

# Lawyer

THE STATE BAR OF MONTANA

## It's a matter of **expectations**



*New lawyers vs. older lawyers in generational conflict*

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new

**Blog**



is up and ~~running~~ talking

A growing list  
of membership

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**INSIDE: The legislative bills we're following**



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## MARCH INDEX

**Issue Note:** We have relabeled this, the first *Montana Lawyer* issue of 2009, as the March issue instead of the February issue. This is to move each month's publication date to the first of the month with which it is labeled, instead of the last half of the month. There will still be 10 issues a year, as promised, including 10 issues for 2009.

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## PRESIDENT'S MESSAGE

# Preserve it? Protect it? Replace it?

*Voters will soon decide fate of MT Constitution*

Chris Tweeten

**C**all me paranoid, but I'm starting to worry about the Montana Constitution. The fragility of our foundation document becomes more and more apparent every time the Legislature comes to town and bills surface that seek to undermine our constitutional rights.

This year my favorite is SB 334, introduced by Sen. Joe Balyeat. You can find the bill's text online at the Bill Watch List link on the home page of [www.montanabar.org](http://www.montanabar.org). The bill would seek to amend the Constitution to allow the Legislature by two-thirds vote in each house to override a decision of the Montana Supreme Court that "invalidates" a statute passed by the Legislature. Its clear intent is to place severe limits on the Court's ability to check the power of the Legislature through judicial review of measures that the Legislature lacks the constitutional power to enact.

SB 334 is unlikely to succeed. As a legislative constitutional referendum it needs the approval of 100 legislators even to make the ballot. If it were to make the ballot, it would still require approval by a majority of Montana voters. These kinds of bills generally fail because they don't represent the views of mainstream legislators, or of the Montana public.

### SO WHY AM I CONCERNED?

Because the 1972 Constitutional Convention delegates included a little-known provision in the new Constitution requiring that the question of whether to call another constitutional convention be placed before the voters every 20 years. This is an idea that can be traced back to Thomas Jefferson, who believed that the newly minted Constitution of the United States would be obsolete within a few decades. Mr. Jefferson might think differently on the subject if he had a chance to view the political climate of the 21st Century.

The mandatory constitutional-convention referendum did not come close to passing in 1994. As the next referendum set for 2014 approaches, however, I'm predicting that there will be a loud and expensive campaign seeking to persuade

the people of Montana that the 1972 Constitution has become obsolete and a new convention is needed.

Bills like SB 334 show that some elements in Montana would like to re-write the Constitution to suit their own ideas of how government ought to function. In addition to these political scientists, special interests could benefit significantly if a new Constitution were to be adopted that removed provisions that were troublesome for their own agendas or added new provisions that would be of benefit.

I certainly wouldn't suggest that anyone's ideas for changes in the Constitution are beyond the pale of public discussion. Nor would I dispute that anyone who has the resources has a 1st Amendment right to buy advertising

designed to persuade voters. What I would say is that in my view the people of Montana will be best served when discussions over political ideas occur in the give and take of the marketplace of ideas rather than in a campaign of slick advertisements and bloviating blogs that obscure more than they enlighten.

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**Wherever we stand on the political spectrum, as lawyers we are uniquely qualified by training and experience to contribute to the public's understanding of what's right and wrong with the Montana Constitution.**

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**WHEREVER WE STAND** on the political spectrum, as lawyers we are uniquely qualified by training and experience to contribute to the public's understanding of the what's right and wrong with the Montana

Constitution.

The State Bar, local bars, and the University of Montana School of Law should begin planning now to present public forums across the state to foster discussion of the issues surrounding the constitutional referendum without filtering them through the lens of television or the keyboards of bloggers.

We will do a grave disservice to our fellow Montanans if we leave to politicians and special interests, backed by slick media campaigns, the discussion over the wisdom of a new constitutional convention. It's not too early to begin thinking about the coming referendum from our perspective as lawyers. I guarantee that other people are already thinking about it from perspectives of their own. ○

# New and different EXPECTATIONS

What today's law grads want from their careers,  
and how it clashes with older lawyers' perspectives

By **Sue Strachan**, 2008 UM Law graduate  
and **Charles Wood**, The Montana Lawyer

**F**orget about Baby Boomers and Millennials. Stop parsing Generation X and Generation Y. Let's simply focus on some of the ways today's new lawyers differ in their expectations about practicing law – from those expectations of experienced Montana attorneys.

Montana attorneys are getting older. At a State Bar Board of Trustees retreat, it was noted that there are more attorneys over the age of 50 than under 50. It was also noted that, according to the Western States Bar Association, there are too few lawyers coming in and too many retiring. Law school admissions are down and so are admissions to the Bar. The American Bar Association is predicting that over the next 10 years 400,000 lawyers will retire, yet law schools only graduate 30,000 students every year. In Montana, the Bar admits just 200 new attorneys each year.

We held in-depth interviews with 11 law students at the University of Montana, ranging in age from 25 to 48, to roughly measure the expectations they have for their law careers. We also interviewed established Montana attorneys across Montana to see how the way they practice law might differ from new-lawyer expectations. Adding to our observations are research and readings from throughout the U.S., and from past panel presentations in Montana.

What follows are 11 observations we've made about the expectations of today's new attorneys.

## 1. There is a preference for non-traditional practices

Seven of the 11 UM Law students said they wanted to work in other than a traditional law firm. They cited a desire to work in government or for non-profit organizations (with natural resources and environmental advocacy at the top of the list). "Public service," "public interest," and "human services" were often mentioned. Others wanted to teach, or go into management of bar associations, CLE providing companies, into law-office management or alternative dispute resolution, or into legal publishing.

The students we interviewed said:

*"I expect to use my degree both to practice law and to use it in other ways. That's what makes it so exciting — the versatility."*

*"I have actively sought out non-traditional legal careers, such as public policy research or legal publishing. This is because I prefer the working environment in these careers — it's not as stressful as a traditional legal career."*

*"I never really saw myself as working for a law firm — I always saw myself as working for the public interest. . . Making partner has never been a career goal."*

*"I don't intend to practice law after graduation. I am interested in a career in state government, ultimately at the administrative level. I also have an interest in law librarianship and may eventually pursue a graduate library science degree."*

Four of the UM Law students do expect to make careers (albeit tenuous ones — see the section on "changing jobs" below) inside traditional law practices.

*"As a first-year law student, my expectations carry a high degree of uncertainty. I expect to put in long hours and maintain the hope that it will be rewarding too . . . I expect that I will have to pay my dues for five years or so after law school — not necessarily to make partner, but to gain enough experience that will allow me to be selective in my work."*

Unlike in other states, where there is a higher desire to work in mega-firms, UM students don't seem particularly keen on working for very large firms.

*"I do not want to work in a large firm, but would like to be in a small firm of about 10 attorneys who will be able to show me the ropes and mentor me. I do not think I will ever go solo."*

*"Frankly, I am stepping into what I believe is my "ideal job," working for a small, general practice private firm that does a bit of everything in a rural area."*

## 2. Debt limits their initial law-practice options

Most of the students we interviewed said law-school debt

(ranging from \$30,00 to \$70,000 among our law school respondents) will determine the first legal jobs that they seek. Six of the law students said the need for higher pay to pay off debts will limit them to their less-than-ideal practices or locations. Debt is the reason many go to work for larger law firms outside of Montana, at least until that debt is paid down.

A few of the students commented:

*"I feel forced to take on a job that pays a certain amount in order to pay for this debt. I am definitely not putting off a career in public service. In Montana, these jobs do not pay that much less than jobs in private practice."*

*"The debt issue is a huge issue and plays a significant role in the work I seek. Fortunately, the new federal legislation [debt forgiveness for public-service work] is a step in the right direction – it makes public interest work a more feasible option. Without debt, I would be definitely work in the public interest arena, or work at a private firm part-time (enough to pay bills) and volunteer half-time at Montana Legal Services, doing pro bono work."*

*"I have about \$55,000 in debt from law school. I don't think student debt will affect my job search too much, except that I will leave Montana to get the salary I expect. After I make my fortune, I hope to come back to Montana."*

### 3. They want a life outside the workplace

The new lawyers place a great emphasis on balancing work and family life. They would be happy to sacrifice longer work hours, for more hours of recreation and family, but they seem realistic that working fewer hours may hinder promotion, or "making partner" in a firm. Most of the students mentioned the desire for flex time (see "billable hours" discussion below).

Several experienced attorneys that we talked to – and who are accustomed to long hours at work – see this as a lack of professional motivation. "New attorneys just don't put in as much volume of work as we did," said one older Montana attorney. "When 5 or 5:30 comes, they're gone."

Our student respondents said:

*"I hope I can do work that I believe in, make a difference in the world, utilize my skills, and find a balance with family."*

*"I'm not looking to be the billable boy genius for some firm. I want quality of life, while doing something I believe in."*

*"I want to travel and spend time with my spouse. I value time more than money and relationships."*

*"I think that travel and family are essential to being productive when working, so I hope to have a position that allows flex-time or 4-5 weeks of vacation."*

*"I'm not interested in making partner. I want to do interesting things in my legal career and have enough time to find a good life balance that allows me to do interesting things outside of work – in my personal relationships and unwinding in my recreational pursuits."*

*"I think I see my career following the traditional model; however, I am nervous about how I will balance family with my profession."*

*"I tend to look to my female professors who have a family – and it gives me hope that it is possible to have both."*

*"I have zero interest in working 70-plus hours per week at a large firm. Quality of life is important to me. Ideally, a work week of up to 50 hours would be perfect, realizing that certain cases will require longer hours when a trial is pending or deadlines approach. I expect a decent salary, but nothing exceptional. For me, a good salary would start about \$60,000. I would be surprised if I ever made much more than \$100,000 a year."*



Students all want flex-time. One student said that "especially in non-profits you do the job and put in well over 40 hours per week because you love it. Flexibility to work odd hours or to take time off is really important."

A law student said that she would like to "have vacation time and not feel guilty for using it." Another student said that in a previous job he could opt for extra vacation and take less pay and hoped he could find something similar in a law job. All students wanted to be productive and work hard at the job and then transition to personal and family time without feeling guilty. Students recognize that deadlines and trials will force them to work "extra hours" or "overtime" when necessary, and no one seemed to be kidding themselves that this will not happen.

### 4. They unanimously despise billable hours, want fixed salaries

Law students already have learned that they do not want to practice in law firms that use a billable-hour regime. Our 11 students were unanimous on that.

One student said "I despise the thought of it. I think it cheats clients and makes the profession a dishonest one."

Another student commented that “firms who want to keep their employees happy and staying with them should pay a fixed salary.”

There was some realism that billable hours may work better for transaction-type legal problems than for open-ended litigation. But all the students preferred a fixed salary, and those kind of jobs were the ones they would seek (see the “Billable hours giving ground” article below).

Students have heard horror stories about impossible-to-meet hour requirements, and a student commented that this is what turned her off to working at a law firm. Experienced lawyers in billable-hours firms confirmed that that pay structure is problematic for today’s new lawyers. “They have a higher expectation of pay vs. the amount of their output than we did,” said one Montana attorney.

It took one Montana firm a while to educate a new associate on the importance of collecting billable hours, another older attorney said. “He had to pay more attention to his hours, he had to learn that that’s the only way you can pay yourself.”

Our students respondents realized that they may be able to earn more under a billable-hour arrangement, but all were more interested in a salary.

*“Billable hours would probably encourage overworking. This is one reason why I would find a government job so attractive. I believe I would be willing to accept a lower salary if it meant I didn’t have to keep up with the billable hours.”*

*“I would avoid a big-firm job with workaholic expectations. I tend to be a workaholic enough if the cause motivates me, I don’t need additional pressures keeping me*

*from life.”*

*“My ideal situation would offer a comfortable (not excessive) salary, flex-time, good vacation schedule, and meaningful work. I want to work hard at work, and then enjoy family time when not.”*

*“I want to be able to just go to work and do a good job, and not have to constantly wonder how many hours I have to put in to be successful. I would like a job with regular hours and a fixed salary.”*

*“I think billable hours are terrible . . . I worked in a billable-hours firm last summer – we billed in 6-minute increments. My research and letter writing was billed out at \$60 an hour, while I was making \$12 an hour. It just doesn’t pass the smell test.”*

#### **4. They want mentoring and coaching in their workplaces**

Several of the law students said this.

#### **5. They are more apt to switch practices or career categories in their lifetimes**

Nationwide studies have shown that this new generation of professionals expect to be more mobile in their careers and less loyal to one workplace. Although our UM respondents

**More EXPECTATIONS, Page 29**

**By Jonathan D. Glater**  
of the New York Times

Lawyers are having trouble defending the most basic yardstick of the legal business – the billable hour. Clients have complained for years that the practice of billing for each hour worked can encourage law firms to prolong a client’s problem rather than solve it. But the rough economic climate is making clients more demanding, leading many law firms to rethink their business model.

“This is the time to get rid of the billable hour,” said Evan R. Chesler, presiding partner at Cravath, Swaine & Moore in New York, one of a number of large firms whose most senior lawyers bill more than \$800 an hour. “Clients are concerned about the budgets, more so than perhaps a year or two ago,” he added, with a lawyer’s gift for

## **Billable hours giving ground at law firms**

understatement.

Big law firms are worried about their budgets, too. Deals are drying up, and only the bankruptcy business is thriving. Two top firms, Heller Ehrman and Thelen, have collapsed in recent months. Others have laid off lawyers and staff. So cost-conscious clients may now be able to sway long reluctant partners to accept alternatives.

The evidence of a shift away from billable hours is, for now, anecdotal, as few surveys exist. But partners at a half-dozen other big bellwether firms and lawyers at corporations, who

sometimes engage outside counsel, say they are more often seeing different pay arrangements.

Mr. Chesler, who is an advocate of the new billing practices, said that instead of paying for hours worked, more clients are paying Cravath flat fees for handling transactions and success fees for positive outcomes, as well as payments for meeting other benchmarks. He said that such arrangements were still a relatively small part of his firm’s total business, but declined to discuss billable rates and prices in detail.

The system of billing by the hour has been firmly in place since the 1960s; keeping track of time spent provided a rationale for the amount charged. In earlier, perhaps more trust-

**More BILLABLE HOURS, Page 28**

# Bills that the State Bar is watching closely

*This is the list of bills that the State Bar of Montana is following closely during the 2009 Montana Legislature. The bills would affect the practice of law and the operation of Montana's courts. Whether a bill is actively supported or opposed by the State Bar will be noted below. The list – updated daily with newly introduced bills, bills' status in the legislative process, fiscal notes, scheduled hearings, and the bill text – can be found on the home page at [www.montanabar.org](http://www.montanabar.org).*

## Introduced in the House

**House Bill 155 – Require state agencies to develop procedures to protect personal information.** Rep. JP Pommichowski (Democrat) is the main sponsor. This bill requires state agencies to protect certain personal information, requires state agencies to develop procedures to protect Social Security numbers, and provides a notification procedure for state agencies or third parties regarding a breach suspected of compromising certain personal information.

The bill was passed by the House and transmitted to the Senate.

The State Bar is watching to see how the bill relates to the Rules of Privacy issues that are being addressed in Montana courts, also outlined in Senate Bill 338 (see next page) as it relates to child and family issues

**HB 301 – Include paralegal services in attorney fee awards.** Sponsored by Rep. Deborah Kottel (D). The bill would 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 also defines “paralegal.”

A hearing on the bill was held in the House Judiciary Committee on Feb. 2.

**HB 303 – Revises the Limited Liability Company Act.** Sponsored by Deborah Kottel (D). This bill replaces the Montana Limited Liability Company Act with the revised Uniform Limited Liability Company Act.

The bill has been tabled by the House Judiciary Committee after a Feb. 3 hearing .

**HB 322 – Fair Arbitration Act.** Sponsored by Rep. Anders Blewett (D), a Great Falls attorney. This bill requires a person nominated or appointed as a neutral arbitrator to disclose a conflict of interest. It also provides for vacating an award because of a failure to disclose a conflict of interest. A hearing was held in the House Judiciary Committee on Feb. 11.

The State Bar's Dispute Resolution Committee was still examining this bill at press time. The bill would affect the Montana Supreme Court's Fee Arbitration program that the Bar manages.

**HB 339 – Revise Limited Partnership Act.** Sponsored by Rep. Deborah Kottel, (D). This bill would replace the current Montana Uniform Limited Partnership Act with the most current, revised version.

The bill was tabled by the House Judiciary Committee after a hearing on Feb. 3.

## Introduced in the Senate

**Senate Bill 50 – Revise salaries for Supreme Court justices and district court judges.** Sen. Jim Shockley (R), an attorney from Victor, is the main sponsor. Under this bill, the Department of Administration would conduct a salary survey to determine the average salaries of justices and judges in the four states surrounding Montana: North Dakota, South Dakota, Wyoming, and Idaho. If the average salaries are greater than the salaries for Montana justices and district judges, the Montana salaries will be raised to equal the four-state average.

The bill was tabled by the Senate Judiciary Committee at Sen. Shockley's recommendation in light of state budget shortfalls. The bill is probably dead.

**SB 125 – Clarify composition of Judicial Nomination Commission.** Sponsored by Sen. Jim Shockley (R). This bill adds the 22nd Judicial District to the judicial districts represented in the composition of the Commission.

The bill was approved by executive action in the House Judiciary Committee. **Actively supported by the State Bar.**

**SB 158 – Revise number of judges in judicial districts.** Sponsored by Sen. Gregory Barkus (R) If the bill passes, there would be district judges added to the following judicial districts:

■ 1st (Helena), 11th (Kalispell), and 18 (Bozeman) – one new judge each, for a total of four judges in each district.

■ 4th (Missoula) and 8th (Great Falls) – one new judge each, for a total of five judges in each district.

■ 13th (Billings) – two new judges, for a total of seven.

The bill also provides for the election of a number of the judges in 2010.

The bill was passed by the Senate, and now resides in the House Judiciary Committee. **Actively supported by the State Bar.**

**SB 191 – Provide funding for court security.** Sponsored by Sen. Larry Jent (D), an attorney from Bozeman. This bill would require all courts of original jurisdiction to impose a user surcharge in criminal, civil, and probate cases. The surcharge must then be used by local governments for the payment of costs for court security needs.

The bill was indefinitely postponed on the Senate floor, and



## Barbara Harris in charge of prosecutions for the state

Good grief! I just read the article in the December edition of *The Montana Lawyer* about Brant Light's appointment as new chief prosecutor for the state. (It is actually a reprint of a Lee Newspapers State Bureau article published in early December.) There are a couple of inaccuracies in the article that I would like to clear up.

I knew I was the old chief prosecutor for the state but I didn't know I was as old as the article indicates. Forty years with the Department of Justice! I'm pretty sure 40 years ago I was still in school. I started with the Attorney General's Office of the Department in 1987, so I'm thinking 21 years is more accurate.

Also, Brant Light will actually be devoting most of his time and energy

to training projects for prosecutors and law enforcement.

Brant is certainly an experienced and capable prosecutor, but the primary focus of his work will not be case-related.

Barbara Harris is the chief of the Prosecution Services Bureau, a position she has held with dedication and

distinction for over four years. She will continue to supervise the special prosecution function of the Attorney General's Office.

Finally, Brant is quoted in the article as saying that no one can replace John Connor. Although he is being very gracious, we all know that everyone is replaceable, even old chief prosecutors.

I am confident that the prosecution and training responsibilities of the Department of Justice will be in capable hands with Barb Harris and Brant Light managing these functions.

— *John Connor, Helena*  
(*Newly retired chief prosecutor for Montana*)

is probably dead.

**SB 333 – Require election of Supreme Court justices from districts.** Sponsored by Sen. Joe Balyeat (R). This bill requires a constitutional amendment, which must be approved by Montana voters. It would require that Montana Supreme Court justices be elected or appointed from districts established by the Legislature. Justices are now elected or appointed on a statewide basis.

A hearing was held in the Senate Judiciary Committee on Feb. 12.

**SB 334 – Allow override of Supreme Court decision invalidating statute.** Sponsored by Sen. Joe Balyeat (R). This bill also requires a constitutional-amendment vote. It would provide that a decision of the Montana Supreme Court that invalidates one or more statutes, or parts of statutes, may be overturned by a two-thirds vote of each house of the Legislature and signed by the governor.

A hearing was held in the Senate Judiciary Committee on Feb. 12.

**SB 338 – Protect information relating to children in family law hearings and records.** Sponsored by Sen. Jeff Essmann (R), an attorney from Billings. This bill generally revises the law relating to family-law proceedings to protect the privacy of children in court records. It establishes methods of authorized access to family-law records, and establishes a category of records to which remote electronic access is prohibited. The bill would require that parenting plans be filed separately from other documents, and it clarifies language related to settlement agreements.

A hearing was held on this bill in the Senate Judiciary Committee on Feb. 10.

## Bills drafted, but not yet introduced

**LC 0910 – Revise civil laws applicable to attorney fees.** Requested by Sen. Gary Perry (R). This bill "seeks to ensure fairness in litigation" by providing that in most civil actions, a party to whom costs are awarded is entitled to reasonable attorney fees. The bill lists fees that it covers.

**LC 1608 – Uniform Mediation Act.** Requested by Rep. Galen Hollenbaugh (D). Draft on hold and text not finalized at press time.

**LC 1737 – Revise laws relating to judiciary.** Requested by Rep. Dan Villa (D). Draft text not finalized.

**LC 1760 – Partisan election of judges.** Requested by Rep. Gary MacLaren (R). This bill would require that all judges and justices be elected to office on a partisan basis, unlike the present non-partisan system. The bill also would eliminate the current prohibition of party endorsements of judicial candidates.

**LC 2027 – Require recusal of judge for campaign contributions or expenditures.** Requested by Rep. Scott Sales (R). Draft text not finalized.

**LC 2183 – License offense: attorney refusal to transmit case file at end of employment.** Requested by Rep. Elsie Arntzen (R). Draft on hold. Draft text not finalized. ○

# An ode to a dues increase

*Our law practices  
have been put on the  
death & disability watch.  
We need help!*

By **Micheal Lamb**  
Helena attorney

I have followed with interest the proposal for a Montana Bar members' dues increase of \$75 initially, pared down to \$50. Very entertaining.

Most published comments are appropriately driven by self-interest and are written from the singular perspective of the author, e.g.:

■ I am a government lawyer and we ought not have to pay if the agency we work for won't reimburse us.

■ I am a senior lawyer and I ought not have to pay.

■ I am a beginning lawyer and I ought not have to pay (at least not as much).

■ I am an "inactive" lawyer and receive nothing but the magazine for my dues (don't raise them).

I can agree with all of that. On the other hand, each attorney's license carries with it the same opportunities and obligations. And, of course, all such provisions, reasonable as they might be, would result in a need for a further increase in everyone else's dues

— or at least we would have to have a bake sale at the Annual Meeting and perhaps even a car wash.

Jim Wheelis on the other hand, comments that judges have been getting a free ride long enough and they ought to pay dues — but that the State Bar is too gutless to change the rule. I am sure the Bar would be grateful for the \$20,000 he calculates such a revision would generate, but find myself among the gutless majority unwilling to propose taking money out of each judge's pocket. Of course our judiciary, quickly becoming fabulously wealthy on the ridiculously generous salaries they earn in exchange for their public service and professional isolation, might want to address the issue at a judicial conference and make their own proposal, or at least take up a collection, but that's up to them.

Not to be overlooked, the opponents of the unified, mandatory Bar have taken the opportunity to scoff at the entire sys-

tem as an unnecessary self-perpetuating, expensive experiment that ought to be given a quick, silent burial. Such comments put one in mind of a Confederate flag, flapping in the wind. The war's over. At some point in time you just have to quit lamenting the good old days of walking

through the snow at night to the "ole three holer," coal-oil lanterns, and trial by combat. The fact is that by the time our current system was adopted, it enjoyed broad-based support from the Bar. One cannot dispute the indispensable role it currently plays in the delivery of legal services and regulation of the practice.

**NONETHELESS, LIKE EVERY** business person in the state of Montana, lawyers have just endured the annual "hand out" season, where every school, charity, church, kids' sports organization, debating club, police association, veterans' organization, etc., solicited our businesses for support for two solid months. And most of us just had annual reviews for our associate attorneys and staff. And the IRS and the Montana Department of Revenue drifted by with their hands out during that joyous holiday season. And, of course, every product or service necessary to the practice of law and personal survival has increased in cost at least once during the last 12 months.

So what's new?

Nothing! And if you ask me whether I want to reach in my pocket for the hundredth time and send \$75 more or \$50 more or 50 cents more to the power

**For the tough guys and gals among us that 'don't need no propping up,' I would observe that the ambulance responding to the scene to pick up your child may already be on the way. . .**

company, to ALPS, to WestLaw, to the Easter Bunny, or to our bar association, the answer is "no!" But all of that "I'm going broke here" and "give me a break" commentary on the State Bar's dues increase proposal — real and practical as it may be — misses the point by a country mile. Bar dues are more than a charitable contribution or a business expense, they are an investment in the profession.

**THERE ARE OTHER COMMENTS** that I've read over the past several months that are dismissive or even uncompli-

**More DUES ODE, Page 24**

# The Blog is under way, and drawing comments

The State Bar got its new Blog up and running in January and it is slowly being discovered by Bar members.

As of *The Montana Lawyer's* press time, 17 messages have been posted by a handful of Bar leaders, and 7 Bar members have posted comments to those messages. The messages have covered everything from Bar news, explanation of Bar policies, Legislative news of interest to Bar members, some state and national legal-news items, and some interesting articles about individual State Bar members. There's even a jab at the Super Bowl. Did you see the photos the Helena attorney took while riding on Barack Obama's Inaugural Train last month? They are on the State Bar Blog.

You reach the Blog from the State Bar homepage at [www.montanabar.org](http://www.montanabar.org). Click on the Blog logo (see it on this page, above) that's located in the middle column under the Front Burner.

You place a comment, for all to read,



by clicking on the "Add Your Comment" line at the bottom of each posting.

So far, bloggers have been State Bar President Chris Tweeten, State Bar Secretary-Treasurer Joe Sullivan, New Lawyers Section Chair Alanah Griffith, Montana Lawyer Editor Charles Wood, and the State Bar's Technology Committee.

The postings contain links to relevant websites and to articles you may have missed.

If you wish to be a regular blogger on the State Bar Blog, send an e-mail to Charles Wood at [cwood@montanabar.org](mailto:cwood@montanabar.org).

Come join our ongoing online conversation.

## Also, use online CLE sign-up

On the Bar homepage, you will also see a running list of upcoming State Bar CLE Institute CLEs. If you click on the link provided for each CLE, it will take you to a page for that CLE that includes all the program information and an online registration form. It's easier to fill out than the CLE brochure that is mailed to you, and you save postage and get your registration in more quickly.

## ...and our web magazine

You can find the State Bar web magazine, *The Complete Lawyer*, aimed at helping Bar members improve their practices and their work-life balance, at [www.thecompletelawyer.com/bars/montana-state-bar-of](http://www.thecompletelawyer.com/bars/montana-state-bar-of) (we will soon have a link on the State Bar home page.)

February's edition focuses on helping attorneys managing a practice in tough economic times, with the March edition on its way.

The State Bar's Members 360 online service has been running for more than a month, and Bar members are beginning to add their personalized, professional information that allow quick connection to Bar online services, such as online CLE registration, online dues payments, and personal information, such as your Bar number. You can change your Bar-directory address and other contact information on Members 360; such contact information is viewable by other Bar members.

We want to ensure that only you are accessing the personal membership information that you wish to keep confidential.

1. Click the Login link at the top of the State Bar homepage at [www.montanabar.org](http://www.montanabar.org).

2. If you are a member of the State Bar of Montana you can log in by entering your username and password. Usernames and passwords are case-sensitive, so be sure to use capital letters when needed and be sure your number-lock key is turned on.

3. Your username is the first and last name you are registered with the State Bar – with no space in between. You

## Logging in to the Bar's Members 360

must capitalize the letters of your first and last name. Usernames can only be changed by a staff member at the State Bar. Example: **JohnDoe**

4. By default, your initial password is the capital letters of your first and last name, the number 20, and your Bar number. All default passwords must contain 6 numbers – so if you have a 2 or 3 digit Bar number you will need to add an extra zero(s). For example, if your Bar number is 567, you would add an extra zero after the number 20. (**200567**).

5. Once you log in, you can personalize the password by clicking on the change-password link. Example: **JD201234** (for JohnDoe).

6. If you have forgotten your password, you can have the system look it up by clicking on the "Forgot your Password?" link. Your password will be sent to the e-mail address we have on file for you. If your member record does not include an e-mail address you will need to contact the State Bar: [jdiveley@montanabar.org](mailto:jdiveley@montanabar.org). For problems logging in, you also can call (406) 442-7660. ○

# State Bar member benefits keep growing

*Occasionally, the State Bar of Montana tries to remind its members of the growing number of membership-benefit programs the Bar offers. You can link to each of the programs by going to [www.montanabar.org](http://www.montanabar.org) and clicking on "About the Bar" in the navigation bar near the top, and clicking on Membership Benefits. Here are the benefits being offered:*

## Banking & Mortgage Services

### Bank of America

State Bar MasterCard or Amex Card with special low-interest introductory rates.

### Law Firm Merchant Account

A credit card program that is specifically designed for law firms and solo practitioners.

## Health & Fitness

### Work-Life Balance Employee Assistance Program

The program provides an easily accessible, safe place to visit and get professional assistance and advice on literally any problem you're facing.

## Insurance Programs

### ALPS (Attorneys Liability Protection Society)

Get the insurance protection needed for you or your firm.

### Disability Specialists Incorporated

Disability Insurance Products available to active Montana Bar members, 60 years and under, at discounted rates.

### Mountain West Benefit Solutions

Association-sponsored group health plans for life & AD&D coverage, long-term care, and disability.

## Legal Resources

### ABA Book Discount Program

Receive a 20 percent discount on all publications ordered directly from the ABA web store.

## Bar-sponsored survey designed to aid your law-firm development

During the next three months, The Rainmaker Institute will partner with the State Bar of Montana and more than a dozen state and local bar associations and other trade organizations to conduct "the largest survey ever held on the needs and challenges faced by small and solo law firms," said Stephen Fairley, CEO of the Rainmaker Institute. Montana attorneys who participate in the online survey will receive the survey's findings.

The survey will reveal:

- Current challenges and obstacles to growth faced by small law firms.
- Specific strategies used by top attorneys to build their practices.
- Statistically valid data on what variables are most critical in determining a law firm's success.

Lawyers who opt to take the survey online will receive an executive summary of the findings which will

include analysis of entire data sample.

As a sponsoring organization, the State Bar of Montana will receive a separate summary that compares and contrasts individual members with the entire sample. Also, the State Bar will receive a white paper highlighting "Best Practices." The State Bar will then make that information available to members to help them implement proven marketing and business development strategies.

The survey is free to the State Bar and its participating members. The Bar will send an e-mail to its sections, explaining the nature and purpose of this research study and including a link that directs section members to the web-based survey.

In the last six years, The Rainmaker Institute has partnered with state and local bar associations to provide their members with proven business development programs focused on meeting the needs and challenges of small firms and solo members.

Over 6,000 attorneys have attended one or more of Rainmakers' seminars.

### LexisNexis

State Bar of Montana Members are eligible for exclusive LexisNexis benefits. Your resource for law-firm marketing information and cutting-edge Martindale-Hubbell client development solutions. Online marketing products and services that can help boost your Web visibility. The new lexisONE® Community gives you free access to free case law, free forms, legal profession news, emerging-Issue analysis, blogs from industry experts, podcasts, and more.

## Professional Resources

### The Montana Lawyer magazine.

This monthly magazine is dedicated to providing Montana lawyers with news

about Montana law, courts and law practices. Free to State Bar members. Others wishing to subscribe can e-mail [cwood@montanabar.org](mailto:cwood@montanabar.org).

### MSBA Career Center

Finding the perfect job has never been easier. The MSBA Career Center is custom tailored to the legal field. You can post your resume and access job listings. You also get access to the Career & Practice Development Community area where you can browse articles, ask a legal question on the forum, and more.

### The Complete Lawyer online magazine

This online magazine provides tools

## Janice Doggett joins State Bar staff

Helena attorney Janice Frankino Doggett, chief legal counsel for the Montana Secretary of State's Office, has joined the State Bar staff as the Bar's equal justice coordinator and deputy Bar admissions counsel. She will serve as the bar liaison to the access to justice organizations and the courts and also will be the admissions counsel for the Character & Fitness Commission.

Ms. Doggett will provide staff support for the State Bar Access to Justice Committee, the Montana Supreme Court's Equal Justice Task Force, the State Bar Dispute Resolution Committee, and will participate on the Supreme Court Commission of Self-Represented Litigants.

She replaces Ann Gilkey, who in November took the job of chief legal counsel of the state Office of Public Instruction.

Ms. Doggett received a BA in Political Science with an area of interest in Mathematics from Carroll College in Helena in 1979. She received her law degree from the University of Montana School of Law in 1982. And she graduated from the National Judicial College in Reno, Nev., in 1988.

After clerking for the Montana Supreme Court in 1982-83, Ms. Doggett has put in extensive public service in Montana. She was assistant legal counsel to the U.S. Small Business Association from 1983-1986; legal counsel and hearing officer



More JANICE, Page 27

The State Bar of Montana Group Benefits Trust (SBMGBT) is well under way in introducing its Wellness Works worksite health-promotion program. This effort began late last fall "and so far the response has been overwhelming," the Trust reported.

Firms who are currently in the SBMGBT are offered a free month of insurance in July 2009 if 60 percent of covered employees and spouses participate in a biometric screening (blood draw) and complete an online wellness assessment. In addition, each employee and his spouse will receive a \$40 Visa gift card for completing both initiatives.

This workplace health is meant to improve the overall health and well-being of every single individual insured by the Trust. "Better health translates directly to lower insurance premiums and possible future premium holidays,"

## Get your employees onto Wellness Works

the Trust said in a letter to *The Montana Lawyer*.

The Trust also said it has received some questions regarding the security and privacy of the information provided to Bar members who have taken the biometric screening. "An individual's privacy is of utmost priority and we can assure you all that measures are in place to protect your privacy," the Trust wrote. "The individual results of both the biometric screening and the wellness assessment are completely confidential and only shared with the individual Bar members who took them."

According to the Centers for Disease Control, 70 percent of all health care

costs are attributable to preventable diseases or illnesses. "A person cannot fix what they do not know is broken," the Trust said. "Having the opportunity to easily assess your current state of health is of the most value to Bar members."

We hope you will participate in and benefit from the Wellness Works program. The Trustees goal is for every firm enrolled in the Trust, and every covered individual, to benefit both financially and from increased health awareness by participating in the Wellness Works program.

In order to qualify for the incentive, both the biometric screening and an online wellness assessment must be completed by March 25, 2009.

**TO LEARN MORE**, contact Mountain West Benefits at 1-877-343-1060.

and insights on professional development, quality of life, and career issues that impact every lawyer's success and satisfaction. Join a State Bar section and receive *The Complete Lawyer* by e-mail.

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Law offices big and small benefit from the numerous features, designed with

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#### Hertz

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# Upcoming CLE seminars for Montana lawyers

February 20 Bozeman – Holiday Inn

**Bench-Bar Conference** 7.0 CLE credits, including 1.0 Ethics credit. Presented by the CLE Institute of the State Bar of Montana. Details of speakers, program and registration can be found on the link on the home page of [www.montanabar.org](http://www.montanabar.org).

February 20 Bozeman – Public Library

**Parenting Plan Evaluations: Special Needs in Evaluating Families** 1.0 CLE credit. Presented by Constructive Agreement, (406) 595-2263

February 24 Missoula – Missoula Courthouse

**The Law, the Guardian & the Judge** 1.0 CLE credit. Presented by the 4th Judicial District Court, (406) 258-3461

February 24 Live Phone CLE

**Tools to Manage Your Probate Cases** 1.0 CLE credit. Presented by AAA Legal Services Program. Details of speakers, program and registration can be found on the link on the home page of [www.montanabar.org](http://www.montanabar.org).

February 27 Helena – Park Plaza Hotel

**Insurance Bad Faith Claims** 5.0 CLE credits. Presented by Lorman Education Services, (800) 678-3940

February 27 Billings – Holiday Inn Grand Montana Hotel

**Oil & Gas and Wind Leases** 6.75 CLE credits. Presented by the State Bar of Montana's CLE Institute. Details of speakers, program and registration can be found on the link on the home page of [www.montanabar.org](http://www.montanabar.org).

March 5 Teleconference

**Paralegal Ethics Seminar: Examining UPL & Conflicts of Interest** 1.0 CLE credits, including 1.0 Ethics credit. Presented by the Institute for Paralegal Education, (800) 793-5274

March 6 Missoula – Broadway Inn

**Law Office Management**, Etc. 6.25 CLE credits, including 1.0 Ethics credit. Presented by the State Bar of Montana's CLE Institute and the Bar's Paralegal Section. Details of speakers, program and registration can be found on the link on the home page of [www.montanabar.org](http://www.montanabar.org).

March 6 Polson – St. Joseph Medical Center

**Drafting a Successful Parenting Plan** 3.0 CLE credits. Presented by Domestic Violence Education & Services, (406) 883-3350

March 12-13 Chico Hot Springs Resort

**The Best Defense is a Good Offense** 12.25 CLE credits, including 2.75 Ethics credits. Presented by the Montana Association of Criminal Defense Trial Lawyers, (406) 582-8822

March 13 Butte – War Bonnet Hotel

**Malpractice Prevention** (Annual St. Patrick's CLE) 7.0 CLE

## 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?showfull-page=1&event=showAppPage&pg=semwebCatalog&panel=browseLive](http://www.seminarweblive.com/mt/index.cfm?showfull-page=1&event=showAppPage&pg=semwebCatalog&panel=browseLive)

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

credits, including 6.0 Ethics credits (1.0 Substance-Abuse/Mental Impairment credit). Presented by the State Bar of Montana's CLE Institute. Details of speakers, program and registration can be found on the link on the home page of [www.montanabar.org](http://www.montanabar.org).

March 13 Missoula – Hilton Garden Inn

**Examining & Resolving Title Issues** 6.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

March 18 Billings – Wingate Inn

**Labor & Employment Law in Montana** 6.25 CLE credits, including 1.0 Ethics credit. Presented by The Seminar Group, (206) 463-4400

March 18 Helena – Great Northern Hotel

**Human Resource Law Update** 6.50 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (406) 447-2206

March 19 Billings – Crowne Plaza Hotel

**Evidence and Expert Testimony Best Practices** 6.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

March 23 Great Falls – Heritage Inn

**Probate Practice** 6.50 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

March 26 Teleconference

**Discovery From Start to Finish** 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

March 26 Webinar/Teleconference

**The Persuasive Lawyer** 3.50 CLE credits, including 2.50 Ethics credits (This program satisfies the substance-abuse/mental-

# STATE BAR CALENDAR

Feb 23-25

**Bar Exam**, Great northern Hotel, Helena

February 27

**Oil & Gas and Wind Leases CLE**, Holiday Inn Grand Hotel, Billings

March 1

**Deadline for applications** for July 2009 Bar Exam

March 6

**Law Office Management, etc. CLE**, Broadway Inn, Missoula

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

March 13

**Malpractice Prevention CLE** (Annual St. Patrick's CLE), War Bonnet Hotel, Butte

March 20

**Family Law CLE**, Crowne Plaza Hotel, Billings

March 27

**CLE: Potpourri of Civil Litigation Issues**, Hampton Inn, Great Falls

April 2

**State Bar Executive Committee** meeting, 7 p.m., Missoula

April 3

**State Board Board of Trustees** meeting, 9 a.m., UM Law School, Missoula

Coming March 13

## Malpractice Prevention

The State Bar's annual St. Patrick's CLE

By the CLE Institute of the State Bar of Montana  
at the War Bonnet Hotel in Butte, Montana

**7.0 CLE credits, including 6.00 Ethics credits  
(1.0 Substance-Abuse/Mental Impairment credit)**

Register for \$ 175; discounts for attorneys practicing for fewer than five years and for law clerks; free for full-time judges

The program & registration brochure has been mailed to State Bar members, or register online at Upcoming CLEs at [www.montanabar.org](http://www.montanabar.org), or call (406) 447-2206

### Topics include:

- Top 10 malpractice traps
- Ethics in the electronic era
- Risk evaluation from an insurer's perspective
- Malpractice & the impaired lawyer
- 10 'Cs' to malpractice prevention
- The impossible happens: your client turns on you!

impairment requirement). Presented by The Likeable Lawyer, (800) 524-2396

March 26 Webinar/Teleconference

**The Trusted Lawyer** 3.50 CLE credits, including 2.50 Ethics credits (the Ethics credits are based on the Montana Rules of Professional Conduct). Presented by The Likeable Lawyer, (800) 524-2396

March 27 Billings – Crowne Plaza Hotel

**Legal Ethics** 1.0 CLE credit, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

March 27 Webinar/Teleconference

**Lessons From Aristotle** 6.50 CLE credits, including 3.0 Ethics credits (the Ethics credits are based on the Montana Rules of Professional Conduct). Presented by The Likeable Lawyer, (800) 524-2396

March 30 Helena – Great Northern Hotel

**Legal Ethics** 1.0 CLE credit, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

March 31 Missoula – DoubleTree Edgewater Hotel

**Legal Ethics** 1.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

# 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).

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**Copyright Law Update**

Prof. Scott Burnham – Mini CLE

**Criminal Law Update**

Prof Andrew King-Ries – Mini CLE

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Judicial Review; The Art of Negotiation

**Ethics**

Reviewing the Basics; A Business View; Conflicts of Interest; Common Pitfalls; Flat Fees; Impaired Practitioners; Engagement Letters

**Landlord-Tenant Disputes**

Author: Klaus Sitte, director of Montana Legal Services

**Oil & Gas Update**

Elm Coulee-Horizontal Bakken in Richland Co.; Deducting Expenses from Royalties; Lessor's Perspective; Title Problems; Lease Forms; Company Perspective; Access Right & Surface Damages

**Pre and Post-Trial Tips**

Taking & Defending Depos; Recovering Atty's Fees; Declaratory J'ments; Impaired Practitioners; Electronics Expectations-Judge's View

**Solo/Small Practice**

Opening an office; Leaving a Firm-Ethical Considerations; Going from Large Firm to Small/Solo Practice; Hiring & Firing; Ethical Considerations when Client Lies in Court and Reporting Other Attorney's Misconduct; View from Bench: Courtroom Decorum & Pitfalls

**Stream Access**

History; Fish, W'lfe & Parks Interest; Bitterroot Rvr. Protect. Assn & Recreationists Perspective; Land Owners' Interest

**Wrongful Discharge Update**

Prof. William Corbett – Mini CLE

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Go to [www.ababooks.org](http://www.ababooks.org) and enter the code PAB7EMTB when ordering.**

# Court sets meeting over disciplinary information

The Montana Supreme Court has called a public meeting to discuss proposed amendments to Rules 20A and 26D of the Montana Rules for Lawyer Disciplinary Enforcement.

The meeting will be Tuesday, March 10, at 1:30 p.m. in the Attorney's Lounge, 4th floor, Justice Building, 215 N. Sanders, in Helena.

On Nov. 26, 2008, the Court entered an order dismissing without prejudice a petition filed by the *Billings Gazette*. The *Gazette* requested that the Court declare Rules 20 and 26 of the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE) in violation of Article II, Section 9 of Montana's Constitution. In dismissing the *Gazette's* petition, the Court determined to sua sponte engage in rule-making pursuant to Rule VI.8 of the Court's Internal Operating Rules. To that end, the members of the Court will discuss and will entertain public comment on the following proposed amendments to MRLDE Rules 20 and 26 at the meeting.

For purposes of the discussion, the Court proposes that Rule 20A (Access to Disciplinary Information – A. Confidentiality) be amended by adding the following new exception:

(5) There is filed with the Supreme Court a petition alleging that the public's right to examine documents filed in the proceeding clearly exceeds the respondent's demand of

individual privacy. The petition shall include supporting factual and legal grounds; shall be limited to 8,000 words of text; shall be served by mail on the respondent or respondent's attorney, on the Office Administrator of the Commission on Practice, and on Disciplinary Counsel; and shall include certificates of compliance with the word limitation and mailing herein. Upon the filing of a petition under this subsection, the Supreme Court shall enter an order granting the respondent 20 days from a date certain in which to respond. The Supreme Court shall, thereafter, expeditiously balance the public's right to know and the respondent's right of individual privacy, and issue its decision in a written order.

For purposes of the discussion, it is proposed that MRLDE Rule 26D (Discipline by Consent—D. Confidentiality) be amended by adding the underlined language.

All tendered admission proceedings prior to the entry of a consent discipline order shall be confidential and subject to the provisions of Rule 20 of these rules. However, such tendered admission proceedings may be subject to disclosure should the Montana Supreme Court so determine in an order issued pursuant to Rule 20A.(5) of these rules.

## Appellate Rules comment period ends March 31

The Montana Supreme Court is seeking public comment on proposed amendments to the Montana Rules of Appellate Procedure which govern all proceedings in the Supreme Court.

Chief Justice Mike McGrath noted that many of the amendments will implement the performance measures recently adopted by the Court and are designed to improve the flow and efficiency of the appellate process.

Included in the proposals are amendments to reduce the permitted length of briefs and petitions, encourage parties to limit the number of issues appealed, and set the time allowed for oral argument on a case-by-case basis.

"The Court believes these changes will also reduce the time between the

## Court changes a citation standard

*The Montana Supreme court issued the following order on Jan. 28:*

IN THE MATTER OF AMENDING CITATION STANDARDS  
FOR THE MONTANA SUPREME COURT (No. AF 07-0064)

Pursuant to its authority under Article VII, Section 2(3) of the Constitution of the State of Montana, this Court filed an order on December 16, 1997, adopting citation formats for use in its opinions, including a public domain or neutral-format citation. The Court has now determined to simplify the format set forth in that order for pinpoint citations to opinions decided after January 1, 1998, by eliminating the requirement that paragraph number(s) be repeated for all three sources cited.

THEREFORE, IT IS ORDERED that, effective immediately, proper, pinpoint citations to opinions decided by this Court after January 1, 1998, shall be in the form shown in the following example:

*Doe v. Roe*, 1998 MT 12, ¶¶ 44-45, 286 Mont. 175, 989 P.2d 1312

In all other respects, the Court's order filed December 16, 1997, shall remain unchanged.

filing of the notice of appeal and when the case is sent to the Court. They will expedite review," McGrath said. "I encourage members of the Bar to review these amendments and let us hear your

views."

The comment period closes March 31. Written comments must be filed (along with seven copies) with the Clerk of the Supreme Court.

## Ethics CLE, Red Mass scheduled for Great Falls

An ethics CLE followed by a traditional legal-community Red Mass has been scheduled in Great Falls for March 20. Details of times and locations will be announced later.

The 2-1/2 hour ethics CLE – “The Law, Ethics and the Aging” – will feature Associate Professor Kristen G. Juras of the University of Montana School of Law, Supreme Court Justice Patricia Cotter, and District Judge Thomas McKittrick, as well as representatives of the elder-care community.

The CLE will be followed by an optional Red Mass and dinner, sponsored by Holy Spirit Parish of Great Falls in concert with a committee of Great Falls area attorneys – Richard Martin, Glenn Tremper, Mary Matelich, Pat McKittrick, Karen Reiff, and Dale Schwanke. Great Falls-Billings Diocese Bishop Michael Warfel will preside at the Red Mass.

The CLE will be open to both lawyers and paralegals, and will cost \$25. Following the free Mass will be an optional catered meal at the Parish Hall at \$20 per person. Registration materials will be structured so that the CLE can be registered for separately from dinner at the cost of \$25.

## Supreme Court appointments

*The Montana Supreme Court has made the following appointment recently to Court commissions:*

- **Commission on Courts of Limited Jurisdiction:** Helena City Attorney David Nielson appointed to fill out the term of Bozeman attorney Paul Luwe, who resigned. The term ends June 30, 2010.

- **Commission on Self-Represented Litigants:** Billings attorney Corbin Howard re-appointed for a new three-year term.

- **Advisory Commission on Rules of Civil & Appellate Procedure:** Terms of attorneys Robert Savage of Sidney, Dana Chrisensen of Kalispell, and Randy Cox of Missoula extended for one year.

- **Commission on Technology:** Supreme Court Justice James Nelson, District Judge Joe Hegel, and State Bar of Montana Executive Director Christopher Manos re-appointed for new terms through March 31, 2010.

- **Commission on Criminal Jury Instructions:** District Judge Julie Macek appointed to four-year term, replacing District Judge Kurt Krueger who left Jan. 1 at the end of his term. Re-appointed to four-year terms are attorneys Karen Townsend of Missoula and Chad Wright of Helena.

- **Commission on Rules of Evidence:** Attorneys Mike Cotter of Great Falls, Wendy Holton of Helena, and Gary Zadick of Great Falls re-appointed for new three-year terms.

### ORAL ARGUMENTS

*The following oral arguments are scheduled before the Montana Supreme Court:*

#### March

- Case No. DA 08-0149 - STATE v. ELLIS.

Oral argument to be held on Wednesday, March 11, 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.



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# Justice in Asia

James Park Taylor

## Counterflowing in Manila



Thanks to the generosity of the Open Society Justice Initiative,<sup>1</sup> I was able to spend nine days in Manila last December with several colleagues from the Committee of Chinese Clinical Legal Educators. We went there to participate in an international conference on legal education hosted by the Global Alliance for Justice Education.<sup>2</sup>

We arrived late on Friday to the Manila airport. Manila is very beautiful from the air, and we arrived just at sunset. The cab ride to the hotel was the beginning of my Manila education, it took us an hour and ten minutes to travel four and a half miles. The cabbie observed that the "traffic was a little bad tonight." The next morning we got up and took a tour to a local inactive volcano, Tagaytay. Tagaytay, a volcano on an island in the middle of a small lake, hasn't erupted for more than 40 years.

Driving to Tagaytay was also an experience. I learned a new word; counterflow. It is a Manila-taxi word, and is used this way in a sentence: (Spoken very casually) "If the traffic is bad, it is okay to *counterflow*." Then the cabbie smiles at you. To counterflow means

TO CROSS THE CENTER LINE AND DRIVE DIRECTLY  
INTO FOUR ONCOMING LANES OF TRAFFIC

This was a great surprise to me, and I was determined to remember that word, counterflow.

**THERE IS BOTH** extreme poverty and extreme wealth in Manila existing side by side. According to our cabbie, Rudy, the gap between the rich and poor is growing larger all the time. The highways and canals are lined with pitiful shacks where thousands of people live.

In Manila, armed guards are everywhere. The local 7-11 has two armed guards. They are wearing very large revolvers.

As proof the guns were not just for show, there was a pitched gun battle in Manila the second day I was there. From my hotel room I heard what I thought was a shot, so I opened the window (I was on the 14th floor) to see what was going on. When I heard the first shot it was hard to tell how far I was from the exchange, but after listening to more than 70 shots over the next hour I was convinced the hotel wasn't too distant. I went downstairs to ask the hotel staff what was going on, and they politely smiled and said "Guns sirs? You must be mistaken. Perhaps there was a celebration with fireworks."

I have been around both guns and fireworks all my life, and I am fairly clear on the difference between them. And I am especially clear on the difference between 70 firecrackers and 70 gunshots. The next morning I again inquired what had happened, and all the hotel staff looked at me as if I were insane. "Gunfight, sir?" came the reply, "You must be mistaken."

The local newspaper appeared to be on my side of the issue, however, as the headline was, "17 Killed in Gun Battle in Downtown Manila." When I showed the newspaper article to the hotel staff, they smiled and said "Sir, we know nothing about this." It was the same smile Rudy the cabbie used when he told me my new word, counterflow.

**THE GAJE** conference began on Monday, but I did not attend the first day's session. A friend of mine, Eduardo Capulong, the director of the Mediation Clinic at UM Law School, invited us to attend a hearing in a criminal case that

his father was handling. Eduardo's father is Romeo Capulong, a noted human rights lawyer<sup>3</sup> practicing at the Public Interest Law Center in Manila, and also a judge pro tem of the International Criminal Tribunal for the Former Yugoslavia.<sup>4</sup>

It was a bit of a trip to attend the hearing because it was scheduled for the island of Mindoro, south of Manila. We had to get up early to avoid the morning traffic and still arrive in time for the 8:30 hearing. In fact, we had to leave the hotel at 3 a.m. After driving for two and a half hours, we took a ferry to the island of Mindoro, then a "tricycle" to the courthouse. I learned that Filipino tricycles were not designed for someone of my size.

Eduardo explained to me that his father Romeo was representing another Filipino human rights attorney, Remigio Saladero, on a murder charge. Saladero was charged in a capital case with the murder of numerous individuals in 2006. The facts surrounding the case are interesting, and the position of



Jim Taylor, the big guy in the white shirt, and HLAF members on their tour of the dreadfully crowded Mandaluyong City Jail.

the defense was that the charges have been fabricated by the government for the purpose of suppressing political dissent.<sup>5</sup>

The presiding judge in the case was the Hon. Manuel Luna, Jr. Judges in the Philippines, like attorneys, do not wear robes or suits to court; they wear the traditional shirt called a barong. On Judge Luna's bench was carved, "Let justice be done though the heavens fall," a motto that he took seriously.

The hearing was on a motion to dismiss the charges against Saladero, based on defects in the way the charge was filed. The case was originally filed against only a few individuals (not including Saladero). Almost two years after the case was filed, one of the government's informants "remembered" that 71 other people had been involved in the murder, and among those "remembered" was Saladero.

The law in the Philippines requires that before charges are filed against an individual, there must first be a hearing with the accused present. At the hearing the government's initial evidence is considered along with any evidence that the accused wishes to offer. This was not done in Saladero's case. Instead there had been an initial hearing for the original defendants, but no hearing for the 71 defendants who were later added. After several hours of arguments concerning whether the hearing would go forward (much longer than the actual hearing would have lasted), the judge decided to postpone the hearing.

When we came out of the hearing a dozen or so military personnel had arrived to take up posts outside the courthouse. In both their demeanor, and the way they handled their weapons, they were more like gang members than professional military. Several of them put their rifle muzzles in the dirt, and another covered the end of his rifle with his hand. My impression was that they were primarily there to intimidate the defense team and the families of the defendants.

After the hearing I had the opportunity to spend the day with Eduardo, his father Romeo, and the other attorneys from the Public Interest Law Center who were working on the case. Although they were not successful in court that day, ultimately they prevailed on their motion to dismiss and on Feb. 6 Saladero was released from jail.<sup>6</sup>

**ANOTHER MANILA EVENT** that made a big impression on me was a trip I took to meet with a Manila-based NGO called the Humanitarian Legal Assistance Foundation (HLAF). The founder of the HLAF is Rommel Alim Abitria, a recent graduate of Ateneo University Law School, and a recent winner of the JusticeMakers competition conducted by International Bridges to Justice.<sup>7</sup> HLAF is working to help alleviate some of the incredible jail overcrowding and delays in the Filipino criminal justice system.

Not surprisingly, the primary problem with the system is a lack of resources. The attorneys are well educated and trained, but each prosecutor, each judge, and each public defender (called a public attorney), may have as many as 1,000 cases. With this kind of caseload, it is impossible to adequately prepare, or to bring a case to trial in a timely manner. Cases drag on for years, and delays of 4-5 years before a trial is completed are common; as many as 70 percent of those in jails are awaiting trial.

HLAF arranged for us to visit the Mandaluyong City Jail in Manila. During our visit we had the chance to talk to one inmate that had been in custody for 10 years, and his trial was still not completed.

The conditions were appalling. There were 838 inmates housed in eight cells. But three of the cells were reserved for the female inmates (and there were only 83 female inmates) leaving about 150 men to a cell in the remaining five cells. There was one toilet in each cell, and the cells were very small. It was not possible for even one third of the people to lie down at the same time because of lack of space.

The food budget for each inmate is 40 pesos per day (about 80 cents), and the medical budget for each inmate is 1 peso per day (about 2 cents per day). If the medical needs of the prisoners exceed the budget, they are on their own for medical care.

Although juveniles are supposed to be kept separate, if the police are particularly unhappy with a juvenile at the time of his arrest, they can simply record his age as 18. The juvenile then goes into the general population, and it takes one to two months before he can prove that he is underage.

We were told that this was not even a particularly overcrowded jail by Manila standards. Some are twice as bad.

More *JUSTICE IN ASIA*, Page 39

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## **Montana Justice Foundation Issues Call for Grant Proposals**

The Montana Justice Foundation (MJF) announces its call for grant proposals. The MJF funds and supports organizations committed to ensuring that all Montanans, especially the vulnerable and underserved, have meaningful access to the civil justice system. One way in which the MJF strives to fulfill its mission is through its grants program. The MJF awards grants to qualified non-profit organizations qualified to carry out the following charitable objectives of the Foundation:

**S**upport and encourage the availability of legal services to vulnerable and underserved populations;

**I**ncrease public understanding of the law and the legal system through education;

**P**romote the effective administration of justice; &

**R**aise public awareness of and access to alternative dispute resolution.

**The deadline for submission of grant proposals is Monday, March 30, 2009 (no exceptions).**  
**Funding decisions will be made in May.**

To download an MJF grant application or for further information on the MJF grant application process, please visit our website at: [www.mtjustice.org](http://www.mtjustice.org).





## A new program provides legal help for those over 60

The Montana Area Agencies on Aging are developing a new program that will offer legal services to people that are 60 and older.

Four years ago, the Legal Service Developer Program, funded by the Agencies on Aging and operated by contract employees, initiated a service offering free legal advocacy, legal education, resources, legal advice and strategy to those who are over 60. Program staff observed a need for legal services that are outside the scope of information, resources and advice. "It has become apparent our seniors are in desperate need of legal representation," program organizers said in a letter to *The Montana Lawyer*. "During this time, we have referred several full-pay clients to attorneys, as well as pro bono and modest means cases."

The Legal Services Developer Program now offers several new levels of legal assistance to persons 60 and older. The Attorney-Paralegal Program offers legal information and advice to all callers who are over 60, or to their families or friends calling on their behalf. There are no income criteria for participation in the overall program, only that they are 60 and older or the legal issue involves a person over 60. But the program does not take family-law or criminal-law cases.

"If we determine ... they need attorney representation, the second tier of the program kicks in and the program determines if the case is a potential pro bono, modest means, or full-pay case." A potential client will have his case screened and evaluated by the Attorney-Paralegal Program. "Once their pay eligibility is determined we will contact those attorneys that have agreed to be included in our database as a participant in our new program."

The Legal Services Developer Program is asking the attorneys and paralegals to fill out an application offering their services as pro bono, modest means, or full pay.

The organizers say that their are benefits to attorneys or

paralegals who sign up to provide services through the program:

- Fulfilling your obligation for pro bono cases.

- All cases are reviewed and analyzed by an attorney and paralegal before you are contacted. A case summary and continuing resource in the form of phone consultation, forms and

advice will be available to you.

- The program's attorney or paralegal will continue to be the liaison between you and the client throughout the case if you so choose. This can avoid unnecessary calls from the client to you, protecting your valuable time. Local resources will provide support for the client on non-legal matters.

- You will have access to a paralegal for support including, but not limited to, investigation, legal research, and document drafting.

- Upon completion of 50 or more hours of pro bono casework you will be entitled to obtain a free CLE certificate to any State Bar sponsored CLE program. The hours will be tracked through our program.

- You will have access to appropriate training opportunities and legal education materials such as forms and manuals in many areas including but not limited to: Power of Attorney, Advance Directive, Probate Guide, Credit Card Debt Made Less Difficult and a Legal Guide to Long Term Care Planning.

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**IF YOU WOULD LIKE** to offer your legal services to Montana seniors (60+), contact Tammie J. Fagan at (406) 576-7030 or [mt\\_aaa\\_legal\\_services@3riversdbs.net](mailto:mt_aaa_legal_services@3riversdbs.net)

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with stress and depression issues or drug or alcohol addiction

mentary of the “Bar leadership,” the suggestion apparently being that “they” don’t listen – and even worse, are being wasteful, cavalier, and careless with our money. Well, if they are, I agree. They should be shot. But before anybody loads his gun, I suggest you spend a day walking around in the shadow of our executive director, Chris Manos. Interview his staff, find out how they fill their days. Maybe it will provide some perspective.

Every time I’m in their office the lazy buggers are hard at work doing something for us. Chris and his staff, like George Bousliman in the decades before, do a great job. As a profession, we receive tremendous value for our dollar from them. They squeeze a nickel as hard as anybody, and are creative and efficient problem solvers.

In addition to implementing the directives of the trustees and the Supreme Court, probably the single greatest purpose of our Bar staff is to coordinate all of the committees, sections, advisory boards, Bar functions, CLEs, etc., that make the whole thing work. And it’s important to note that all of the members of the Bar leadership, i.e., the trustees, commissioners, committee members, advisors, officers, CLE presenters, etc., all serve as volunteers, donating literally millions of dollars of time and expertise each year to the profession and to the justice system. Of course this leadership service to the profession is shared by an ever-changing and evolving group. As a consequence, literally hundreds, if not thousands, of the current members of the Bar have been or currently are a part of the “leadership” being criticized.

**SINCE EVERYBODY** appreciates what a hornet’s nest they are kicking over when the issue of a dues increase comes up, I don’t think it’s done for any reason other than fiscal necessity. Moreover, I am grateful for everything they do, par-

ticularly our members who volunteer their time to improve our lot; mostly because I don’t have to do it myself. Also, one of my life theories is that if honest, hard-working people volunteer their time and expertise to study a problem and make a recommendation that takes money out of their own pockets, it comes with a presumption of reliability.

I don’t like the expense more than anyone – but if I ever get confused about how much is being done or what is being done by the Bar, I can always just paw through our website, or the State Bar calendar, or the list of upcoming CLE seminars detailed in each edition of *The Montana Lawyer*.

Of course, according to our president, Chris Tweeten, only 60 percent of the proposed dues increase is directed at paying the increased cost of postage stamps, health insurance for employees, rent, etc. The other 40 percent will be dedicated to underwriting the costs of the Lawyers Assistance Program (LAP), which to this point has been subsidized by the Bar’s cash reserves, ALPs, and the State Bar Health Benefits Trust. Now this is an entirely different matter.

**IF YOU WOULD HAVE** asked me about this issue earlier in my career I would have provided a different response than I do today – perhaps not as pointed a response as trial attorney Ken Peterson’s toughen-up or get-out message: “I do not have the patience to mother attorneys . . . along [and] certainly do not want my dues increased to prop up attorneys that will just weaken the profession and harm clients.”

While I don’t agree with it, I understand the sentiment. It is undeniable that, as Ken says, work as an attorney routinely requires “mental, physical and emotional toughness” as well as “discipline and hard work.” It comes with the territory. And none of us wants to “weaken the profession” or “harm clients.” Of course, our goals as professionals are just the opposite – to strengthen the profession and prevent harm from occurring to clients. And I believe that is precisely what the Lawyers Assistance Program is designed to do.

First, I acknowledge the appropriateness of our president’s comment when he wrote that precisely because of the stresses of the profession “lawyers are three times as likely to engage in substance abuse and twice as likely to become depressed” as members of the general public. When you deal day after day with everyone else’s legal problems, disasters, and worst fears it is not surprising. I would add my own observation that over my career I have observed some of the toughest, hardest-working, most committed and most successful lawyers I know, friends and adversaries alike, who have had a hell of a time with medications, mental illness, divorce, grief, cancer, alcohol – you name it. When these catastrophes struck, they all needed help with their professional obligations until they weathered the storm, died or committed suicide: some got it, some didn’t.

**FOR THE TOUGH GUYS** and gals among us that “don’t need no propping up,” I would observe that the ambulance responding to the scene to pick up your child may already be on the way; your spouse may be throwing your personal effects in the dumpster, closing your bank accounts, and changing the locks as you read this; and the cancer that will cause your lingering, smelly death a year from now may be

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Just wait, it makes no difference how tough you are, the ticket for your personal trip through hell is on its way. We all need help sometime – who ya gonna call?

**NOW TO THE NUT-CUTTIN’:** A few years ago a brilliant, hard-working attorney, a fine man, a fine father, a credit to his profession and his community and one of my best friends, killed himself. He was a good man. He wasn’t weak. He was strong in the true sense of the word: kind, compassionate, determined, reasonable. But he was single and grieving.

**If it doesn’t work, maybe we’ll scrap it altogether and end up requiring practitioners to identify a ‘death buddy’ or ‘disability buddy’ as a condition of law practice.**

He had been diagnosed with a lung disease which would kill him over a decade and like most of us, was very private in his personal life. We, his friends, tried to be there for him but we are not professionals. He abhorred the stigma of not being able to handle things himself. Ultimately, individually and collectively, we failed him. The image of his little girl at the funeral, who I had known since the day she was born, is something I’ll pack around forever.

If our profession isn’t committed to trying to head off such catastrophes, then I am embarrassed to be a part of it. But even this tale of woe, which would be echoed by the hundreds of friends and associates of those seven attorneys who couldn’t take it anymore and committed suicide in 2005-06, misses the point.

**THE PURPOSE OF** and necessity for the LAP was captured by the prior published comment of Jason L. Harkins, a young attorney from Billings, who recounted that not long after he “hung out his shingle” a local attorney had a stroke, and that he assisted his family by taking over some of the clients who were abandoned as a result, and assisted in “farming out” other clients. In his short career, he’s had occasions to do that again. He recognizes that the LAP is a resource to assist the practicing bar in fulfilling its responsibility to protect the public from the consequences which would unavoidably occur if someone didn’t step into the breach – particularly in cases of sole practitioners. Bravo!

Consider for a moment, when a sole practitioner, a fine, moral, hard-working lawyer, or a weak, amoral, pantywaist who had no business practicing law in the first place, has a stroke, or drinks himself to death or blows her brains out, what happens to the clients, to their files, to the legal problems, secrets, and catastrophes that are contained in them?

When I served on the Commission on Practice, we routinely dealt with complaints of an ethics violation resulting from an alleged lack of diligence (Rule 1.3), failure to communicate (Rule 1.4), and/or incompetence (Rule 1.1), triggered by some catastrophe in the attorney’s life: a dead child, a financial crisis, substance abuse, a health crisis, a divorce; the list was endless. Our concern was not so much the attorney, but, rather, the

profession’s obligation to protect the public, i.e., the clients. We struggled to develop remedies to fit the situation, e.g., temporary-disability status, probation, mentoring arrangements with volunteer attorneys, counseling, etc.

We were ill-equipped to provide the necessary supervision, and unqualified to make a determination in the first instance as to the appropriateness and adequacy of any of our attempts to protect the public by imposing treatment regimens on attorneys. In many cases we “propped them up” and created solutions that allowed them to save their careers, their clients, and perhaps even their self-respect. And along the way we helped their clients, saved them all a lot of time and money and prevented another black eye for the profession; all of this done for free, by volunteer members of the Bar and public.

The LAP can step into this breach.

**YOU, LIKE ME,** probably haven’t spent too much time dwelling on the question of what happens if a lawyer, for whatever reason, can no longer competently serve his or her clients. For example, assume that a lawyer decides that he can’t take it anymore, locks his client’s files in his flooded basement or a storage facility, locks the office door and takes off to become a spaceman; or goes on vacation and doesn’t come back – ever; or goes down to the local hospital for her annual physical, gets an unwanted surprise, and dies of it eight months later, all the while praying and hoping things will get back to normal; or, least creatively, ends her own life.

I was surprised to learn that this happens in a horribly creative number of variations several times every year in the state of Montana. Life happens! And when it happens in the office of a sole practitioner, there is generally no one to pick up the pieces or to put his finger in the dike. In any of the small communities throughout the state, the other lawyers in the area are

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usually precluded from lending a hand since they are probably on the opposite side of many cases in that lawyer's office.

While lawyers like Mr. Harkins oftentimes step up, generously volunteer their time and help out with these crises, it is always a costly, time-consuming disaster. In the absence of that, what has generally happened historically is that our executive director, the State Bar counsel, and whoever else needs to become involved from our "leadership" drop everything and handle it. The practice is inventoried, trustees appointed, the cases farmed out, the judges notified, the clients advised, etc. And the clients, whose legal matter has been left to sink into the abyss, endure the attendant multiplication of costs and loss of time that go hand-in-hand with each such derailed legal career. And the legal profession and justice system come away with a new legion of detractors ("damned

lawyers!").

Can all such situations be avoided – No! Should we do what we can to head them off whenever possible, provide a supportive option that will help prevent damage to clients and a black eye for the profession – Absolutely.

**I WAS SURPRISED** to learn that Montana is one of the last states in the country to finally get around to recognizing that there has to be an organized response to this never-ending problem.

Obviously, the efficacy of the program may not be susceptible of objective evaluation; but that's no reason to fail to do what can be done to prevent these catastrophes. Hopefully, ours will enjoy the success of the programs after which it is modeled. All we can do is what we can. If it doesn't work, so be it. Maybe we'll modify or scrap it altogether and end up with a rule requiring practitioners to identify a "death buddy" or "disability buddy" as a condition of practice, i.e., someone to handle or assist with these matters in the event of a problem.

I expect that with some individuals, intervention by the LAP will be a total waste of time and money. Some attorneys may appropriately conclude that they should find something else to do with their lives. Perhaps the LAP will help some attorneys to evaluate their personal compatibility with the stresses and challenges of practice. It will certainly serve as a place where our brothers and sisters in the practice can go for help when they are facing a professional or personal crisis and have need of confidential, professional direction and assistance. But in the final analysis the Lawyers Assistance Program serves not only to preserve careers, families, and perhaps lives – its ultimate goal will be to protect, preserve and advance the interest of the most important part of the justice system – our clients. And that, my friends, serves to strengthen the profession and protect our clients from harm.

**FINALLY, EVERY TIME I** hear another hilarious lawyer joke I am reminded that as a profession we have a public relations problem. While the large majority of people are generally "satisfied" or "very satisfied" with their own lawyers, they don't feel that way about the profession. Every time a lawyer gets into trouble, whether of their own making or otherwise, that affects not only the individual lawyer but reflects poorly on the profession as well.

The LAP can help us to prevent some of that; and that reason alone justifies its adoption. I expect that once again we will be caught doing the right thing. ○

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for the Montana Human Rights Commission, 1986-1990; general counsel and legal counsel for the Montana School Boards Association, 1991-1997; teacher of school-law summer courses at Montana State University, 1998-1999; contract legal counsel 2000 to 2003 for the Montana Rural Education Association, 200-2001; co-chief counsel to the Office of Public Instruction, 1997-2000; and chief legal counsel and assistant chief of staff to Secretaries of State Bob Brown from 2001-2004, and Brad Johnson from 2006-2008.

Among Ms. Doggett's accomplishments:

- In 2007, she was selected and participated in the prestigious Toll Fellowship program, a leadership training program for select government leaders across the country.

- She was the first female president of the Montana High School Association Board of Control (1998-2001).

- Is a board member of the National Council of School Attorneys, where she was the editor of the National School Board's Association "School Law Primer."

- Was on the Montana Supreme Court's Gender Fairness Task Force.

- Is past president of the State Bar's Women's Law Section.

Ms. Doggett is married to Stuart Doggett, and has

two grown children.

And, yes, she was Miss Montana in 1976.

You can reach Ms. Doggett at (406) 447-2201 or [jdoggett@montanabar.org](mailto:jdoggett@montanabar.org). ○

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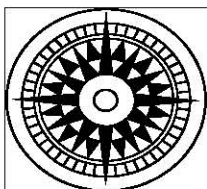


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ing times, firms stated a price “for services rendered,” without explanation.

But one has only to eavesdrop on a table of law associates comparing their workloads to get a sense of how entrenched the billable hour is, creating a pecking order among lawyers, identifying the best as the busiest and the most costly.

With a sigh that is simultaneously proud and pained, lawyers will talk about charging clients for 3,000 or more hours in a year – a figure that means a lawyer spent about 12 hours a day of every weekday drafting motions or contracts and reviewing other lawyers’ motions and contracts.

“**DOES THIS MAKE** any sense?” said David B. Wilkins, professor of legal ethics and director of the program on the legal profession at Harvard. “It makes as much sense as any other kind of effort to measure your value by some kind of objective, extrinsic measure. Which is not much.”

To be sure, lawyers may be talking a good game but secretly hoping that the economy will bounce back and everything will return to normal, said Frederick J. Krebs, president of the Association of Corporate Counsel, whose members work in the legal departments of corporations and other organizations. He said that lawyers cheerfully lamented the bad incentives created by billable time for years, even as they grew rich from the practice.

“I like to paraphrase Churchill,” Mr. Krebs said. “In all

these conversations, never has so little been accomplished by so many for so long. It just hasn’t happened.”

But the crashing economy may achieve what client complaints could not, Mr. Krebs added. “We may well be at a tipping point here.”

Greed may also encourage lawyers to change their payment plans. Law firms are running out of hours that they can bill in a year, said Scott Turow, best-selling author of legal thrillers and a partner at Sonnenschein Nath & Rosenthal in Chicago.

“Firms are approaching the limit of how hard they can ask lawyers to work,” he wrote, in an e-mail response to a reporter’s query. “Without alternative billing schemes, lawyers will not be able to maintain the rapid escalation in incomes that big firms have seen.”

A recent study released last year by the Association of Corporate Counsel showed a rise in the number of companies paying by the hour – but that covered the spring and summer, before the worst of the downturn.

Many smaller firms and solo practitioners have long offered to perform services, like mortgage closings, for flat fees. Plaintiff lawyers also often work on a contingency basis, receiving a percentage of any awards.

“What we do in our business litigation is charge clients some kind of monthly retainer, which gets credited against an eventual recovery,” said John G. Balestriere, a partner at Balestriere Lanza, a Manhattan firm with five lawyers. “It’s a lot easier for us to tell a client, ‘We want to do this, we want to push for summary judgment,’” he said, and so avoid a lengthy, costly trial.


**WHEN NOT PAID** by the hour, lawyers’ approach to their work changes, said Carl A. Leonard, a former chairman of Morrison & Foerster who is now a senior consultant at Hildebrandt International, which advises professional services firms.

In one case, he said, Morrison & Foerster negotiated a fixed fee for defending a company in court, covering work up to the point of a motion for summary judgment. On top of the fee, if the case settled for less than what the company feared having to pay if it lost in court, the law firm got a percentage of the amount saved. The arrangement made sense when the goal was to resolve the dispute quickly.

In litigation, firms that charge by the hour can suffer if they are too successful and end a lawsuit — and the stream of payments from continuing work — too quickly. One law firm that recently collapsed, Heller Ehrman, was hurt in part because a number of cases had settled.

The biggest stumbling block to alternative fee structures may be the managing partners at law firms, who will have to overhaul compensation structures to reward partners and associates for something other than taking a long time to do something.

**THIS ARTICLE** appeared in the *New York Times* on Jan. 30.




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felt they want their entire careers (or what's left of them in the case of the older students who've already moved out of previous careers) to be using their law degrees, even in non-traditional paths. But many hold out a vision for something new in the future.

As to specific workplaces, they show a reluctance to being tied down to one place for long.

*"Current law students have had more mobility than previous generations . . . We are quick to jump to new opportunities if we are in a situation that is not meeting our needs."*

*"When I do find I job, I would expect to be there at least five years before possibly moving on."*

*"I hope to practice law for the rest of my life. However, I have an entrepreneurial streak and could see myself starting a business."*

*"I hope to practice for at least 10 years. I would ultimately like to utilize my degree and experience to teach."*

*"I'm not sure how long I will practice law – definitely for 15 to 20 years. After that, I plan on using my law degree and legal experience in creative ways – such as volunteering abroad and assisting developing countries in developing legal systems."*

*"I hope to be in the legal arena for the rest of my career (about 20 years). I do not know how much of that time I will be a practicing attorney in a firm with clients. I am really interested in doing other types of jobs (at a state bar association, at a law school in admissions or alumni relations, with an organization that puts on CLEs, at West or Lexis, at a title company, escrow company, or a 1031 tax-exchange facilitator)."*

When asked whether the generational conflicts have been a reason that young associates have left their law firms, the experienced Montana lawyers said that hasn't appeared to be the case – either the young lawyer or the firm, or both, have made the necessary compromises to keep young lawyers in the firm. However, national studies have shown that the present generation of new workers will change jobs or workplaces an average of 14 times in their careers.

### 6. Mobile-ready new attorneys don't mind working in offices

A surprise to us, law students said they are prepared for and expect to be mobile within their practices, but they prefer to work in an office, not at home. They also expect to travel a lot in their work. Only one respondent wanted to work at home as much as possible, "to be close to my family." Most preferred a bit of workplace flexibility.

**WHAT HE SAID:** "I found the workload and ambient competition threw me off balance. It was hard to remain true to my original plan. It's easy to get concerned that everyone else is on the competitive path towards a better law career. I had to remind myself of my goals and focus on how law fits into my vision.

"Law school took a far bigger toll on my marriage than anticipated. I doubt I would do it again if I knew what I know now. Or I would have done it much earlier in life, before I had as many other commitments.

"I suppose that I do have some cynicism toward the expectation that lawyers will work themselves to death. I see law school as practice for hierarchy and overworking. I don't think it has to be that way, but as long as billable hours or 15 credits per semester are the measuring sticks, I think we encourage law students to prepare for a life of too much work with too little time."

– UM Law student, age 36

*"There's a lot to be said for working from home, but I think it would be difficult for me to separate home life from work life if I went that route."*

*"I would like regular hours, if possible – I think it would make for a more stable home life. I expect to work in an office, and maybe travel occasionally for business."*

*"Ideally, I would spend most time in the office, but have the ability to work remotely from home on occasion."*

*"I want to work in an office – though there is always travel involved in any legal job in Montana."*

*"I know that I am not productive when I work at home. I would prefer having an office to work in. I hope there would be some travel to meet clients. I am sure I will have a laptop."*

*"I have recently thought that I need to embrace new technology as much as possible to allow flexibility in where I work. That will make vacations and personal time less important."*

*"I want to mix it up (office, travel work, and work at home) to keep me happy."*

### 7. Perspectives on legal careers have changed for most students since they entered law school

How have students' expectations about a law careers changed since they began law school?

A UM student responded to this question by stating:

*"After three years of law school, I no longer see attorneys*





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*as Olympian, infinitely knowledgeable professionals. That isn't to say I don't believe lawyers are professional, but I personally think they are professionals in the same way an auto mechanic is a professional: both have specialized skills and knowledge that allows them to solve particular problems."*

Several students said that if they had known about the amount of work, the infighting and competition, and the specialized skills the legal profession demanded, they wouldn't have started law school. Students questioned whether they were "too nice" to be successful in this adversarial field.

One student was positively impressed by the close-knit network of attorneys in Montana.

Some of the students' changes in expectations:

*"Before I went to school, I really didn't know about all of the specialized skills attorneys have to have to be successful. I didn't realize there were such things as discovery, billable hours, depositions, etc. In retrospect, if I had known what being an attorney is really like, I would have done something else."*

*"I came into law school believing that a law degree would be helpful in almost any field. I no longer believe that is true and think that it may actually hinder my ability to find a job outside of the practice of law. I think there could be concern among employers that I will not stay in a position for the long-term because my law degree allows me the option of going into a practice."*

*"I worked at a law firm prior to law school so my perception is not shaped by law school. I saw many attorneys who were overworked, underpaid, and unhappy. As a result, many of their clients were deprived of proper representation – without the client being aware of this. But, I also saw a handful of attorneys who really made a positive impact in the lives of their clients, took pride in their work – the recipe for a very rewarding legal career. . . It was enough inspiration to get me here."*

*"I did not understand how much writing there would be . . . I can't believe how long cases take. . . Access to justice is more of a problem than I had realized. I was surprised by how genuine all my classmates are."*

## **8. They would love to practice in Montana; but can they?**

Almost all the UM students said they would love to stay in Montana to practice law, even though many have come from other states. But most said they may have to practice outside Montana to earn enough to pay their student-loan debts. A common theme was, "As soon as those debts are paid I want to return to Montana."

We also have heard that most UM Law students want to stay and practice law in Missoula. Our respondents were pretty mixed on this – they weren't necessarily tied to the

Missoula expectation – perhaps because, some of them said, there were few legal-practice opportunities left in Missoula.

*"I would like to stay in Montana. Even if my wife and I had to go elsewhere first, we would try and come back. I would consider working in places other than Missoula, but it would be best if it was close to Missoula. My wife works in Missoula and she has a job-type that can only be found in Missoula."*

*"I want to stay in Montana. Montana is the only place I have been that I can imagine spending the rest of my life. I want to stay in western Montana, but not necessarily just Missoula."*

*"I will go wherever I find a career I will enjoy. I have not ruled out returning to Montana, although presently I am taking the Minnesota Bar and looking for careers out-of-state."*

*"I hope to stay in Montana, but will go elsewhere for employment, if necessary. I definitely will not stay in Missoula and will not seek a job here. I would prefer to go to Billings or Great Falls, but realize that given the fact that I want to work in state government, it is likely I will end up in Helena."*

*"I expect to stay in Montana. If for some reason I was lured away, I would expect to come back. . . I would consider working outside of Missoula – though I would have to have proximity to wilderness like Missoula does."*

*"I do plan on staying in Montana, even though this is not home. I love it here – the legal community is small and appears to be tight-knit. I think this is conducive to a solid foundation in terms of experience."*

*"I do not expect to stay in Montana. My spouse works in another state and I will go where he is for now. I would come back to Montana, but only after my student debt is paid and I could afford to take a lower salary."*

*"I would definitely live somewhere else besides Missoula. I like Great Falls and Billings. It would be good to live in a college town. I like living in larger cities where you can be anonymous and have access to everything 24/7 – the all-night post office, all-night stores, more concerts and arts, and professional sports. Better flight schedules and lower-cost airfares. Sometimes Montana is a little slow and small."*

## **9. They already use laptops, PDAs and the Internet as their key tools**

Undergraduate and law-school work has equipped new lawyers with the skills of using, and depending upon, desktop computers, laptops, Blackberries and other personal digital assistants, and the Internet. When the State Bar asked the UM

Law School Library staff if they needed more copies of *The Montana Lawyer* magazine sent to them each month, they told us no, the students preferred to read it online – they don't want more paper.

Students are using their laptops to do research during class, tying Internet files to their class lecture notes on a real-time basis.

College students across the country are so dependent on their laptops for research and writing, and on their Blackberries for communication, that it will be tough to pry their cold, hired fingers off the things when they graduate and enter the professional workplace. The students say:

*"I plan to use [the Internet] to unchain me from my desk as much as possible."*

*"I think laptops have a huge impact on the learning experience . . . I can't imagine trying to take all of the notes without one."*

*"I like having Internet in class because I can quickly look up statutes and cases in class without having to fumble through a supplement or FacPac."*

*"It is significantly easier to outline [in class] using a laptop, and I can take notes much faster while typing. However, I find it much easier to concentrate in class if I handwrite my notes."*

*"Everyone learns differently. I have enjoyed typing my notes, and feel like I was able to capture more of the lectures than when I took notes by hand in college."*

*"Having the computer in class is great to look up the MCA and Rules of Civ. Pro and Evidence. It is easy to cut and paste into your notes."*

*"I can type faster than I can handwrite . . . One problem with using the computer has been that my notes sometimes resemble a transcript of the class, much too cumbersome to study from."*

*"The laptop has been an essential tool in my law school career. It is easier to manage notes, write papers, and do projects with the laptop. I've also used the Internet in class to enhance the classroom educational experience – the ability to look up information on WestLaw, or to run a Google search for death penalty statistics, for example, helped me contribute to classroom discussion."*

*"I expect I will use laptops and the Internet every day as a practicing attorney."*

However, some experienced Montana attorneys are not always enamored of the way new lawyers use their digital devices. "It's their ability to communicate too quickly" through e-mail, one older lawyer pointed out. "We had a young attorney be upset after having e-mailed and not having

heard back within an hour."

A couple of older attorneys said that immediate reactions younger attorneys fire back with are often nastier than with the calming effect that comes from slowing down and crafting a snail-mail letter.

## **10. They have an undue sense of entitlement, and they are not afraid to challenge the authorities on which they depend**

As an example of how our UM Law students are willing to push back against workplace rules and conditions, we look to the student protest over law professors who have banned laptops from their classrooms. The reason for the ban? Students often will roam the Internet for non-law-related files (You Tube, anyone?), search for or send e-mail, or play Internet games during lectures. Most of our student respondents feel they are entitled to use laptops for whatever reason they choose because they are entitled – they paid for the college class. The feel it is up to the professor to make his lecture interesting enough to lure them away from web surfing.

This sense of entitlement irritates some of Montana's experienced attorneys.

New lawyers "expect higher pay but with lower output," said one older attorney. "And they expect to become partners in three years whether or not they are producing enough income for the firm." She said her firm has always relied on production as a goal for partnership, and that other firms require an associate to actually purchase a partnership. "It takes a while for new lawyers to understand this," she said.

Several older attorneys used the phrase "sense of entitlement."

Back on the computers-in-the-classroom controversy, almost all our respondents agree that it was rude to be on laptops while a guest lecturer was speaking. But they were not hesitant to speak out against their professors (translate: law-firm principals):

*"I believe there are definitely ways to skirt this issue without any heavy-handed prohibitions. Finally, though, students often seem to turn to the Internet because they are bored. It's remarkable how little Internet usage goes on in classes that students find engaging."*

*"Banning laptops is silly. If someone doesn't have the concentration to pay attention in class, it wouldn't matter whether they did or did not have a laptop. Laptops do make it easier to tune out, but isn't that part of time management? I think it should remain a student choice."*

*"My observation is that students waste a good deal of time in class looking at the Internet, playing computer games, etc. I don't necessarily blame the students. A professor has a responsibility to keep the class engaged in the material – that is, after all, what they are paid to do . . ."*

*"I think the professors have no place even engaging*



*themselves in this discussion. My decision of how I take notes, or even IF I take notes, for that matter, is none of their concern."*

*"Certain professors feel they are not getting the respect they somehow believe they are entitled to because students are not sitting at their desks paying full attention like good little grade-schoolers. The truth is, law students pay tens of thousands of dollars or more to come to law school – a professional, graduate, adult school – and professors are supposed to provide the service students are paying for."*

*"It is distracting when all the students are playing games during class – but it is a personal choice. This is not for professors to decide."*

## 11. Lack of community involvement and inter-office camaraderie.

Experienced lawyers also complained that today's new lawyers don't get involved in their communities as much as they are expected to. "We are constantly pushing new attorneys to get out into the community," said one law-firm principal, "but it appears to infringe on their private time."

One reason they need to be involved is because it builds networks and helps them obtain more clients, she said.

New attorneys like to be out "doing their own thing," another older lawyer said, agreeing that new associates don't have as much "law-firm mentality."

And several older attorneys commented that today's new colleagues seem less likely drop in to other colleagues' offices just to talk. "They'd rather e-mail," one said.

Although two of the experienced attorneys said today's new

associates tend to be more relaxed and less formal, almost the whole group of older lawyers felt they also were more aggressive and defensive. "In litigation they make too much of the small stuff," said one lawyer with almost 20 years experience. "They're sometimes too rigid, which is hard on clients and other lawyers. They like to play the game of 'Gotcha!'"

"They're quick to write letters that inflame – there is more poison in the pen," which, he said, is not helpful to the client. "They have their heads down, horns out."

## Conclusion

These 11 sets of expectations among law students, and the reactions from experienced attorneys, do not appear to have caused enough conflict for many of the lawyers and their firms to have parted ways – yet. Smaller firms find the conflicts more troubling. "Bigger firms whip them into shape quicker than we can," said one attorney.

As new law classes graduate, the expectations will continue to deepen and change, to the horror or amusement of the graduates' older colleagues. Experts say it behooves all the attendant generations to be aware of how the other thinks, and be willing to make some adjustments.

As one of our surveyed UM Law students, a 31-year-old woman from California, put it:

*"I think a lot of seasoned attorneys are a bit resentful of the fact that they had to make huge sacrifices in their personal lives in order to pursue the typical partner-track course at private firms. Our generation values quality of life above that traditional track. We also have more options and are more mobile, hence, the high turnover. And the legal profession is highly resistant to change. This creates the tension between the old and the new ideals." ○*

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## NEWS ABOUT MEMBERS

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The Billings law firm of Moulton, Bellingham has added two new shareholders:

■ **Michael E. Begley.** Mr. Begley was born in Casper, Wyo, in 1970, and spent much of his youth traveling to Montana for alpine ski races. He graduated from Rocky Mountain College, Billings, in 1996, a scholarship athlete with the Rocky Mountain College Varsity Ski Team. After graduation, he worked for three years as a youth counselor with the Yellowstone Boys & Girls Ranch near Billings. He was also a volunteer soccer coach for the Magic City Soccer Club. Mr. Begley is a graduate of the University of Montana School of Law where he was selected as a teaching assistant for first-year law students. He was also a staff member and editor for the *Montana Law Review*. he graduated from law school with honors in May 2002. Admitted to the bars of both Montana and Wyoming, Mr. Begley is licensed to practice in all courts of both those states; his practice includes both litigation and



commercial transactions.

■ **Jeff G. Sorenson.** Mr. Sorenson was born in Billings in 1976 and graduated from Billings Senior High in 1994. After completing undergraduate studies at MSU, he attended the University of Montana School of Law, during which he interned with the Moulton firm. Mr. Sorenson received his JD with high honors in 2003. He then attended New York University School of Law and completed the LL.M. program in taxation in 2004. He is a member of the American Bar Association as well as the State Bar of Montana. Mr. Sorenson practices with the Moulton firm in the areas of estate planning and administration, real property, business transactions, and taxation.



The Helena law firm of Gough, Shanahan, Johnson & Waterman announced that three attorneys have joined the firm as partners. They are:

## NEWS ABOUT MEMBERS

■ **Dennis R. Lopach.** Born and raised in Great Falls, Mr. Lopach comes to the firm after serving for many years in the legal affairs, governmental affairs, and management structures of Mountain Bell, US West, MediaOne, and NorthWestern Corporation. His practice focuses on energy and telecommunications law, tax, and complex public policy matters in the firm's Government Relations Group.

■ **KD Feedback.** Mr. Feedback brings to his legal practice more than 25 years of practical and technical experience in the petroleum, mining, and timber industries. He worked as a driller, exploration geologist, drilling consultant, professional forester, and logger prior to associating with the firm in 2002, and his law practice now focuses on natural resource, environmental, and water law, as well as associated civil and constitutional matters arising from property rights and takings issues.

■ **Peter G. Scott.** Mr. Scott comes to the firm as regulatory and litigation counsel for various governmental, private, non-profit, and corporate clients through the Northwest. Prior to coming to the firm, he worked in the Spokane office of Preston, Gates & Ellis, and he is a member of the State Bars of Montana, Idaho, Washington, and Oregon. His law practice focuses primarily on land use, water rights and natural resource issues, and Mr. Scott serves as secretary to the Northwest Mining Association and as vice chair of the ABA's Mining Committee.

Gough, Shanahan, Johnson & Waterman also announced that **Terry B. Cosgrove** has joined the firm as an of-counsel partner. A native of Great Falls, Mr. Cosgrove served as executive vice president and general counsel of Blue Cross Blue Shield of Montana from 2001 through 2008. He has practiced law in Helena since 1972, and was a partner at Crowley, Haughey, Hanson, Toole & Dietrich prior to joining Blue Cross Blue Shield. He has been an adjunct instructor of both criminal justice and constitutional law at Carroll College, has lectured at the New York University Institute on state and local taxation, and has authored numerous articles on state taxation issues. Mr. Cosgrove's practice will focus on health care, commercial, and state and local taxation matters.

After four years with the U.S. Agency for International Development (USAID) in Rwanda, **Regan Whitworth** has moved to Maputo, Mozambique, where he is still working with USAID.

Lamb & Carey Law of Helena announced the association of **Graden Hahn**. Ms. Hahn joined Lamb & Carey Law after completing her clerkship with Justice Patricia Cotter at the Montana Supreme Court. Ms. Hahn grew up in Whitefish. She attended and skibred for Middlebury College in Vermont before returning to Montana to compete for Montana State University in Bozeman. She earned a bachelor's degree with honors from MSU in 1996, a



juris doctorate from the University of Montana School of Law in May 2005, and was admitted to the State Bar of Montana in July 2005. Prior to law school, Ms. Hahn staffed the Montana Environmental Information Center's Missoula office, where she worked collaboratively in the successful effort to protect the Blackfoot River from degradation threatened by a proposed mine near Lincoln.

The Brown Law Firm announced that Kelly Jo Cogley Gallinger and Matthew Ira Tourtlotte have become shareholders in the firm.

■ **Kelly Jo Cogley Gallinger** received her bachelor of arts degree, with honors, from Montana State University in 1997. Thereafter, Ms. Gallinger lived in Pusan, Korea, teaching English as a second language to university students. Ms. Gallinger graduated from the University of Montana School of Law in 2001 and embarked upon a clerkship with Chief Justice Karla M. Gray. Since joining the Brown Law Firm in 2002, Ms. Gallinger's litigation practice has focused on civil litigation, insurance defense, insurance coverage, and products liability.

■ **Matthew Ira Tourtlotte** received a bachelor of arts degree from Gonzaga University in 1995. Mr. Tourtlotte later attended law school at the University of Montana from 1996 to 1999. After graduation, Mr. Tourtlotte served as a clerk for District Judge Langton. Mr. Tourtlotte later joined the Brown Law Firm in 2002. His practice has focused on civil litigation, construction litigation, insurance defense, and insurance bad faith.



The Carey Law Firm in Missoula announced that **Andrew D. Huppert** is now associated with the firm. Mr. Huppert graduated with highest honors from the University of Illinois in 1983 and with honors from the University of Montana School of Law in 1989. He has been practicing throughout Montana for the past 20 years and will continue to focus his practice on workers' compensation, personal injury, medical negligence, and insurance bad faith. He can be reached at (406) 728-0011 or [andrew@careylaw.com](mailto:andrew@careylaw.com).

Great Falls native **Neal P. DuBois** has joined Taleff Law Office as an associate attorney. Mr. DuBois received his bachelor's degree in Political Science from the University of Nevada Reno in 2005 and his juris doctorate from the University of Montana School of Law in May 2008. While in law school, Mr. DuBois worked as an intern at Taleff Law Office and at the Kalispell law firm of Anderson & Bliven. He completed his clinical work at ASUM Legal Services. He also served in as president of the Native American Law Student Association (NALSA) for two years. Mr. DuBois was the national liaison and ABA representative with NALSA's national board and the

freshman class representative to the UM Student Bar Association. His practice will include commercial transactions and litigation, as well as the general practice of law.

The Billings law firm of **Hendrickson, Everson, Noennig & Woodward** will now be known as **Hendrickson Law Firm, P.C.** The firm – comprised of Gary Everson, Mark Noennig, Kelly Varnes, Tanya Dvarishkis, and Heather Sather – will continue to provide legal services in litigation, personal injury, commercial law, taxation, wills, trusts and estates, probate, corporate, gaming and liquor licensing, real estate, mortgages, criminal defense, family law, and landlord-tenant law.

**Heather Webster Sather**, a native of Billings, associated with the Hendrickson Law Firm in July 2008. Ms. Sather attended the University of Montana where she received a BS in Business Administration and BA in Dance. She then attended the University of Montana School of Law and received her

juris doctorate in 2007. Ms. Sather clerked for the Judge Russell C. Fagg. During law school, Ms. Sather interned with Datsopolous, MacDonald, & Lind, the Missoula office of Crowley, Haughey, Hanson, Toole, & Dietrich, and ASUM Legal Services. Her practice includes civil litigation, family law, and criminal defense.

Eureka attorney **Tiffin Hall** recently completed an advanced, six-day program entitled “Mediating the Litigated Case,” sponsored by the Straus Institute for Dispute Resolution at Pepperdine University School of Law. The program focuses on the various stages of the mediation process, identifying and working with different negotiation styles, and facilitating problem solving in all types of cases. A 1990 graduate of the University of Montana School of Law, Mr. Hall is now conducting mediation and settlement conferences in his offices at 124 Riverside Dr. in Eureka and around Western Montana. He can be reached at (406) 297-7026 or at [jtiffinhall@interbel.net](mailto:jtiffinhall@interbel.net).

## DEATHS

### Gardner Brownlee, retired district judge

E. Gardner Brownlee, retired Missoula district judge, died at St. Patrick's Hospital in Missoula at age 92.

Raised in Wolf Point, he attended Northern Montana College in Havre and graduated from the University of Montana Law School in 1940.

That same year, Judge Brownlee and his friend, Tom Koch, launched their law firm, Koch & Brownlee, in Hamilton. Judge Brownlee also ran for county attorney in Ravalli County that year, defeating late Montana Sen. Lee Metcalf.

In 1941, Judge Brownlee married Mildred Adrain. They had a son and daughter and were later divorced. Judge Brownlee served with the U.S. Air Corps in World War II.

He served 14 years as county attorney and in July 1959, was appointed by Gov. Hugo Aronson to fill an unexpired term as 4th Judicial District judge and was re-elected until his retirement in 1979.

In 1968, he married Louise Sullivan.

Judge Brownlee was active in several civic organizations. He spent many years in Boy Scouts, having been the first Eagle Scout in the northeastern Montana scouting district, and he worked with young men in Scouts, teaching canoeing and other sports at summer camps. He was active in Eagles

in Hamilton and Rotary in Missoula.

Judge Brownlee also was an enthusiastic member of the Rocky Mountain Model T Club, driving with friends and family to Glacier Park and holiday parades around the state. When he retired in 1979, he blithely traded in his 1912 Model T and bought a Kubota tractor for his “fun days.”

“Gardner worked hard for the improvement of the administration of justice,” his obituary said. While on the bench, he wrote four editions of the “Handbook for Montana Peace Officers,” a training manual for Montana justices of the peace and police judges, several training books for juvenile courts and Indian tribal courts, and a guide to the rules of evidence.

He taught at the Law Enforcement Academy for many years and also taught at seminars throughout the western United States.

Judge Brownlee was a member of the Montana Criminal Code Commission, a member of Region 1 Board of Crime Control, was chair of the Montana Commission on Lower Court Reform and a Montana member of the National Judicial Educators' Association.

After retirement, he continued to serve as a district judge, handling administration of decreed water in the 4th Judicial District.

Judge Brownlee was preceded in death by his son, Douglas. He is sur-

vived by his wife Louise and his daughter.

### Roy Murray, Butte attorney

Roy Eugene Murray Jr., 88, died on Dec. 14 in Kalispell.

Mr. Murray graduated from Boys central High School in Butte, and graduated from Notre Dame University in 1942. He served as a lieutenant in the Navy in the South Pacific during World War II. He received his juris doctorate from Harvard University in 1950. He became a member of the Montana and California bar associations.

Mr. Murray succeeded his father as owner of Murray Motor Company in Butte. He served as an assistant U.S. attorney in the Nixon administration.

Mr. Murray was preceded in death by his wife, Patricia, and a daughter. He is survived by a daughter and a son.

### George D. Goodrich, Missoula attorney

Missoula attorney George Danforth Goodrich, 75, died in Missoula on Dec. 11.

Born in Minnesota, Mr. Goodrich graduated from the University of Minnesota Law School in 1958 after serving as a captain in the Army field artillery. In 1958, he moved to Helena and worked for what is now First Trust Company. In 1964, he joined the Garlington, Lohn & Robinson law firm

in Missoula, where he was a partner until his retirement in 2003. He was a member of the American College of Probate Counsel; he specialized in banking, property, and estates.

In 1955, Mr. Goodrich married Jennifer McDonald in Minnesota. They had three sons, and later divorced. In 1988, he married JoAnn Mick in Missoula. He is survived by his wife JoAnn, and his three sons.

### John 'Potts' Prothero, Butte attorney

John Thomas Prothero, 88, died Jan. 30, 2009, at his home in Butte. Known to family and friends as "Potts," he was born and raised in Butte, he attended Gonzaga University on a basketball scholarship, the University of Montana in pre-law and graduated from law school at Catholic University in Washington, D.C., in 1951. After graduation, Mr. Prothero went to work for the U.S. Senate subcommittee of Labor Management Relations.

In 1952, he and his wife, Loretta, moved back to Butte. He began working for the Butte Silver Bow County Attorney's Office and stayed there for 16 years. He then he went into private practice with the law firm of Burgess, Joyce, Prothero, Whalen & O'Leary. He stayed with the firm until 1986, then he practiced law in the Miners Bank Building until he retired.

He is survived by two daughters and two sons.

### Other deaths

- **Richard J. Briski**, an attorney for 25 years practicing in

Michigan, Illinois, and Montana, died in Helena on Dec. 14 at age 51.

- **Melissa Greenhagen**, 37, clerk of district court in Valley County, was killed by a sniper in Glasgow on Jan. 17 while performing duties as a part-time emergency medical technician.

- **V. Lavon LaPoint**, a non-attorney who worked for oil, gas, and timber companies and who was then employed in the Natural Resources Department of the Crowley Law Firm from 1982 until her retirement in 1993, died in Billings on Jan. 18 at age 81.

- **Charmaine Fisher**, 79, who was clerk of district court in Yellowstone County from 1985 until her retirement in 1995, died of cancer at her home in Billings on Jan. 19.

- **Amy J. Rydeen**, a paralegal who had worked as a legal assistant for the Powell County attorney, died at her home in Deer Lodge at age 38.

- **Mary Florence Trovatten**, 87, a retired office manager for the Cascade County Attorney's Office, died in late January at her home in Great Falls.

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.com.

**MOUNTAIN WEST BANK NA** is expanding its legal department and hiring another attorney, who will be located in Helena. This position reports to Mountain West Bank's vice-president/bank counsel, and applications will be accepted immediately. Duties will include providing legal advice to management and personnel on lending, contracts, commercial law issues, employment law issues, and other corporate matters. The position will also involve litigation and some travel. All applicants must have a J.D. degree and be a member of the Montana Bar. Applicants should have a working knowledge of the Uniform Commercial Code, contract law, property law, and bankruptcy law. Applicants must be hard-working, with excellent communication and interpersonal skills, and a demonstrated ability to prioritize projects and complete multi-task assignments. Salary will be competitive and will depend on experience. Additionally, Mountain West Bank provides an excellent benefit package. Mountain West Bank is an equal opportunity employer. All inquiries will be kept confidential. Send a cover letter, resume and writing sample to: Amy Randall, Esq., Mountain West Bank NA, PO Box 6013, Helena MT 59604-6013; (406) 449-2265.

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## **EVICCTIONS**

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## **JUSTICE IN ASIA, from Page 21**

The jailers themselves were very sympathetic to the inmates' situation. They called the conditions "inhuman" and asked for any help that we might be able to offer. When we visited the jail in December, it was approaching 90 degrees Fahrenheit. There is no air conditioning or air circulation system.

Rommel works with the inmates at the jail and has established an inmate paralegal program to try to get cases moving. In this program he is training inmates as paralegals to help explain the legal process to other inmates. Attorneys almost never visit the jail. In the past year, there had only been 2 visits by a public defender to the jail.

Rommel has also begun a rights awareness program for the inmates, and is distributing workbooks to the inmates so that they can keep their own records about their cases. Given how long it takes for a case to be completed, the workbooks are very important. They allow the inmates to keep track of the current status of a case, the number of delays, the reason for the delays, and other case information.

**DELAYS IN THE** Philippine court system are very common. If a witness fails to attend a hearing, the case may be delayed three or four months before another hearing date is available. If a prosecutor, judge, or public attorney

fails to attend a hearing a similar delay can be expected.

The traffic in Manila even plays a part in the delays. Attorneys often have cases scheduled in several different courts in Manila, and the traffic may make it impossible to get across town in time for a scheduled hearing. Even if you counterflow.

**IF YOU ARE INTERESTED** in helping with the work of Rommel Alim Abitria and the Humanitarian Legal Assistance Foundation, they can be contacted through the HLAFF website.<sup>8</sup>

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

## **Notes**

1. [www.justiceinitiative.org/](http://www.justiceinitiative.org/)
2. [www.gaje.org](http://www.gaje.org)
3. [www.defendsison.be/pages\\_php/0502150.php](http://www.defendsison.be/pages_php/0502150.php)
4. <http://www.un.org/documents/ga/docs/55/a55919a2.pdf>
5. [www.upiasia.com/Human\\_Rights/2008/11/05/philippines\\_jails\\_human\\_rights\\_lawyer/5889/](http://www.upiasia.com/Human_Rights/2008/11/05/philippines_jails_human_rights_lawyer/5889/)
6. [www9.gmanews.tv/story/147598/Court-orders-release-of-militant-labor-lawyer-5-labor-leaders-after-3-months](http://www9.gmanews.tv/story/147598/Court-orders-release-of-militant-labor-lawyer-5-labor-leaders-after-3-months)
7. <http://ibj.org/global-defender-support/justicemakers/>
8. <http://main.hlaффil.org/>

Call for prices list. Hess-Homeier Law Firm, (406) 549-9611, [thesshomeier@msn.com](mailto:thesshomeier@msn.com). See website at [www.montanaevictions.com](http://www.montanaevictions.com).

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