across-the-board reduction.

## Paralegal-fee bill becomes a law

Gov. Schweitzer also signed House Bill 301 to allow inclusion of reasonable paralegal fees as a component of attorney fees that may be awarded to a prevailing party in certain cases. The bill goes into effect Oct. 1.

Through an amendment by the governor, the bill also defines "paralegal" as

having to practice under the supervision of an attorney. The original bill lacked the attorney-supervision clause with the definition of a paralegal. The State Bar felt that lack of an attorney's supervision could give an opening to unauthorized practitioners of law. The governor and both houses of the Legislature agreed.

The bill also makes clear that no attorney or paralegal fees will be awarded in a court case when a party is represented by anyone other than a duly admitted or licensed attorney at law.

The Paralegal Section said it would provide an article with more details about the new law in the July edition of *The Montana Lawyer*.

# Nominations sought for 8 trustees, two officers

The State Bar of Montana will take nominations through July 3 for eight trustee positions and the offices of president-elect and secretary-treasurer for the Bar elections on Sept. 5.

On the nomination form at right, a candidate for trustee must submit signatures of at least 10 active State Bar members who live in the candidate's area (an area map can be found on Page 193 of the Bar's 2009 Lawyers' Deskbook & Directory or on the Board/Executive Committee Page under "Groups" at [www.montanabar.org](http://www.montanabar.org)). Candidates for president-elect and secretary-treasurer must have 25 signatures.

Up for Election are:

## The nomination form

- Two trustees in Area E (Eastern Montana).
- Three trustees in Area F (Lewis & Clark and Broadwater counties).
- Three trustees in Area H (Yellowstone, Stillwater, Carbon, and Big Horn counties).

Again, the filing deadline for the nominating petitions is July 3. Ballots will then be mailed to Bar members by Aug. 4, and must be returned to the Bar by Aug. 25. The ballots will be counted on Sept. 5.

## IMPORTANT EVENT REMINDERS

### Annual Rookie Camp in Billings

The State Bar's nationally recognized Rookie Camp for new lawyers will be held Friday, June 12, on the Campus of MSU Billings.

The Camp, which allows new lawyers to discuss issues face-to-face with justices, judges and experienced attorneys, will take place on the 3rd Floor of the college's Liberal Arts Building. Registration is between 7 and 8 a.m., the introduction (Room 309) begins at 8 a.m., and three one-hour-long discussion sessions begin at 8:30 a.m. Discussions are broken into small groups to allow for closer contact between the experts and the rookies.

Rookie Camp is for Montana lawyers who have been practicing for less than five years. Attendees receive 4.0 CLE credits, including 3.0 Ethics credits.

At noon, following the discussion sessions, a luncheon hosted by ALPS will be held in the Ballroom of the campus's Student Union Building. The State Bar Road Show for the Billings area will follow the luncheon, also in the Ballroom (see story at right). Later, at 5 p.m., a reception by the New Lawyers Section for rookies and all other attorneys will be held at Walker's Grill, 2700 1st Ave. North, across from the Crowne Plaza Hotel in downtown Billings.

### Road Show also in Billings June 12

The State Bar will take one of its 2009 Road Show events to Billings on June 12, immediately following Rookie Camp (see story at left).

The Road Show – an annual CLE with 3.0 free Ethics credits – will be from 1-4 p.m. in the Ballroom at the Student Union Building on the campus of MSU Billings.

The CLE, titled "You're on the Ethics Committee," provides attendees with several problematic vignettes concerning attorney conflicts, confidences, and other ethical challenges.

Attendees are welcome to a 5 p.m. reception by the New Lawyers Section set for Walker's Grill, 2700 1st Ave. North in downtown Billings.

Other Road Show events will be held this year in at least one other yet-to-be disclosed Montana city.

### Unveiling of plaque honoring Constitution writers

The State Bar is one of the sponsors of a public ceremony to dedicate a new plaque recognizing the delegates who wrote the Montana Constitution, at 2 p.m. on June 11 in the Capitol Rotunda in Helena.

The keynote speaker will be UM Law Professor Fritz Snyder on "The Montana Constitution's Transition to the 21st Century." Other speakers include Marshall Murray, Arlyne Reichert, Chuck Johnson, Mike Jetty, and Janet R. Kelly. Lt. Gov. John Bohlinger will be moderator.

### Criminal law ethics CLE in Bozeman

Hofstra University Law Professor Monroe Freedman and five other top national ethics experts will speak at the state Bar's conference on Ethics in the Criminal Justice System at the

Hilton Garden in Bozeman on June 26.

The one-day conference, organized by the Bar's Criminal Law Section, will be good for 6.50 Ethics credits.

# State Bar officer & trustee election

## 2009 nomination petition

I, \_\_\_\_\_, residing at \_\_\_\_\_, Montana, am a candidate for the office of ( ) President-Elect; ( ) Secretary-Treasurer; ( ) Area E Trustee; ( ) Area F Trustee; ( ) Area H Trustee, at the election to be held on Sept. 5, 2009. I am a resident of Montana and an active member of the State Bar of Montana. I request my name be placed on the ballot.

Signature \_\_\_\_\_

The following are signatures of active members of the State Bar of Montana supporting my candidacy. Trustee candidates include the area of residence. No fewer than 10 signatures must be provided for a Trustee; and no fewer than 25 signatures for a President-Elect candidate or Secretary-Treasurer candidate.

### NAME

### ADDRESS

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**Return to State Bar of Montana, PO Box 577, Helena MT 59624. Must be postmarked no later than Aug. 4, 2008.**

The State Bar of Montana has built new web pages for its Lawyer Referral & Information Service (LRIS) to provide more information and easier access into the program for potential clients.

The pages also inform attorneys of the benefits of joining the program and provides conditions and the means of joining (under the "Join the Service" button on the LRIS page).

You can find the new site at [www.montanabar.org](http://www.montanabar.org), under the "For the Public" link at the top navigation bar. Click on "Get a referral."

EACH YEAR, LRIS staff handles more than 6,000 calls from people across the country looking for a Montana lawyer. Currently, approximately 100 lawyers are on the program's referral list. The list has been growing lately, its coordinators say.

The new pages provide links telling readers:

- How Lawyers Set Their Fees.
- A Guide to Montana Legal

## Lawyer Referral grows web site and lawyer list

Resources with other legal-resource providers in addition to qualified attorneys, and options for information or assistance.

- Where to find free State Bar brochures on subjects like Divorce in Montana, Small Claims Court, When You Need Lawyer and other subjects. (The brochures are available at various public service agencies, Montana court-houses, some law firms, and at the State Bar's offices in Helena.)

- A Law School for Montana Citizens.

- Common Questions About Hiring an Attorney.

The site also explains where clients can go (to Montana Legal Services, for example) if they cannot afford an attorney. They are reminded that LRIS is not a pro bono program, and that member lawyers only agree to take a case at a reasonable fee.

The site goes into detail how a client contacts the free service, and what the procedures are for obtaining an LRIS lawyer contact. And the site explains the general qualifications of the member attorneys.

The LRIS Rules of Operation are also provided on the site.

**THE STATE BAR** is building a new on-line referral system, said Bar staffer Marie Connolly, who is in charge of the project. The online system will be available for both lawyers and clients to sign on 24/7. The system should be ready in a few months once glitches with the Bar's Texas-based web provider are worked out (call Ms. Connolly at 406-447-2204 for its status).

## STATE BAR CALENDAR

### June 8

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

### June 10

**Advertising & content deadline** for *The Montana Lawyer* magazine July edition

### June 11

**Dedication of plaque** for authors of Montana Constitution, 2 p.m., Capitol Rotunda

### June 12

**Rookie Camp & Luncheon**, 8 a.m.-1 p.m., MSU Billings  
**State Bar Road Show**, 1-4 pm., ballroom of MSU Billings

### June 17

**Law Education & Information Committee** conference call, 10 a.m.

### June 26

**Criminal Law Ethics CLE**, Bozeman

### 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 7

**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**, Missoula.

# Upcoming CLE seminars for Montana lawyers

June 1 Missoula – DoubleTree Hotel

**Implications for the Court in Parenting Decisions** 3.0 CLE credits. Presented by the 4th Judicial District Court, (406) 258-4742

June 1-5 (mornings) Missoula – UM Law School

**Indian Child Welfare Act** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 1-5 (afternoons) Missoula – UM Law School

**Indian Law Research** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 2 Billings – Billings Convention Center

**Medical Records Law in Montana** 6.0 CLE credits. Presented by Lorman Educational Services, (866) 352-9539

June 8-12 Missoula – UM Law School

**Tribal Criminal Law & Procedure** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 9 Billings – Crowne Plaza Hotel

**FMLA Master Class** 6.25 CLE credits, presented by M. Lee Smith Publishers, (800) 274-6774

June 12 Billings – MSU Billings

**State Bar Rookie Camp** – 4.0 CLE credits, including 3.0 Ethics credits. Presented by the State Bar of Montana, (406) 447-2205

June 12 Billings – Ballroom at MSU Billings

**State Bar Road Show** 3.0 free Ethics credits. Presented by the State Bar of Montana, (406) 447-2205

June 15-19 Missoula – UM Law School

**Indian Water Law** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 16 Teleconference

**Important Rules for Fiduciaries & Their Counsel** 1.50 CLE credits. Presented by Cannon, (706) 353-3346

June 26 Bozeman – Hilton Garden Inn

**Ethics in the Criminal Justice System** 6.50 CLE credits, including 6.50 Ethics credits. Presented by the State Bar of Montana and its Criminal Law Section, (406) 447-2206. Details at [www.montanabar.org](http://www.montanabar.org)

June 29-July 3 Missoula – UM Law School

**Indian Education & the Law** 15.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6781

June 29 Glasgow – Cottonwood Inn

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

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

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

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

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

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

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 Law School

**Veteran's Law Course** 30.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6871; [umt.edu/law](http://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 Law School

**Veterans' Law CLE** 6.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-6871; [umt.edu/law](http://umt.edu/law)

July 16 Helena – location to be announced

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

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

# State Bar of Montana Bookstore

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

## LEGAL PUBLICATIONS

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

**Montana Probate Forms**  
2006, 288 pages  
Book plus CD \$150

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

**Criminal Jury Instructions**  
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  
Book \$25

**Step-parent Adoption Forms**  
2003, 5 forms  
Book \$20

**U.S. & Montana Constitutions**  
Pocket-sized booklet  
\$4 each

**University of Montana Law Review**  
Subscribe at [www.umt.edu/mlr](http://www.umt.edu/mlr)

**Public Lands Law Review**  
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5. Risk Evaluation from an Insurer's Perspective - 1.0 Ethics credit
6. The Impossible Happens: Your Client Turns on You - 1.0 General CLE Credit

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**To pay by credit card**, please see the online Bookstore at [www.montanabar.org](http://www.montanabar.org)  
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- Small Firm & Solo Practice  
- Engagement & Disengagement Letters  
- Community Property in Another State: Effect on MT Dissolution  
- Adult Felony Sentencing  
1.0 CLE credit each topic  
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### 2007 Landlord-Tenant CLE

3.0 CLE credits  
3-CD set, audio only  
Print materials included

### 2007 Montana Ethics CLE, Butte

5.0 CLE credits, inc. 5.0 Ethics credits  
Set of 4 DVDs, print materials included

### 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

## MONTANA DVD SEMINARS FOR FREE

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### Fraud Under the Big Sky

50-minute film via DVD

### 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 Substantive & Procedural Dependency Law

1.5 CLE credits

### 2005 Adolescent Brain Development

1.0 CLE credit

## CLE MATERIALS

on CD or via e-mail, \$35

*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

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### CLE & SKI

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

### Construction Law

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### 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

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How to Succeed; Basic Will Drafting; Water Rights Claims; Privacy Rules; Lawyers' Assistance Program

### Water Rights for General Practitioners

Water Rights Fundamentals & Jurisdiction; Water Court Perspectives; Supply, Demand & the Future of Water Rights Claims; Ditch Easements; Realty Transfer Certificates; Ownership Updates

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from 2007 or earlier,  
contact Gino Dunfee at 447-2206**

**For online CLE seminars, go to  
[www.montanabar.org](http://www.montanabar.org)  
under "CLE"**

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**State Bar of Montana members get 20% discount off all ABA publications.  
Go to [www.ababooks.org](http://www.ababooks.org) and enter the code PAB7EMTB when ordering.**

# Court amends Rules of Appellate Procedure

The Montana Supreme Court has adopted amendments to the Montana Rules of Appellate Procedure that will take effect on Oct. 1.

In its May 5 order adopting the amendments, the Court said the amended rules will apply "to all briefs, motions, petitions, responses, and documents filed on or after October 1, 2009, in pending matters and to all new appeals, original proceedings and other matters filed on or after that date."

On Jan. 22, the Court issued an order

proposing the amendments, with a two-month comment period. "Many well-reasoned and helpful comments were received, and each was carefully considered by this Court," the May 5 adoption order said. On April 28, the Court held a public meeting for further discussion of the proposed amendments and the written comments. Representatives of the Montana Supreme Court Clerk's Office, the Appellate Defender's Office, and the State Bar of Montana attended the meeting and offered additional input.

As a result of the written comments and the discussion at the public meeting, "we have determined to adopt certain of the proposed amendments and to reject others," the Court said.

You can find a copy of the new rules (with strike-throughs for language deleted and shading for language added) at <http://courts.mt.gov> under Orders / New Rules. The rules are labeled "AF 07-0061 In the Matter of the Rules of Appellate Procedure."

## Court reappoints three to Practice Commission, 4th election being held

After elections were held this spring in three State Bar of Montana areas, the Montana Supreme Court has reappointed three members of the Commission on Practice to new four-year terms.

The election among attorneys in Areas B, D, and H provided the Court with a list of names from which the appointments, or reappointments, would be made.

Reappointed to the commission that regulates Montana attorneys' practices are three attorneys:

- Stephen R. Brown, Havre.
- Mary Jo Ridgeway, Miles City.
- John Warren, Dillon. Mr. Warren has been serving as Commission chair.

The Court also announced a new election in Area F for an attorney position of the Commission on Practice. Area F is comprised of Judith Basin, Fergus, Petroleum, Meagher, Wheatland, Golden Valley, and Musselshell counties. The Court said attorney and Commission member John Oldenburg has consented to reappointment, however a new election nominating three resident Bar members is required. District Judge Wayne Phillips will handle the election, with results due May 22.

## Fee arbitration rules amended to tighten and clarify procedures

In an April 28 order, the Montana Supreme Court adopted changes in the Rules on Arbitration of Fee Disputes between attorneys and clients.

The changes were requested by the State Bar and its Fee Arbitration Committee, and went into effect on May 1.

"The changes tighten and clarify the fee-arbitration procedures," said Bar Counsel Betsy Brandborg.

The Rules also were reworked to keep lawyers from getting out of the fee-arbitration requirements, which they sometimes try to do. "If you don't participate in the process when required to, you are in trouble with the

Court under these amendments," Ms. Brandborg said.

The Bar filed its petition for the changes on July 10, 2008. The Court gave Bar members a 45-day comment period. On Oct. 28, the Court held a public meeting on the revisions.

Justices Patricia Cotter and Jim Rice met on two occasions with a committee of the Bar to reach accord on the amendments.

The new rules can be found at <http://courts.mt.gov/newrules.asp>, listed as "AF 08-0323 In the Matter of the Revision of Rules on Arbitration of Fee Disputes."

## Lawyer convicted of assault is suspended

Great Falls attorney Arthur Roy Tadewaldt, who was sentenced in district court in March for assault with a weapon, witness tampering, and false reports to law enforcement, was suspended from the practice of law in an April 22 Montana Supreme Court order. He had been sentenced to 15 years in prison.

Tadewaldt was charged by Great Falls authorities for stabbing and injuring a woman at his home and then lying to police about the incident. Tadewaldt, who appeared intoxicated when questioned by police, appeared to have been making demands for companionship and sex from the woman, who declared that Tadewaldt was not her boyfriend.

The Supreme Court has directed the Office of Disciplinary Counsel to prepare a complaint for further sanctions against Tadewaldt in light of the convictions.



## ORAL ARGUMENTS

### June 2009

■ Case No. DA 08-0307 – CATHERINE SATTERLEE, Petitioner and Appellee, v. LUMBERMAN'S MUTUAL CASUALTY CO., Insurer for BUTTREY FOOD & DRUG, Employer and Appellee --- James ZENAHLIK Petitioner and Appellant v. MONTANA STATE FUND, Insurer for EAGLE ELECTRIC, Employer and Appellee. --- JOSEPH FOSTER, Petitioner and Appellant v. MONTANA STATE FUND, Insurer for ALLEN ELECTRIC, Employer and Appellee.

Oral argument is set for Wednesday, June 10, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. DA 08-0399 – CARY ROHLFS and TERRA ROHLFS, Petitioner and Appellee, v. KLEMENHAGEN, LLC dba STUMBLE INN, Defendants and Appellees.

Oral argument is set for Wednesday, June 10, at 2 p.m. in the courtroom of the Montana Supreme Court, Helena.

■ Case No. OP 08-0430 STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff, v. BUSH HOG, LLC, Defendant.

Oral argument is set for Wednesday, June 24, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

**TO VIEW BRIEFS** containing details on each case, go to <http://courts.mt.gov/library>, click on "Cases" in the top navigation bar, and search for the case by names or case number.

## Elder Abuse Forum in Great Falls June 12

An Elder Abuse Prevention Forum will be held in Great Falls on June 12, featuring presentations from attorneys, governments officials, social workers, and law-enforcement officials.

The forum will be held at the Rainbow Assisted Living Community from 1 p.m. to 7 p.m.

The forum will address all types of elder abuse, from physical abuse to financial exploitation.

The speakers will be District Judge Judge Dirk Sandefur, Cascade County Attorney John Parker, State Ombudsman Elena Keitzman, Cascade County Sheriff Dave Castle, Jim Francetich of Adult Protection Services, and Sgt. Jeff Newton of the Great Falls Police Department.

The Elder Abuse Prevention Forum is a coalition of groups and individuals dedicated to addressing and eliminating what it calls the country's epidemic."

## Successful February Bar examinees

Listed below are Montana's 52 newest attorneys, from a field of 64 applicants who sat for the February Bar Exam in Helena.

After the 52 passed the Bar Exam, most were sworn in as Montana attorneys on May 19 in two Helena ceremonies. One ceremony for Montana-court attorneys was at the Supreme Court Chambers, the other for federal-court attorneys was in the Paul G. Hatfield Courthouse.

Passing the February 2009 Bar Exam were:

Bagby, James

Baumann, Jenifer

Bishop, Matthew

Corrigan, Leah

Decker, Christopher

Dwarzski, Noelle

Erickson, Robert

Evans, Kelsey

Evans, Mark

Foster, Jeffry

Freedman, David

Gardner, David

Gradwell, Lori

Greenley, Eeva

Hagin, Will

Hardgrave, Joseph

Harman, Cory

Hernandez, Shiloh

Herring, Tonya

Holliday, Katherine

Holmes, Ashley

Johnson, Ariston

Kaiser, Miranda

Kakuk, Michael

Lazaro, Skye

Lindemann, Rebecca

Longley, Alison

McCann, Mary Christina

McCormack, Joanne

Meras, Lukia

Muldoon, Brian

Nicastro, Anthony

Odle, Nathaniel

Pham, Nguyen Vu

Polan, Jessica

Potter, Amy

Prill, Christine

Ries, John

Roberts, Amanda

Saul, Amanda

Schieke, Wendy

Scott, Steven

Selby, Richard

Stanfield, Elizabeth

Thieszen, Mark

Tiller, Benjamin

Tocker, Marc

Walter, Erik

Watson, Lawrence Reed

Williams, Benjamin

Womack, Leta

Woodward, Cammi

The Next Bar exam is in Missoula on July 27-29.

The application deadline for the July exam was March 1.

The application deadline for the February 2010 exam in Helena is Oct. 1.

# Legal Writing

Judge Mark Painter

## Good writing needs a good 'look'



*What an odd phenomenon it is that lawyers – whenever they want to draw special attention to passages, such as main issues in a brief or warnings in drafted documents – make them typographically impenetrable.*

– Bryan A. Garner, *A Dictionary of Modern Legal Usage* 130 (2nd ed. 1995)

Lawyers and judges seem to find ways to make writing difficult to read. We have discussed nominalization, the use of the passive voice, long sentences and paragraphs, and using two or three words when one will do. But we also tend to make the words physically hard to read.

Because we are usually trying to persuade the reader, we should make it easy. This includes visually, as well as mentally. The typestyle, the visual makeup of the page, and the general look and visual "feel" of the document add to – or detract from – readability.

### Unreadable fonts

Sometimes we invest in great word-processing technology, then insist on having our writing appear as if produced on a 1940 Underwood.

Courier is the most difficult to read of any normal font. This is because it is monospaced, rather than proportional. Typewriters required this spacing. Our word processors do not. Do you remember ever reading a book in Courier? Long ago, some courts even made us have our briefs printed – because typescript is notoriously unreadable.

Contrast this with:

Courier is the most difficult to read of any normal font. This is because it is monospaced, rather than proportional. Typewriters required this spacing. Our word processors do not. Do you remember ever reading a book in Courier? Long ago, some courts even made us have our briefs printed – because typescript is notoriously unreadable.

Never use Courier, unless you want your document to look as if it were typed in 1940. Times New Roman (TNR – which is the text font for most of this magazine) is now the

default font on most word processors. But that need not dictate your style. **[However, your local court rules should. Check out the Montana Supreme Court and federal court rules on fonts and font sizes in the documents you send them].** One problem with TNR is that the periods and commas are too small – they are sometimes difficult to see. This sentence is in TNR. This is in Georgia.

TNR was developed for the *London Times*. Because ink tends to expand in newsprint, the periods and commas – and the type itself – appear larger and darker. Our printers don't bleed, so TNR is not the best font.

After much research – I've conducted tests with hundreds of people in my seminars – Georgia is my choice. Georgia was developed for the Internet, so it is much easier to read. Palatino, Baskerville, and Garamond are also good for text, though each has some good and bad points. All are serifed type.

Not unreadable but not as readable is a sans serif font. Serifs are the "wings" at the bottom and top of the letters – look at the a, f, d, f, h, i, k, l, m, n, p, q, r, u, v, w, x, and y. The serifs guide the reader's eyes horizontally – which is the way we read text. Scientific studies support always using a serif type for text.

On the other hand, a sans serif type - wings - guides the eyes vertically. Some common sans serif types are Arial, Lucinda Sans, and Tahoma. You should use one of them for headings and titles in your document. And to further set off the headings, make them bold. I use **Arial bold italic**.

### Avoid all-caps

Never use all caps, unless a specific format absolutely requires it. Text in all caps is very difficult to read:

WE GAVE JUDGE PAINTER'S BOOK TO EVERY ATTORNEY IN OUR OFFICE, AND REQUIRE OUR ATTORNEYS TO FOLLOW JUDGE PAINTER'S 40 RULES. OUR WRITING IS NOW MORE EFFECTIVE AND PERSUASIVE.

Compare this with:

We gave Judge Painter's book to every attorney in our office, and require our attorneys to follow Judge Painter's 40 rules. Our writing is now more effective and persuasive.

If you want to emphasize a phrase or a sentence, either (1) write it well enough that it supplies its own emphasis, or (2) use **bold**, not caps or *italics*. Because *italic type* cuts down on reading speed, *italics* should be reserved for case names.

Underlining is almost as bad as all caps – for the same reason. It obscures the down part of the letters.

---

**MARK PAINTER** is a judge on the Ohio 1st District Court of Appeals. He has served as an adjunct professor at the University of Cincinnati College of Law since 1990.

ing claims for benefits. VSOs can be state or county employees. National service organizations including Vietnam Veterans of America, The American Legion, Disabled American Veterans, The Military Order of the Purple Heart, and The Veterans of Foreign Wars also train and hire VSOs.

Montana's 104,000 veterans are served by 19 state-funded VSOs through the Montana Veterans' Affairs Division.<sup>16</sup> Each VSO in the Montana Veterans' Affairs Division is fully trained, accredited, and certified. Montana VSOs are statistically highly effective in representing veterans at the regional level.

Veterans represented by Montana VSOs more than double their ultimate compensation amount over veterans who represent themselves.<sup>17</sup> For every dollar of state investment in the Montana Veterans Affairs Division, the Division's VSOs attain \$102 in federal VA compensation to Montana veterans.<sup>18</sup>

Nevertheless, each Montana VSO serves a significantly higher portion of the state's veteran population than a VSO in any one of the surrounding states. In contrast to the 104,000 veterans in Montana who are served by 19 state VSOs, the 58,000 veterans in North Dakota are served by 53 county and tribal VSOs; the 74,000 veterans in South Dakota are served by 79 state, county, and tribal VSOs; and the 137,000 veterans in Idaho are served by 41 county VSOs.<sup>19</sup> In addition, VSOs don't often represent veterans in appeals to the BVA or the United States Court of Appeals for Veterans Claims. Current statistics show that even if veterans were represented by VSOs at the regional level, 64 percent of veterans appealing to the United States Court of Appeals for Veterans Claims appeal pro se.<sup>20</sup>

### How Montana lawyers can help

Much like Montana's expert VSOs, Montana attorneys educated in the VA benefits system and appeals process could play an integral role in our state's response to those who have served and are serving this country. By assisting clients in identifying potential claims,

gathering all relevant evidence to support those claims, developing a complete record, navigating the maze of paperwork, and screening any frivolous claims before they reach the BVA, attorneys would "improve the quality and reduce the administrative cost of [VA regional and appeal] proceedings."<sup>21</sup>

Unfortunately, even though representation is critical to a veteran's successful benefits claim, lawyers educated in the VA claims process and willing to represent veteran claimants are difficult to find. Representatives from the National Veterans Legal Services Program report the number of lawyers willing to represent VA claimants falls "far short of the demand."<sup>22</sup> Montana is no exception. Only seven Montana lawyers are listed as admitted to practice before the U.S. Court of Appeals for Veterans Claims, and only three Montana lawyers are accredited by the VA General Counsel.<sup>23</sup>

**The Montana Bar** can rise up to meet the ever-increasing need for knowledgeable and effective veterans' advocates. Lawyers educated in the many resources available to Montana veterans and active service members can provide helpful and accurate referrals. As Montana VSOs have demonstrated, effective representation can significantly increase a veteran's chance at submitting a successful benefits claim and nearly double a veteran's ultimate compensation. Montana attorneys should come alongside Montana's VSOs to meet the legal needs of those who have served and are currently serving our country overseas and here at home. Let us help bind up Montana's wounds and care for those who have borne the battle.

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**HILLARY WANDLER** is the UM School of Law's legal writing fellow. She teaches legal analysis and legal writing, and will teach the School of Law's inaugural course offering on veterans' benefits law this summer. She joined the School of Law after clerking for both Judge James R. Browning of the U.S. 9th Circuit and Chief Judge Donald Molloy of the U.S. District Court for Montana, and practicing civil litigation with the Missoula law firm Garlington, Lohn & Robinson. Ms.

Wandler is admitted to practice before the state and federal courts in Montana and the U.S. Court of Appeals for Veterans Claims, and is accredited to practice before the Department of Veterans Affairs. She received her BA cum laude from Concordia College and her JD with high honors from the UM School of Law.

### NOTES

1. Jt. Econ. Comm., "Fight Now Pay Later: The Future Costs of Funding the Iraq War," 110th Cong. (June 12, 2008) (testimony of Hon. Brian Schweitzer, Governor of Montana); FY 2008 Performance & Accountability Report, Dept. Veterans Affairs Rep. at 15 (VA 2008), [www.va.gov/budget/report/2008/index.htm](http://www.va.gov/budget/report/2008/index.htm) (last updated May 7, 2009).

2. Natl. Ctr. for Veterans Analysis & Statistics, "Montana: Veteran Population by Age, by Sex, by County," [www1.va.gov/vetdata/docs/MONTANA.pdf](http://www1.va.gov/vetdata/docs/MONTANA.pdf) (last updated May 7, 2009).

3. Montana Capitol Report, Joint Resolution 9 – Shows Support for our Troops, [www.mtcapitolreport.org/legislators/house-joint-resolution-9-shows-support-for-our-troops](http://www.mtcapitolreport.org/legislators/house-joint-resolution-9-shows-support-for-our-troops) (last updated May 7, 2009).

4. See Linda Bilmes, Soldiers Returning from Iraq & Afghanistan: The Long-Term Costs of Providing Veterans Medical Care and Disability Benefits 2 (Harvard Univ. JFK Sch. of Govt. Faculty Research Working Paper Series No. RWP07-001) (Jan. 2007) (available at <http://ksgnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP07-001>). Bilmes recognizes the different definitions of "wounded" used by the Department of Veterans Affairs and the Pentagon. Due to its narrow definition of "wounded in action," the Pentagon reports a lower estimate that approximately seven service members are wounded in action for every fatality in Operation Iraqi Freedom (OIF)/Operation Enduring Freedom (OEF). See Dept. of Def., "Global War on Terrorism: Casualties by Military Service Component – Active, Guard and Reserve – October 7, 2001 through May 2, 2009," [http://siadapp.dmdc.osd.mil/personnel/CASUALTY/gwot\\_component.pdf](http://siadapp.dmdc.osd.mil/personnel/CASUALTY/gwot_component.pdf) (last updated May 7, 2009).

5. See Rand Corporation News Release, "One in Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression," [www.rand.org/news/press/2008/04/17/](http://www.rand.org/news/press/2008/04/17/) (last updated May 7, 2009).

6. Public & Intergovernmental Affairs, "The Origin of the VA Motto," [www1.va.gov/opa/feature/celebrate/vamotto.asp](http://www1.va.gov/opa/feature/celebrate/vamotto.asp) (last updated May 7, 2009). President Lincoln spoke during the final stages of the Civil War, encouraging all to "bind up the nation's wounds" and "do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." *Id.*

7. *Id.*

8. 38 U.S.C. § 101(2) (2006); 38 C.F.R. § 3.1(d) (2008).

9. See Dept. of Veterans Affairs, Federal Benefits for Veterans, Dependents and Survivors 85 (VA 2009) (available at [www1.va.gov/opa/feature](http://www1.va.gov/opa/feature)



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## YOU CAN HELP, from P. 8

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**To register for the CLE,** obtain a fillable PDF version of the Application for Accreditation or to request a videocast location site, contact the Supreme Court's Statewide Pro Bono Coordinator, Patty Fain at [pfain@mt.gov](mailto:pfain@mt.gov) or call (406) 794-7824.

[/index.asp](#) [hereinafter Federal Benefits].

10. 38 U.S.C. §§ 1110, 1131, 1521. Veterans and their families may qualify for a wide variety of additional federal and state benefits, but compensation and pension are the major benefits systems within which veterans and dependents typically need representation.

11. See Federal Benefits at 20. A veteran who has a disability rated as 30 percent or more disabling is entitled to additional monthly compensation. *Id.*

12. 38 U.S.C. § 5107(a) (2006).

13. See VA Form 21-526 (available as a fillable form at [www.vba.va.gov/pubs/forms/VBA-21-526-ARE.pdf](http://www.vba.va.gov/pubs/forms/VBA-21-526-ARE.pdf)); Jonathan Creekmore Koltz, "Unstacking the Deck: In Defense of the Veterans Benefits, Healthcare, and Information Technology Act of 2006," 17 Fed. Circuit B.J. 79, 79-80 (2007).

14. See Koltz, *supra* n. 12, at 80.

15. See Ronald B. Abrams, "Representing Veterans in the Battle for Benefits," 42 *Trial* 30, 32 (Sept. 2006).

16. See [http://dma.mt.gov/mvad/addresses/office\\_addresses.htm](http://dma.mt.gov/mvad/addresses/office_addresses.htm) for a list of Montana Veterans Affairs Division VSOs. Montana veterans who belong to national service organizations may also go to national VSOs, some of whom are who are located in Montana.

17. Mont. Veterans' Affairs Div., Statistics Sheet (prepared by Joe Foster, Administrator Mont. Veterans Affairs Div.) (on file with the author).

18. Mont. Bd. of Veterans Affairs, Biennial Report (July 1, 2008) (prepared by Joe Foster, Administrator Montana Veterans Affairs Division) (on file with the author).

19. N.D. Leg. Council Staff for the Pub. Safety Comm., "Delivery of Veterans' Services – Other States' Efforts and County Veterans' Service Officer Certification" (Nov. 2007) (available at [www.legis.nd.gov/assembly/60-2007/docs/pdf/99146.pdf](http://www.legis.nd.gov/assembly/60-2007/docs/pdf/99146.pdf)); FY 2008 Performance & Accountability Report at 15; Idaho Veterans Services, 2008 – 2009 Veterans Resource Directory, [www.veterans.idaho.gov/OVA%20Bulletins/2008%20-%202009%20Directory.pdf](http://www.veterans.idaho.gov/OVA%20Bulletins/2008%20-%202009%20Directory.pdf) (last updated May 7, 2009).

20. U.S. Ct. of App. for Vet. Claims, Annual Reports 1999–2008 (available at [www.vetapp.gov/documents/Annual\\_Report\\_-\\_20081.pdf](http://www.vetapp.gov/documents/Annual_Report_-_20081.pdf)).

21. See Koltz, *supra* n. 12, at 93.

22. See Barton F. Stichman & Ronald B. Abrams, *Veterans Benefits Manual* 7 (LexisNexis 2007).

23. See U.S. Ct. of App. for Veterans Claims, Public List of Practitioners, [www.vetapp.uscourts.gov/practitioners/](http://www.vetapp.uscourts.gov/practitioners/); select Montana Location (last updated May 7, 2009); Dept. of Veterans Affairs Office of the General Counsel, Accreditation Search, [www.va.gov/ogc/apps/accreditation/index.html](http://www.va.gov/ogc/apps/accreditation/index.html); select Download Complete List of Accredited Attorneys, Claims Agents, or Representatives in Excel (last updated on May 8, 2009).

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***When ipsie dixit is not enough***

The Montana legal community and the University of Montana are now connected to an impressive new program for families of men and women who have died serving in Iraq and Afghanistan.

Thanks to a UM graduate and his attorney father-in-law in Conrad, Mont., Montana is the first state to initiate the Grateful Nation Program, which has now gotten national TV-network attention.

According to the *Missoulian*, David Bell, an insurance executive from Florida who is a UM Business graduate, and John McCarrick, a New York attorney, were discussing over lunch a newspaper story about a young widow whose husband was killed serving in Iraq, and the lack of federal assistance for his family. "We were under the impression that if you were in the military and you served your country and you were killed, that the surviving family members were taken care of," the *Missoulian* quoted Bell, who now lives in Bermuda, as saying. "The reality is that's not the case at all."

Although neither Bell nor McCarrick has served in the military, they wondered what would be their biggest concern if they were killed? For the two fathers, the answer was: the welfare of their children.

"Thus was born Grateful Nation," wrote *Missoulian* reporter Chelsi Moy. "A pilot program founded in 2007, Grateful Nation offers full-ride college scholarships and early academic intervention to kids of Montana soldiers killed while serving on active duty in Iraq or Afghanistan. Montana is the first state to offer the program, but it's been developed as a blueprint for implementation elsewhere around the country. The University of Montana is running the program with assistance from the UM Foundation."

**MONTANA ATTORNEY** and former State Bar Trustee Gale Gustafson is the secretary and a director of Grateful Nation Montana Inc., and his law offices in Conrad are the headquarters of this Montana non-profit corporation. Co-Founder and president of the group, David Bell, is married to Mr. Gustafson's daughter, Brittany. Ms. Bell is treasurer of Grateful Nation Montana.

Co-founder John McCarrick, a graduate of Georgetown Law School, also has Montana ties. He served as a 7th and 8th grade teacher as a Jesuit Volunteer Corps participant at the Ft. Belknap Indian Reservation in 1982-1983. After his second year in law school, Mr. McCarrick came back to Montana in 1984 and was a summer associate with the Billings law firm of Crowley, Haughey, Hanson, Toole & Dietrich. He is currently a partner in the New York law firm of Edwards,

## Grateful Nation program's roots planted at law firm in Conrad, Mont.

*Provides college scholarships to families who lost a parent in Iraq, Afghan wars*

Angell, Palmer & Dodge. "John continues to help with fund raising activities for the Ft. Belknap community," Gustafson said. "In 1997 he organized and led a three-year fundraising effort for a new community center at Lodge Pole, which continues to serve the people of this community." Mr. McCarrick is vice president and a director of Grateful Nation Montana.

Cindy McCain, wife of U.S. Senator John McCain and

a successful business woman and philanthropist, also serves on the board of directors.

"Of course, we would certainly entertain the possibility of adding another Montanan to our board of directors, including an attorney deeply committed to this project," Gustafson told *The Montana Lawyer*. "I have received really supportive comments, including promise of pledges from the handful of attorneys with whom I have discussed GNM," he said.

Senator Max Baucus, a Montana attorney, has pledged "his enthusiastic support" for GNM, Gustafson said, "as has Senator Jon Tester, Congressmen Denny Rheberg and Governor Brian Schweitzer."

**ATTENTION WAS DRAWN** to the program on March 31 when Grateful Nation was featured in the "Making a Difference" segment on the "NBC Nightly News with Brian Williams." The four-minute segment featured Dylan Hyland, a 17-year-old Loyola High School student in Missoula whose father, Army 1st Lt. Josh Hyland, was killed in an explosion in Afghanistan in 2005; and Nicole Johnson, wife of Marine Corps Sgt. Trevor Johnson who was killed by a roadside bomb in Afghanistan earlier this year.

Children who lose a parent in the wars "have a nonexistent probability that they go to college," especially when the parent did not attend college, which most military personnel do not, Bell told the *Missoulian*.

Montana was an ideal location for the launch of Grateful Nation, Bell said. Per capita, Montana is the state with the highest number of soldiers killed in action, he told the *Missoulian*. To ensure the program's success as it got off the ground, Montana's small population made for a more manageable number of eligible children. Once the program succeeds on a small scale, it can be applied to places where the number of eligible children is much larger, Bell said.

Of the 23 kids in Montana eligible to enroll in Grateful Nation, only a dozen have signed onto the program, he said.

Dylan Hyland is less than a year away from applying to colleges, but many of the children are still toddlers and infants. Bell suspects more widows to enroll as their children age.

Under the program, when the child turns 12, the University assigns a UM professor to mentor the student. Families are invited to visit campus and participate in special events such as Homecoming. The child can attend any school in the Montana University System. Tuition, books, room and board are paid for in full. The only requirements are that students must complete their schooling by age 30 and maintain a 2.5 grade point average.

UM professor of sociology and criminology Dan Doyle began mentoring Hyland in January, the *Missoulian* said. The two have met on several occasions and Hyland, who's indicated an interest in criminology, has toured the campus and sat in on several college classes.

Part of the mentor's role is to make sure that the teen is prepared for college. "Dylan has a good head on his shoulders," Doyle said. "I think he'll do just fine."

It was an easy decision for UM President George Dennison to agree to house the pilot program at UM, the *Missoulian* said. "Everyone understands the reasons for doing this . . . This was a perfectly manageable program," said Dennison, who paid for his schooling using the GI Bill after his Navy service from 1953-1957.

**BELL AND MCCARRICK** began raising money for the program a year ago, the *Missoulian* said. Insurance companies nationwide have donated much of the money to date, Bell said. The money is held in an endowment through the UM Foundation.

Still, more funding is needed to fulfill the obligations to those children in the program, Mr. Bell said.


Gustafson said the organization received a "tremendous response" to the NBC program, which was taped over a two-week period in Missoula and at the Arlington National Cemetery. "I received a call from an attorney and Vietnam Veteran from Florida who wants to set up a similar program for the families of Florida and has requested our advice as to how to proceed," Gustafson said.

"Any contributions for the benefit of these families of our fallen soldiers, which are fully tax-deductible, may be made to the University of Montana Foundation/Grateful Nation Montana," Mr. Gustafson said. One-hundred percent of those contributions goes directly to the benefit of these children, because the co-founders and other directors are bearing all administrative expenses, he said.

**FOR MORE DETAILS** or to refer any families with a Montana connection who have lost a parent in Iraq or Afghanistan, you can contact Mr. Gustafson at :

**Grateful Nation Montana  
Gustafson Law Offices  
400 South Main, Suite 101  
Conrad MT 59425**

or by calling (406) 278-7521 or 5332; or e-mail [info@gratefulnationmontana.com](mailto:info@gratefulnationmontana.com). Visit Grateful Nation's website at [www.gratefulnationmontana.com](http://www.gratefulnationmontana.com).




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Reviewed by **Renee L. Coppock**, Billings attorney

Sometimes an attorney needs to look at the pages of a book to compare information from various sources. Other times, an attorney finds a CD-Rom or another online form of information most helpful. "Business and Commercial Litigation in Federal Courts," edited by Robert L. Haig, has it all, while offering every practitioner substantial, current information in the nine-volume treatise.

The treatise offers valuable insight not only to litigators in federal court, both plaintiffs and defendants, but also to all attorneys practicing commercial and business law. Consulting the treatise during commercial transactions could keep your

client out of court. The hardbound treatise is composed of 96 chapters, including a soft-cover Table of Cases and Index, and is written by 199 respected judges and attorneys who provide very practical analyses and commentary on current topics.

The Table of Cases and Index also include a table to the up-to-date and relevant jury instructions and related forms. The companion CD-Rom containing the jury instructions is easy to use, even for those who are not computer savvy.

The treatise begins with the basics of litigation – jurisdiction, venue, forum selection, removal, consolidation, joinder, and severance – and moves into investigation of the claims and case evaluation.

The case evaluation discussion in Chapter 5 contains particularly helpful and detailed information that ensures all aspects of the case are considered, not just the obvious. This will lead to a better informed client and a better understanding of the potential outcomes of litigation. The discussion is easy to follow and understand, yet contains information useful to the most seasoned attorney. As with other treatises, the work will be kept up-to-date with pocket parts.


One of the most valuable resources could be Chapter 22, Discovery of Electronic Information. The chapter has 77 separate sections discussing issues that arise in today's electronic age. The citations to the rules are most helpful, especially in light of the analysis of cases relating to each rule. Hours and hours can be spent at seminars in an effort to learn just a fraction of what is contained in the chapter. The practice aids are also invaluable, giving the practitioner checklists of who and what to ask of organizational employees, how to investigate back-up systems and archives, and even what orders to use during discovery disputes.

In-house counsel will find constructive, thorough advice relating not only to electronic discovery, but also to litigation avoidance, business judgment rule, commercial defamation, employment discrimination, labor law, and officer and director liability. Chapter 63 deals extensively with officer and director liability, discussing bankruptcy, the Sarbanes-Oxley Act, insurance, and derivative actions. The work also includes a frank discussion of the role of an organization's general counsel, outside lawyers, and in-house counsel during litigation, and how those roles can change mid-stream. There are tips on how to deal with the changing roles as well.

For the commercial practitioner, the treatise contains advice on litigation management, showing how to budget for lawsuits on behalf of clients with in-house counsel. This is often a point overlooked by attorneys that causes big issues with the client during litigation. The advice is practical and worth reading, containing sample budgets and concise explanations.

Overall, the treatise is thorough and well-organized. All types of practitioners will benefit from the checklists, forms, case analyses and practical advice. It is not often that an attorney finds such a wealth of knowledge in one source. It is definitely worth the purchase price.

**RENEE L. COPPOCK** is a partner at Crowley Fleck law firm and has practiced in the areas of commercial litigation, agricultural law, real estate transactions, bankruptcy, tribal law, and environmental law since joining the firm in 1987.



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ship roles on a number of other national committees. She is a graduate of the University of Kansas, where she earned two undergraduate degrees, a master's in English literature and a law degree.

"My belief in the power of law and education for furthering the public good led me to a career in legal education," she wrote in her letter of application to UM. "At this defining moment in the history of the Law School, the new dean will have a unique opportunity to contribute to the school by helping to enhance the educational program and the relationship of the school with the bench and bar."

Involvement with issues of legal ethics and the profession "informs my focus of the mission of law schools and the central mission of educating the next generation of lawyers and leaders while fostering strong relationships with the campus community, the Montana Bench and Bar, alumni and local, state, tribal, and national constituencies," she wrote.

**HER LETTER OUTLINED** several of her beliefs:

- "I believe that our profession must provide practical training for the leaders of tomorrow who will take their place in a people-oriented legal profession."
- "... I would seek to enhance the student-centered culture of the school. The core values I embrace as a professor would permeate my approach to serving as dean."
- "... a commitment to providing international experiences for students and close connection to the Montana bench and bar, in order to provide a range of local and global experiences for students and to ensure that the public continue to receive quality legal services."
- "As a professor I seek to encourage and inspire students to active learning and active questioning. I believe that teaching must achieve training in theory and skills while also providing a home for diversity of thought and individual growth. Because I see the role of the lawyer in society as part of the subject of every law course, I include practical application of doctrine and issues of legal ethics in my classes and I support clinical education."
- "As dean, I would seek to personify the articulated goals of the Law School with an active focus on facilitating the work of the faculty and enhancing civic and ethical responsibility as part of the core values for law students."
- "I believe that fostering the development of future leaders of our nation makes legal education a calling rather than a job. I care about individuals as well as institutions and take seriously the work of the law and legal education in fostering a just and inclusive society."

**IN A PHONE INTERVIEW** from Tulsa with *The Montana Lawyer*, Prof. Russell reflected on moving from teaching at a

private law school and being the dean of a state (public) law school.

"My foundation was formed at the University of Kansas, where I taught as a young lawyer, and then on the faculty at Memphis," she said. "Both are public law schools; my core values are formed by public law schools." Although she stressed that there is nothing wrong with a private law school, she said it is attractive to be returning to UM's public setting, where public service may be more of a priority.

She said she also shares with UM a great appreciation for academic freedom for faculty. She intends to teach at the Law School, the subject depending on the greatest curriculum needs.

She also told *The Montana Lawyer* that her background in professional responsibility was as important to her hiring at UM as was her background in energy and environmental law. "We are entering a period where green issues are becoming paramount," she said, "and I want to help the Law School contribute to that."

**PROF. RUSSELL REPRESENTED** governmental entities, lenders, and other clients in matters arising under the Comprehensive Environmental Response, Compensation & Liability Act, the National Environmental Policy Act, and on other environmental issues, such as wetlands designation and site mitigation plans. "As chief negotiator for the Superfund consent decree and as director of NELPI [The National Energy-Environment Law & Policy Institute], I focused on consensus-building and collaboration," she wrote.

Prof. Russell says she has significant administrative experience, including personnel supervision and financial administration. These experiences include directing NELPI, serving as education officer of the 10,000-member ABA Section on Environmental Law, and serving as an officer in various legal organizations. "During my time at the University of Memphis," she said, "I administered a unified legal research and writing program, served on the Institutional Review Board, and worked on interdisciplinary environmental committees." She said she has chaired significant law school committees and coordinating programs such as the Pace Human Rights in Action Program, which placed six students in internships and other support positions for the War Crime Tribunals in The Hague and Geneva. "Many of these posts included the task of overseeing personnel and budget processes," she said.

Noting that fundraising is a priority for deans in most law schools, Prof. Russell said she has had "the good fortune to experience success in both academic and community funding projects," including two grants from the U.S. Bicentennial Commission Bill of Rights Project and a successful campaign to raise more than \$4 million to purchase at-risk lands in the Wolf River Basin as a member of the board of directors of the Wolf River Conservancy.

**SINCE 2006**, Prof. Russell has been on the University of Tulsa National Energy-Environment Law & Policy Institute (NELPI) and the College of Law's NELPI professor of law and NELPI director. From 1992 to 2006, she was assistant law

professor and law professor at the University of Memphis. From 1982 to 1984, she was instructor in contracts, legal research and writing, and appellate practice and was director of Legal Writing at the University of Kansas School of Law.

She has been visiting professor at the University of San Diego School of Law International Institute; the International Energy Law symposium in Barcelona, Spain; the Intersection of Culture & Environmental Law symposium in Dublin, Ireland; St. Mary's Law School in Innsbruck, Austria; Lewis & Clark School of Law; Pace University School of Law; University of Missouri-Kansas City School of Law; the International Human Rights symposium in Ulster, Ireland; the International Sale of Goods symposium in Russia and Poland; and the University of Houston *Energy Law Journal* Symposium.

**PROF. RUSSELL IS** is the nominee to become vice chair of the ABA Section of Environment, Energy & Resources (SEER), and will be chair elect and chair from 2010 to 2012. She was chair of the AALS Professional Responsibility Section; chair of the ABA Professionalism Committee of the Section of Legal Education; vice chair, ABA Professionalism Committee; on the executive committee of the AALS Natural Resources Section; chair of the ABA Committee on Innovation of SEER; chair, ABA Committee on Global Oil & Gas of SEER; on the board of directors of Energy Advocates; on the ABA Standing Committee on Ethics & Professional

Responsibility; and chair of the ABA Strategic Response Committee of SEER.

Prof. Russell graduated from the University of Kansas School of Law in 1980. She also has a master's with honors in English Literature, a BA in Liberal Arts and a BS in Education, all from the University of Kansas.

In 1980-81, she was law clerk for Judge James K. Logan for the U.S. 10th Circuit Court of Appeals.

**ADMITTED TO PRACTICE** law in Kansas, Missouri, and Tennessee, she was in private practice in law firms in Memphis and Kansas City for almost 10 years, working in general practice, environmental and commercial transactions and litigation, and appeals.

She has authored a book on "Issues of Legal Ethics in Environmental Law," co-authored the book "Mastering Contract Law," and has produced many book chapters and legal journal articles.

You can view her entire CV at [www.umt.edu/lawdean/](http://www.umt.edu/lawdean/).

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## Mediation Clinic staffers win Bar's Mitchell Award

The Montana State Bar of Montana has bestowed the Carol Mitchell Award to three students who graduated in May from the University of Montana School of Law. They are Saul Seyler, Bina Peters and Kate Talley.

Traditionally, the award is given to one senior who "is committed to the principles of mediation in dispute resolution, and who has demonstrated excellence in the study and practice of alternative dispute resolution." The Bar gave the award to three students this year for their work in the University of Montana School of Law's Mediation Clinic.

"This was a big year for us as it's our inaugural year in-house," said Professor Eduardo Capulong, the clinic director. "Saul, Kate, and Bina did a terrific job not just doing our staple mediations but also ramping up Clinic operations. I've no doubt they'll continue to be great assets to our community."

Mr. Seyler is a 2001 honors graduate of San Francisco State University, with a degree in Environmental Studies and concentration in Environmental Sustainability and Social Justice. He will receive ADR and Natural Resource Conflict Resolution certificates upon his graduation this spring. A board member of the Missoula Community Dispute Resolution



Mitchell Award winners, from left, Saul Seyler, Bina Peters, and Kate Talley.

Center, one of his areas of interest is workplace mediation.

A Billings native, Ms. Peters received her undergraduate degree in music and philosophy at the University of Puget Sound.

Ms. Talley has an undergraduate degree in political science and environmental studies from Emory University, and a graduate degree in special education from Loyola Marymount University. She, too, received an ADR certificate upon graduation.

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## NEWS ABOUT MEMBERS

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**Roberta "Bobbie" R. Zenker** has accepted a position with Disability Rights Montana in Helena, an organization that provides protection and advocacy for people with disabilities in order to protect and obtain their human, civil, and legal rights. Ms. Zenker left the Appellate Defender's Office of the State Office of Public Defender to assume her new duties April 7.

Formerly the Madison County attorney, she is a 1992 graduate of the University of Montana School of Law. She was involved with the Montana County Attorneys Association for many years, and continues to serve the State Bar on the Professionalism Committee. Her primary practice areas with Disability Rights Montana will be core services and employment, benefits and access issues.



Gov. Brian Schweitzer has chosen Billings lawyer **John Edwards** to serve on the state Board of Public Education. Gov. Schweitzer appointed Mr. Edwards to succeed Kirk Miller, whose term expired. Mr. Miller did not seek reappoint-

ment. Mr. Edwards is in a private law practice and is active in family businesses, including Edwards Jet Center, real estate, and ranching. He holds undergraduate and law degrees from the University of Montana. His participation in UM athletics included two national title games in I-AA football.

**Evan F. Danno** has rejoined the Lerner Law Firm in Kalispell, which was previously known as Lerner & Danno. At the Lerner Law Firm, Mr. Danno will continue his litigation and insurance claims practice, particularly in the areas of personal injury, employment, estates, and real estate. Mr. Danno earned his JD from UM School of Law in 1991, and has practiced law in Montana for 17 years. He was formerly associated with Conklin, Nybo, LeVeque & Murphy in Great Falls, and most recently was a member of Henning & Keedy in Kalispell. He is admitted to practice before the U.S. District Court for Montana, the 9th Circuit Court of Appeals, and the Blackfeet and Confederated Salish & Kootenai tribal courts.

The Montana Meth Project announced that Cascade County Attorney **John Parker** was appointed to its board of directors.

### **Robert Bruce Brown, Stevensville attorney**

Attorney Robert Bruce Brown, 82, died at home in Stevensville on May 1.

He was born in Wisconsin, the youngest of eight children. In 1928, when he was 2 years old, his family headed to the Bitterroot in Montana. The family lived and worked on farms and ranches up the Burnt Fork and on Three Mile for many years before the dream of their own farm became reality. Mr. Brown graduated from Stevensville High School at age 15.

During three summers before and after graduation, he worked as a lookout on St. Mary's Palisades and Antrim Point towers and stringing telephone lines across the ridges of the Sapphires through the treetops from the Squaw Peak lookout to the Skalkaho. Mr. Brown joined the Navy and was assigned to the officer candidate school at Carroll College in Helena.

In 1945, just before Mr. Brown was to ship out on the USS Harwood to the Pacific, he was severely injured in a shipboard training exercise, the only survivor of a fire crew. His lungs were seared and he was unconscious and on death watch for several days. He recuperated in the Navy hospital at Camp White near Pendleton, Ore. He was discharged at 100 percent disability in 1946 and enrolled at the University of Montana in Missoula, but soon fell ill and was diagnosed with tuberculosis. He was hospitalized in the TB sanitarium at Galen for another 15 months.

Once recovered, Mr. Brown returned to the University, deciding to take up law like his older brother, Cecil. When Mr. Brown graduated from the law school in 1950, he and his wife Frances moved to Stevensville to open a law practice. Their daughter was born before Mr. Brown's graduation and two sons followed, carefully fitted into the office schedule – Mrs. Brown served as Mr. Brown's legal secretary for most of his career.

Mr. Brown practiced as an attorney a total of 55 years, 49 in private practice and as the town attorney of Stevensville and six as Ravalli County attorney, 1981-1986. He was best known for his knowledge of Montana water law and Bitterroot water rights.

Mr. Brown served as community leader from the '50s through the '70s. He worked to set up the Civic Club by-laws and charter and participated in many Civic Club projects. He served as Creamery Picnic chairman several times and led a troop of Boy Scouts sponsored by the Civic Club. He was elected Civic Club president at least twice. In the '50s and '60s, Mr. Brown and his wife served on the Democratic Central Committee and he was elected as a delegate to the 1964 Democratic National Convention.

The Browns were founding members of Our Savior Lutheran Church, which became a lifelong commitment. He served in every office in the church, helped build both structures, sang in the choir, and was the resident legal authority. His last act, only hours before entering the hospital for his last short illness, was to go over the proposed constitution for the

May 3 meeting that he would not live to attend.

Mr. Brown's wife died in 2008. He is survived by his two sons and daughter.

### **Richard Carstensen, Billings attorney**

Long-time Billings attorney and noted Montana athlete Richard J. Carstensen, 79, died on April 25.

Mr. Carstensen was born in Helena, and his father died less than two years later in a car accident. Mr. Carstensen graduated in 1946 from Helena High School. He was an All-State tackle on the Bengal football team and lettered two years on the track team. He started every game but one for four years on the Bengal basketball team, was high scorer all four years, and was All-State center. He held the Bengal total career scoring record of 1,183 points for 51 years, and was selected to the Helena Sports Hall of Fame in 2005.

He went to the University of Montana on a basketball scholarship in 1946 where he started four years for the Grizzlies. His 1949-50 Grizzlies won 27 and lost 4 which still ties for the Griz best ever season record. He was selected as a charter member of the Grizzly Basketball Hall of Fame, and held the Griz's best percentage free throw record.

At the University, he was a Sigma Chi, president of the Sophomore Class, the M-Club, and Silent Sentinel, the senior men's honorary. He served as Aber Day chair, and was on the Athletic Board. He graduated from UM Law School in 1951.

Mr. Carstensen has practiced law in Billings since 1951, and received a 50-year pin from the State Bar of Montana in 2001. He served as chief deputy county attorney, assistant city attorney, and city attorney and was U.S. federal magistrate for 10 years. He was a member of the Yellowstone Area Bar Association, Billings Barristers, ABA, Montana Criminal Defense Lawyers Association, and National Association of Criminal Defense Lawyers. He was admitted to practice before all state and federal courts in Montana, the 9th Circuit Court of Appeals, and the U.S. Supreme Court.

A lifelong opponent of the death penalty, Mr. Carstensen was proud of being one of a group of appellate attorneys who secured permanent reversals of two Montana death sentences.

Mr. Carstensen served as president of the Billings Lions Club, McKinley PTA, and Little Guy Football. He served as a member of the Billings Park Board, Billings Traffic Commission, and the *Billings Gazette* Readers Panel. He was chair of the Billings and Montana Young Republicans, vice-chair of the National Young Republicans and chair of the Billings Republican Central Committee. He served on and as chair of the Midland Roundtable Football Committee for nine years for the Montana-Wyoming football games in Billings and served on the committee that planned the Billings Metra Arena. Mr. Carstensen served nine years as a director of the Billings Mustang professional baseball team.

Mr. Carstensen is survived by his wife, Shirley, three daughters and two sons.

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Musselshell County Attorney's Office is hiring a part-time deputy county attorney. Applicant must be licensed to practice law in Montana. Experience in criminal law and trial experience is preferred. Position is available June 1, 2009, and is open until filled. Submit a letter of interest, and letters of recommendation to: Musselshell County Attorney's Office, 506 Main Street, Roundup MT 59072.

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