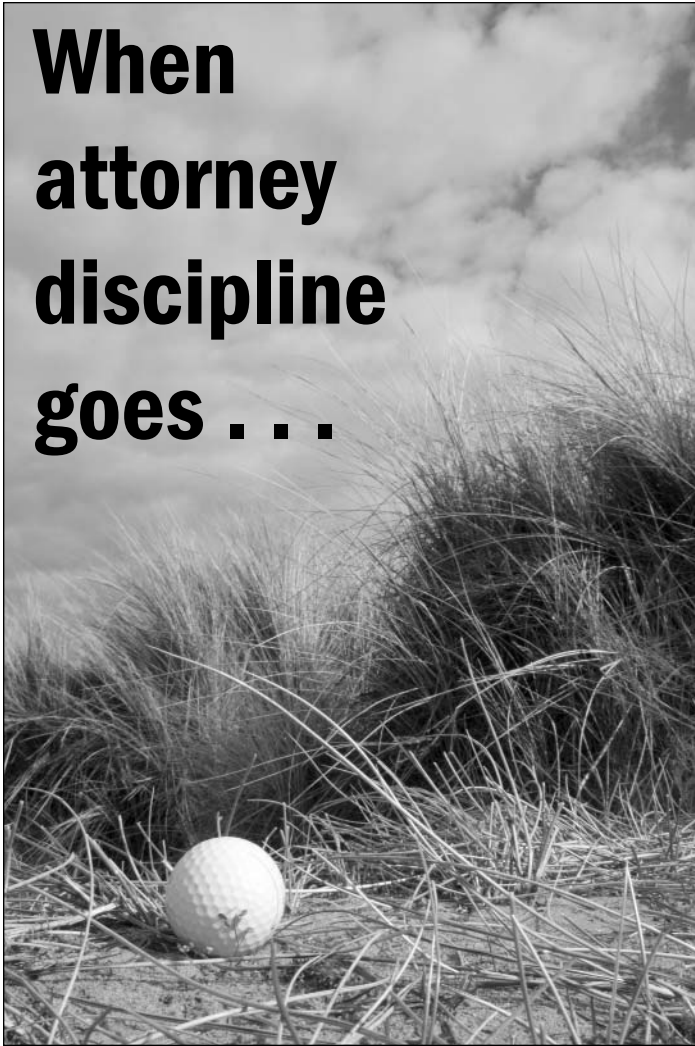

Lawyer

THE STATE BAR OF MONTANA

**When
attorney
discipline
goes . . .**



**out
of
bounds**

*A Montana lawyer cries
'foul' over admonishment,
the Supreme Court agrees
— in more ways than one*

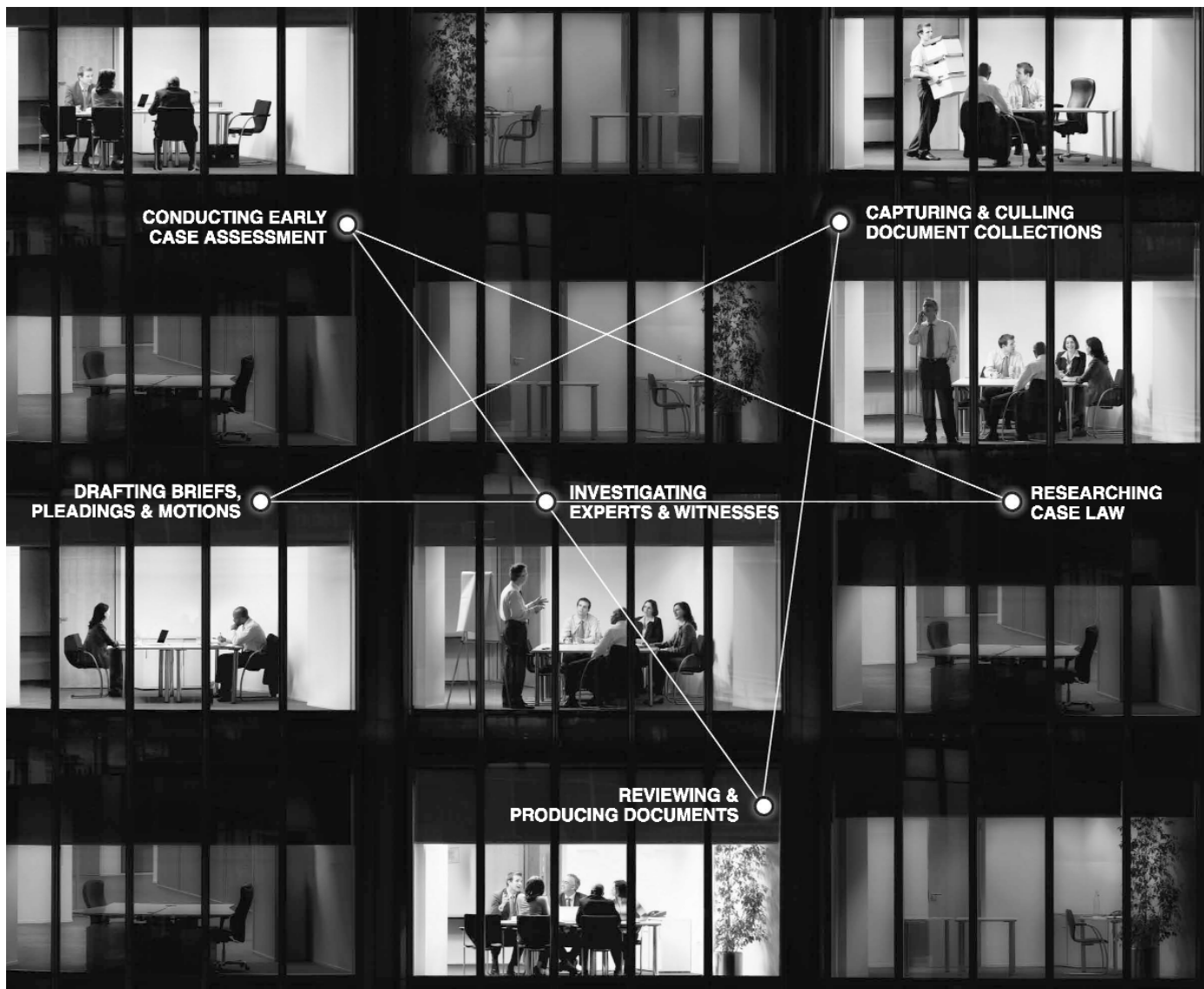
Unauthorized Practice Commission disbanded

Consumer Protection Agency to take complaints

ETHICS OPINION



**Can you disclose
your client's
psychotherapy file
— to the client?**



DOES YOUR LITIGATION TEAM CONNECT THE DOTS?

Only LexisNexis® lets you harness your team's thinking—every case, every task.

Disconnected litigation processes lead to inefficiency. Critical insight can be lost. Keep your entire team connected throughout the life of any case with the most complete portfolio of integrated litigation tools and research content.

Exclusive LexisNexis Litigation Resources Include:

CaseMap® • LAW PreDiscovery™ • Concordance® • Total Litigator • *Shepard's*® • IDEX® Expert Witness Resources

● **CONNECT THE DOTS TODAY**

Visit lexisnexis.com/dots or call 1.866.316.8525

TOTAL PRACTICE SOLUTIONS
Client Development Research Solutions Practice Management Litigation Services

 **LexisNexis®**



LexisNexis, the Knowledge Burst logo, and Shepard's are registered trademarks of Reed Elsevier Properties Inc., used under license. CaseMap, Concordance and IDEX are registered trademarks and PreDiscovery is a trademark of LexisNexis, a division of Reed Elsevier Inc. © 2009 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. L018376-01/09

THE MONTANA LAWYER

Published every month except January and July
by the State Bar of Montana, 7 W. Sixth Ave.,
Suite 2B, P.O. Box 577, Helena MT 59624. Phone
(406) 442-7660; Fax (406) 442-7763.
E-mail: mailbox@montanabar.org

STATE BAR OFFICERS

President

Cynthia K. Smith, Missoula

President-Elect

Joseph Sullivan, Great Falls

Secretary-Treasurer

K. Paul Stahl, Helena

Immediate Past President

Chris Tweeten, Helena

Chair of the Board

Shane Vannatta, Missoula

Board of Trustees

Pam Bailey, Billings

Pamela Bucy, Helena

Darcy Crum, Great Falls

Vicki W. Dunaway, Billings

Jason Holden, Great Falls

Thomas Keegan, Helena

Jane Mersen, Bozeman

Olivia Norlin, Glendive

Mark D. Parker, Billings

Ryan Rusche, Wolf Point

Ann Shea, Butte

Randall Snyder, Bigfork

Bruce Spencer, Helena

Matthew Thiel, Missoula

Shane Vannatta, Missoula

Lynda White, Bozeman

Tammy Wyatt-Shaw, Missoula

ABA Delegate

Damon L. Gannett, Billings

THE MONTANA LAWYER

Publisher

Christopher L. Manos, Executive Director

Editor

Charles Wood (406) 447-2200; fax: 442-7763

e-mail: cwood@montanabar.org

SUBSCRIPTIONS are a benefit of State Bar membership; others purchase a year's subscription for \$40, pre-paid. Third Class postage paid at Helena MT 59601.

ADVERTISING RATES are available upon request. Statements and expressions of opinion appearing herein are those of the advertisers or authors and do not necessarily reflect the views of the State Bar of Montana.

POSTMASTER: Send address changes to Montana Lawyer, P.O.Box 577, Helena MT 59624.

Copyright 2010 State Bar of Montana
Printed in Billings
at Artcraft Printers

MAY INDEX

Cover Story

- Discipline & due process: Supreme Court rules
Commission on Practice out of bounds 5

Features

- Ethics Opinion: psychotherapy notes 10

Commentary

- President's Message: Fight for 'the others' 4
- On the Court's mental-illness decision 25

State Bar News

- Nominations sought for officers, trustees 12
 - Officer & trustee nomination form 13
- Lawyer Assistance regional committees set up 12
- State Bar award nomination forms
 - Karla Gray Equal Justice Award 12
 - William J. Jameson Award 14
 - George L. Bousliman Professionalism Award 15
 - Neil Haight Pro Bono Award 16
- State Bar Calendar 16

Courts

- Court disbands UPL Commission 8
- Colleagues like Thomas for Supreme Court 9
- Kirscher appointed to 9th Circuit panel 9
- Baker leads Swandal in fundraising 21
- Supreme Court oral argument calendar 21
- State seeks savings in courtrooms 22
- Discipline: two suspensions, one censure 23

Regular Features

- Upcoming CLEs 17
- State Bar Bookstore 18
- Awards & Honors, News About Members 28-29
- Deaths 29
- Classifieds 30



PRESIDENT'S MESSAGE

Let's fight for 'the others'

Why take offense to our LGBT discussion?

Cynthia Smith

I began my year as State Bar president with a request that we examine the diversity of our membership and the ways in which certain individuals face barriers in their access to justice. To me, those issues are related.

Some of those barriers are obvious. For example, we all agree that poverty is a barrier, and we all support the programs that address those barriers, like pro bono programs, Legal Services, and the Montana Justice Foundation. Race is another example. None of us would deny that race can be a barrier in the access to justice.

Some of those barriers, however, are subtle because they arise from personal characteristics that are invisible, or hidden. You will find people with these characteristics in every race, culture, and economic status. The characteristics I am referring to are those of the GLBT (gay, lesbian, bisexual and transgender) community.

The subtle nature of the barriers faced by the GLBT community allows people to argue that the barriers don't exist, or that society is free to ignore them. For example, at last spring's State Bar Strategic Planning Meeting, the Board of Trustees heard from a panel of attorneys who represent clients with difficulties in the access to justice. One panelist discussed problems her lesbian client faced when she went to court to enforce her right to parent the children she had been raising and the property she had acquired with her former partner. The client faced an absence of laws governing unmarried domestic partners or same-sex parents. After the meeting, I received several interesting comments about that panelist's presentation. One lawyer commented that she did not believe sexual orientation was a barrier to justice. Another said it was inappropriate for the Board of Trustees to discuss controversial political issues.

The latter complaint still puzzles me. Why does this issue have to be so controversial? We all have friends or family members who are gay or lesbian. Some of the Montana lawyers I most deeply respect and admire are gay or lesbian. These lawyers did not choose their sexual orientation. Their sexual orientation is as immutable as their race. Yet despite this immutability, many state governments are unwilling to extend to them the same rights as

those enjoyed by heterosexuals – the right to marry and the corresponding right to divorce, or the right to be free from discrimination based upon their sexual orientation.

And as to it being a political issue, why shouldn't a group of lawyers discuss the absence of legal remedies for identifiable groups of Montanans? It is true that it is the Legislature that enacts laws, but it is lawyers who have the ability (and the obligation) to stand up for those who, for whatever reason, cannot stand up for themselves to challenge bad laws or fight for good ones.

I heard yet another complaint following the panel presentation, although it was more of a comment than a complaint. The comment came from a Montana transgender lawyer, who asked that we also include her community in our discussion about access to justice. That

lawyer recently announced her status as Montana's only transgender lawyer when she spoke in support of a proposed Missoula city ordinance that would prohibit discrimination on the basis of sexual orientation, gender identity or gender expression. Missoula passed the ordinance and became the first local government in Montana to do so. I hope that other Montana cities and the state itself follow suit. It would go a very long way towards eradicating the barriers faced by my gay, lesbian and transgender colleagues.

And how is that eradication related to diversity? It is related because barriers break down when the people excluded by the barriers are no longer "the others." Through diversity, we learn that others are really not so different than us. They truly are our family, our neighbors, our coworkers. We as a bar need to embrace the diversity of our state, and include in our membership and leadership members of all groups, regardless of race, sexual orientation, or gender (or transgender).

Diversity enriches all of our lives. Universities recognize this, and include diversity as an important factor in admissions. But diversity does more than enrich our lives. It actually moves us forward in eradicating the barriers that prevent access to justice. Access to justice is, or should be, the mission of all lawyers. ○

Lawyers have the ability (and obligation) to stand up for those who cannot stand up for themselves . . .

Discipline & due process

The following Montana Supreme Court order, issued on March 23, sets definite limits on the authority of the Court's Commission on Practice and determines how a Great Falls attorney's right to due process was violated. The order is presented here verbatim:

Commission on Practice oversteps its bounds, Court rules; attorney fends off complaint after meeting duty to report a conflict

On Jan. 7, 2010, Elizabeth Best filed with this Court a Petition for Original Jurisdiction and Application for Injunctive and Declaratory Relief wherein she contended that the attempt by the Commission on Practice (COP) to discipline her with a private admonition was a violation of her rights to due process, to equal protection, to know and participate in government, and to free speech. By order dated Jan. 12, 2010, we directed the COP to vacate the private admonition which was scheduled to occur on Jan. 21, 2010, and we stayed all further proceedings pending our decision in this matter. In addition, we granted the COP time to respond to Best's petition. Thereafter, we granted the Office of Disciplinary Counsel (ODC) time to respond to the petition and we allowed Best time to file a reply to the COP's response.

Having now carefully reviewed the petition, the responses, the reply and the associated appendices, we conclude that the dispositive issues in this case are: (1) whether we should accept jurisdiction of Best's petition, (2) if we accept jurisdiction, whether the COP violated Best's right to due process, and (3) whether the COP can, sua sponte, charge a lawyer with a violation of the Montana Rules of Professional Conduct (MRPC) outside of any violation alleged in a complaint or report by the ODC.

Factual and procedural background

Best filed a lawsuit in June 2008 on behalf of Dr. Elaine Samuel against a Montana hospital alleging, inter alia, that a restrictive covenant contained in Dr. Samuel's employment contract with the hospital was void as contrary to public policy. Best alleges in her petition before this Court that after the lawsuit was filed, several of Dr. Samuel's colleagues encouraged Dr. Samuel to join the Montana Medical Association (MMA) as well as the American Medical Association (AMA) because both organizations oppose restrictive covenants, and because either or both organizations might be interested in participating in the case as amici or in sharing the costs of litigation. Dr. Samuel joined the MMA in December 2008.

Best further alleges that around the time that Dr. Samuel joined the MMA, Dr. Samuel informed Best that the attorneys representing the hospital in her case also represented the

MMA. Best contends that as part of discovery and trial preparation, she learned that the MMA and the AMA oppose restrictive covenants. Seeing this as a potential positional conflict on the part of the hospital's attorneys, Best wrote them

to point out the problem. The hospital's attorneys wrote back providing only the ODC's address.

Thereafter, Best wrote to the ODC to report the potential conflict and enclosed both her letter to the hospital's lawyers and their response. Best notes in her petition that she believed it was her duty to do so under MRPC 8.3 (Reporting Professional Misconduct) and this Court's decisions in *Schuff v. A.T. Klemens & Son*, 2000 MT 357, 303 Mont. 274, 16 P.3d 1002, and *In re Engel (Engel I)*, 2008 MT 42, 341 Mont. 360, 177 P.3d 502.

By letter dated Jan. 6, 2009, the ODC dismissed Best's complaint after determining that there was no conflict. The ODC noted that because the hospital's attorneys "represent the association and not the individual members," the pending litigation between Dr. Samuel and the hospital did not involve the MMA. Best did not appeal this decision.

Prior to her receipt of the ODC's decision, Best had written to the MMA seeking assistance with Dr. Samuel's case against the hospital, ostensibly because of the broad significance of the issues in the case to the medical profession. In her letter to the MMA, Best pointed out that it was her understanding that the hospital was represented by the same attorneys that represent the MMA.

On April 2, 2009, the hospital's attorneys filed a complaint with the ODC against Best asserting that Best sent the letter to the MMA for the purposes of causing the hospital's attorneys "difficulties in [their] relationship with the MMA." They also alleged that because Dr. Samuel joined the MMA the very same day that Best mailed her letter accusing the hospital's attorneys of a conflict of interest, Best and Dr. Samuel had "contrived a conflict of interest . . . for the purpose of harassing and intimidating" the hospital's attorneys. Specifically, the complaint accused Best of violating MRPC 3.1 (Meritorious Claims and Contentions), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 4.1 (Truthfulness in Statement to Others).

The ODC investigated the complaint against Best and presented it to the COP's Review Panel with the recommendation that the complaint be dismissed with a letter of caution. On Sept. 28, 2009, the Review Panel considered the matter and agreed that the allegations against Best of violations of MRPC 3.1, 3.3, 3.4, and 4.1 should be dismissed. However, the

Review Panel concluded that the undisputed evidence clearly and convincingly proved that Best sought to interfere with the attorney-client relationship between the hospital's attorneys and the MMA, thereby violating MRPC 4.2 (Communication with Person Represented by Counsel). The Review Panel recommended a private admonition.

Thereafter, the Adjudicatory Panel of the COP reviewed the matter and also determined that Best violated MRPC 4.2. The Adjudicatory Panel approved the Review Panel's recommendation of a private admonition.

On Dec. 22, 2009, the COP issued an Order to Appear stating that it had reviewed the complaint and the report from the ODC and that it had found "just cause" for a private admonition of Best under Rule 13 of the Montana Rules for Lawyer Disciplinary Enforcement (RLDE) (2002). The order directed Best to appear on Jan. 21, 2010, for the admonition. Best's petition to this Court followed.

Issue 1. Whether this Court should accept jurisdiction of Best's petition.

Best requests that we assume jurisdiction of this original proceeding because the regulation of the practice of law is exclusively within the jurisdiction of this Court, the issues presented are of statewide importance, and there is no other adequate or speedy remedy. As Best notes in her petition, the preamble to the RLDE provides the following:

The Supreme Court of the State of Montana . . . declares that it *possesses original and exclusive jurisdiction and responsibility* under Article VII, Section 2(3), of the 1972 Montana Constitution and the provisions of Chapter 61, Title 37, Montana Code Annotated, in addition to its inherent jurisdiction, *in all matters involving admission of persons to practice law in the State of Montana, and the conduct and disciplining of such persons.* [Emphasis added.]

Article VII, Section 2(3) of the Montana Constitution provides that this Court "may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members." Thus, this Court has a "constitutional mandate to fashion and interpret the Rules of Professional Conduct." *In re Rules of Professional Conduct*, 2000 MT 110, ¶ 9, 299 Mont. 321, 2 P.3d 806.

In addition, we have determined that "the regulation of lawyers in Montana 'is a matter peculiarly within the inherent power of this Court, subject, of course, to constitutional guarantees . . .'" *In re Engel (Engel II)*, 2008 MT 215, ¶ 6, 344 Mont. 219, 194 P.3d 613, cert denied, ___ U.S. ___, 129 S. Ct. 619 (2008) (quoting *Goetz v. Harrison*, 153 Mont. 403, 404, 457 P.2d 911, 912 (1969)).

Furthermore, this Court has the authority to entertain original proceedings and to exercise supervisory control under Article VII, Section 2 of the Montana Constitution and M. R. App. P. 14(3) and (4) (formerly M. R. App. P. 17(a)). See *Inter-Fluve v. Eighteenth Jud. Dist. Court*, 2005 MT 103, ¶ 17, 327 Mont. 14, 112 P.3d 258; *Plumb v. Fourth Jud. Dist. Court*, 279 Mont. 363, 369, 927 P.2d 1011, 1015 (1996). In *Plumb*, we recognized that original jurisdiction may be exer-

cised where constitutional issues of major statewide importance are involved; where the case involves purely legal questions of statutory and constitutional construction; and where urgency and emergency factors make the normal appeal process inadequate. *Plumb*, 279 Mont. at 369, 927 P.2d at 1015. It is not necessary for all three circumstances to be present for this Court to exercise jurisdiction. *Plumb*, 279 Mont. at 369, 927 P.2d at 1015.

Best was ordered to appear before the Commission on Practice on Jan. 21, 2010, for a private admonition. That order stated that the COP, in making its determination, considered the complaint and the report prepared by the ODC. However, as Best noted in her petition to this Court, she was denied access to the ODC's report and recommendation, and neither the ODC nor the COP identified the conduct or the rule which they claim she violated. Indeed, Best was not made aware of the actual reason for the disciplinary action to be taken against her until the COP filed its response to her petition before this Court.

As Best stated in her petition, "[p]ermitting private admonitions without regard to due process poses serious detriment to all Montana lawyers, and chills responsible and professional practice of law. This inures to the detriment of all Montana citizens."

We agree with Best that this case involves issues of major statewide importance and we accept jurisdiction of her petition.

Issue 2: Whether the COP violated Best's right to due process.

The COP ordered Best to appear before it for a private admonition. Private admonitions are provided for in RLDE 13 which states:

At any time before initiation of formal disciplinary proceedings, an Adjudicatory Panel, in its discretion, may give a private admonition to the lawyer in the name of the Supreme Court . . . Thereupon, the matter shall be deemed terminated except that the [COP] shall maintain a record of such admonition which record may be considered by Adjudicatory Panels and Review Panels in determining discipline to be recommended or imposed in any subsequent disciplinary proceeding involving the lawyer. Private admonitions are not appealable.

Best maintains that because she had no opportunity to see or present evidence, to confront or cross-examine witnesses, or to appeal, she was deprived of her right to due process of law.

Article II, Section 17 of the Montana Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law."

No absolute standard exists for what constitutes due process. *McDermott v. McDonald*, 2001 MT 89, ¶ 10, 305 Mont. 166, 24 P.3d 200. The process due in any given case varies according to the factual circumstances of the case, the nature of the interests at stake, and the risk of making an erroneous decision. *Sage v. Gamble*, 279 Mont. 459,

465, 929 P.2d 822, 825 (1966). We have stated previously in the context of a lawyer disciplinary proceeding that due process requires notice and an opportunity to be heard. *Goldstein v. Commission on Practice*, 2000 MT 8, ¶ 40, 297 Mont. 493, 995 P.2d 923.

Engel II, ¶ 23. In addition, due process requires a fair and impartial tribunal, *State v. Moore*, 268 Mont. 20, 51, 885 P.2d 457, 477 (1994), overruled on other grounds by *State v. Gollehon*, 274 Mont. 116, 906 P.2d 697 (1995), and a fair hearing, *Matter of Goldman*, 179 Mont. 526, 551, 588 P.2d 964, 978 (1978).

While the ODC concedes that “the specific grounds for the [COP’s] decision to give Best a private admonition were not communicated to her,” it argues that because this case involves informal discipline, Best’s due process rights are minimal. According to the ODC, minimal due process rights exist at this informal stage because lawyers are not in danger of losing their licenses and any discipline imposed by the COP is not public. However, private admonitions are still a form of discipline. *In re Potts*, 2007 MT 236, ¶ 29, 339 Mont. 186, 171 P.3d 286. And, as Best points out, private admonitions include the potential for the imposition of costs; are maintained as a record by the COP in order to increase discipline in some future proceeding; can cause attorneys to incur substantial costs in hiring legal counsel; are required, in some cases, to be disclosed to malpractice insurance carriers and to other jurisdictions on pro hac vice or admission applications in other states; and can result in reciprocal jurisdiction in another state.

The ODC further argues that Best received all the due process necessary because she was provided a copy of the informal complaint against her and she was given an opportunity to respond to the complaint. What the ODC fails to point out is that the informal complaint did not include any information on the rule that Best was eventually determined to have violated or that the basis for the purported violation was “interference” with the attorney-client relationship between the Hospital’s attorneys and their other client, the MMA. Moreover, Best was never given an opportunity to respond to this new charge.

“[D]ue process requires fundamental fairness of procedure which includes notice.” *Gazette v. State ex rel. Com’n on Practice*, 2008 MT 287, ¶ 12, 345 Mont. 385, 190 P.3d 1126 (citing *In re B.N.Y.*, 2003 MT 241, ¶ 21, 317 Mont. 291, 77 P.3d 189; *In re A.F.-C.*, 2001 MT 283, ¶ 50, 307 Mont. 358, 37 P.3d 724). Simply stated, due process requires notice of the alleged misconduct charged. *In re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1226 (1968).

The lawyer disciplinary board in *Ruffalo* added a misconduct charge after it had heard the testimony against a lawyer. The United States Supreme Court stated in that case that a lawyer in a disciplinary proceeding is “entitled to procedural due process, which includes fair notice of the charge.” *Ruffalo*, 390 U.S. at 550, 88 S. Ct. at 1226. The Supreme Court further stated that the charge must be known before the proceedings begin to avoid laying a trap for the accused. *Ruffalo*, 390 U.S. at 551, 88 S. Ct. at 1226. The Supreme Court held in *Ruffalo* that the absence of fair notice “as to the reach of the grievance

procedure and the precise nature of the charges” deprived the lawyer of procedural due process. *Ruffalo*, 390 U.S. at 552, 88 S. Ct. at 1226.

In the instant case, the COP admits that neither it nor the ODC notified Best of the COP’s consideration of Best’s letter to the MMA in light of MRPC 4.2 before scheduling Best’s private admonition. The COP claims that “[t]hat would have been explained confidentially during the private admonition in an effort to instruct and improve Best’s practice of law.” The COP further admits that had it privately admonished Best, she would not have had a hearing, the right to confront witnesses, or the right of appeal.

Best was not put on notice that she was charged with a violation of MRPC 4.2. To now punish her for a violation of that rule without an opportunity to respond to the charge would be a violation of her entitlement to due and fair process.

Accordingly, we hold that the COP violated Best’s right to due process.

Issue 3. Whether the COP can, sua sponte, charge a lawyer with a violation of the Montana Rules of Professional Conduct outside of any violation alleged in a complaint or report by the ODC.

The COP is an arm of this Court. Its function is to “hear and decide complaints and in appropriate cases . . . make recommendations to the Court for discipline.” RLDE 1 (emphasis added); *In re Creation of Office of Discip. Counsel*, 2001 MT 257, ¶¶ 18-19, 307 Mont. 210, 53 P.3d 861. In addition, the RLDE provides that the ODC “shall perform *all prosecutorial functions*,” RLDE 5(B) (emphasis added). Nothing in the RLDE permits the COP to act as a complainant in disciplinary proceedings. On the contrary, the RLDE provides that “[p]rosecutorial and adjudicatory functions shall be separated and managed to secure responsiveness, efficiency and fairness.” RLDE 1.

RLDE 11 provides the rules for review of an existing complaint, procedural determinations, referral of that complaint for investigation, dismissal, requesting that the ODC draft a formal complaint for further action, and recommendation of action to an Adjudicatory Panel. In this case, the ODC recommended no discipline. Notwithstanding, the COP ignored the ODC’s recommendation and, instead, decided to draft its own complaint and then act on its own complaint.

When investigatory and adjudicatory functions are combined, the risk of unfairness from the combination of those functions may, under certain circumstances, be too high. See *Goldstein*, ¶ 27. This is just such a circumstance. We agree with Best that the COP exceeded its authority in this case when it acted outside the four corners of the original complaint to charge Best with violation of a completely different rule and then gave Best no opportunity to respond to this new charge.

Having determined that Best’s right to due process was violated, we do not reach the other grounds for relief which she claims and argues in her petition.

Accordingly, based on the foregoing,

IT IS ORDERED that the disciplinary action against Best is DISMISSED WITH PREJUDICE.

○

Court disbands the UPL Commission

Complaints will now be handled by Office of Consumer Protection

In an April 20 order, the Montana Supreme Court dissolved its Commission on Unauthorized Practice, effective immediately, after the state Attorney General's Office of Consumer Protection agreed to investigate complaints of unauthorized practice of law. The Court's order follows:

On Feb. 4, 2009, the Commission on the Unauthorized Practice of Law (CUPL) filed a Petition and Memorandum in Support of Revision of the Rules on the Unauthorized Practice of Law. The proposed rule changes were attached to the Petition. On Feb. 19, 2009, this Court issued its order submitting the Petition and proposed rule changes for public comment. Over the period during which public comment was accepted (Feb. 19, 2009, through April 20, 2009), attorneys, other interested persons, organizations, institutions, businesses, and local governments filed voluminous, thoughtful comments with the clerk of this Court. Indeed, we cannot recall a matter on which there has been more comment by members of the public on a matter before us. On June 23, 2009, the CUPL filed its response to the comments and matters raised therein.

Subsequently, on March 19, 2010, the CUPL filed its Motion to Withdraw the Petition and Memorandum in Support and to Dissolve the Commission. To this latter document, the CUPL attached a Memorandum of Understanding entered into on March 19, 2010, between the State Bar of Montana and the Attorney General's Office of Consumer Protection. Under that Memorandum of Understanding, the Office of Consumer Protection has agreed to receive, process, evaluate, and – in appropriate cases – assign attorneys to address complaints of unauthorized practice of law by nonattorneys.

The Office of Consumer Protection has further agreed to direct complaints of unauthorized practice of law by attorneys not licensed in Montana to the State Bar of Montana for possible referral to the Office of Disciplinary Counsel.

We conclude that the CUPL's Motion should be granted. However, in order to explain our decision in this regard, we summarize the evolution of this matter following the filing of the CUPL's Petition.

Background

Following the close of the comment period on the Petition, we carefully studied and deliberated the comments and the

CUPL's response. As a result of these deliberations and consultations with the CUPL, the State Bar of Montana, and the Montana Attorney General, we reached several conclusions, which are summarized here.

First, we conclude that this Court is not authorized either directly or through a Commission to regulate the “unauthorized practice of law.” Article VII, Section 2(3) of Montana's Constitution empowers this Court to “make rules governing appellate procedure, practice and procedure for all other courts, *admission to the bar and the conduct of its members* [subject to the legislature's power to disprove rules which we adopt]” (italics added). Pursuant to this Constitutional scheme, the legislature has historically defined what constitutes the

practice of law (§ 37-61-201, MCA) (The legislature has also enacted other laws under Title 37, Ch. 61, MCA, which are not at issue here) and has charged the executive branch with the duties of investigating and prosecuting the “unauthorized” practice of law (§ 37-61-214, MCA).

Second, we conclude that the array of persons and institutions that provide legal or legally-related services to members of the public are, literally, too numerous to list. To name but a very few, by way of example, these include bankers, realtors, vehicle sales and finance persons, mortgage companies, stock brokers, financial planners, insurance agents, health care providers, and accountants. Within the broad definition of § 37-61-201, MCA, it may be that some of these professions and businesses “practice law” in one fashion or another in, for example, filling out legal forms, giving advice about “what this or that means” in a form or contract, in estate and retirement planning, in obtaining informed consent, in buying and selling property, and in giving tax advice. Federal and state administrative agencies regulate many of these professions and businesses via rules and regulations; federal and state consumer protection laws and other statutory schemes may be implicated in the activities of these professions and fields; and individuals and non-human entities may be liable in actions in law and in equity for their conduct.

Furthermore, what constitutes the practice of law, not to mention what practice is authorized and what is unauthorized is, by no means, clearly defined.

Finally, we are also mindful of the movement towards nationalization and globalization of the practice of law, and with the action taken by federal authorities against state attempts to localize, monopolize, regulate, or restrict the interstate or international provision of legal services.

Third, we conclude that this Court has no Constitutional authority to define, generally, what constitutes the practice of

law, except within the context of a case or controversy properly before this Court. Moreover, it follows that this Court has no Constitutional authority to define the “unauthorized practice of law,” again, except within the context of a case or controversy properly before this Court. And, finally, it follows

that we have no Constitutional authority, except within the context of a case or controversy properly before this Court, to sanction or remedy the “unauthorized practice of law.”

Fourth, we conclude that our proper role in matters involving the practice of law or the unauthorized practice of law is to exercise the authority granted to us under Montana’s Constitution. We will hear and determine cases and controversies properly before the Court and we will continue to exercise our exclusive, original jurisdiction to supervise all other courts of Montana and the admission to, and conduct of members of, the Bar, pursuant to Article VII, Section 2(1), (2), and (3) of Montana’s Constitution. In this regard, we conclude also that it is appropriate that we adopt rules for the regulation of the practice of law in Montana by Montana attorneys in addition to those already adopted, and we will do so by subsequent order.

Fifth and finally, based upon the foregoing, we conclude that the CUPL’s instant Motion is well taken and should be granted. In so doing, we acknowledge the excellent, and often frustrating, work of the CUPL over the years, and we thank CUPL co-chairs Carol Bronson and John Connor and all others who have served on the CUPL for their service to this Court and to the people of Montana. We also commend the State Bar of Montana and the Attorney General for their work toward establishing a better way of handling complaints of unauthorized practice of law.

Therefore, good cause having been shown,

IT IS ORDERED that the CUPL’s Motion is GRANTED. The CUPL is dissolved effective April 20, 2010, and its Petition is dismissed as moot. This Court’s Feb. 15, 2000, order adopting rules for the CUPL is vacated and all rules for the CUPL are repealed. ○

Those who served

The State Bar thanks the following for serving on the Commission on the Unauthorized Practice of Law:

Chair Carol A. Bronson,
Great Falls

Vice Chair John P. Connor
Jr., Helena

Patrick Dougherty, Missoula
Lee Berger, Kalispell

Tom Marra, Great Falls

Loren Solberg, Choteau

Angela A. Zielinski, Missoula

Marie Connolly, State Bar
staff member for the
Commission

Colleagues think Thomas right for Supreme Court

By **Lorna Thackeray**
of the Billings Gazette



Judge Thomas

Sidney R. Thomas, a federal appeals court judge from Billings, may not have the traditional Eastern elite background of a Supreme Court justice, but Montanans who work with him say it would be hard to find a better candidate for the highest court.

Thomas, 56, who was born in Bozeman and graduated from Montana State University and the University of Montana Law School, is one of 10 candidates President Barack Obama is considering as a replacement for retiring U.S. Supreme Court Justice John Paul Stevens.

Obama is expected to announce his selection around the end of May.

“If I were the president and I wanted to get somebody through before the end of this summer, I would say he’d be using his head in nominating Sid, or his advisers would,” said Montana’s chief U.S. district judge, Richard Cebull of Billings. “I think Sid would have a lot easier time getting through the Senate than some other people I’ve read about. He’s got friends

More JUDGE THOMAS, Page 25

Kirscher put on 9th Circuit bankruptcy appeal panel

Montana’s chief bankruptcy judge, Ralph Kirscher of Butte, has been appointed to the 9th Circuit Bankruptcy Appellate Panel (BAP), which resolves appeals arising out of bankruptcy court decisions.

Judge Kirscher succeeds Bankruptcy Judge Dennis Montali of California. His appointment was effective May 1. Judge Kirscher will continue in his current job in Montana; the 9th Circuit appointment is an additional duty.



Judge Kirscher

Judge Kirscher, 58, is the only full-time judge sitting on the U.S. Bankruptcy Court for the District of Montana, which handled 2,771 cases in 2009. He was appointed to the bankruptcy bench on Nov. 18, 1999, and has been serving as chief bankruptcy judge since then. The Montana court also relies on recalled Bankruptcy Judge John L. Peterson.

Judge Kirscher chaired the executive committee of the 9th Circuit Conference of Chief Bankruptcy Judges from 2004 to

More JUDGE KIRSCHER, Page 25

Withholding psychotherapy records from a client

The following State Bar ethics opinion was delivered by the State Bar's Ethics Committee in April:

Ethics Opinion 100412

Facts

A non-profit state-wide legal organization represents clients with mental health issues in their efforts to obtain social security benefits. To effectively advocate, the organization has their client/patient sign what it believes is a Health Insurance Portability and Accountability Act (HIPAA) compliant release that asks for psychotherapy notes. The client/patient is aware that the organization is asking for these and that the organization may potentially submit the material to the tribunal. HIPAA specifically recognizes that there are situations where those with mental impairment are not served by seeing their psychotherapist's notes, and provides the means for a health care provider to protect against disclosure to the patient (subject to exceptions, identified further below). See also, Montana Uniform Health Care Information Act, MCA 50-16-501 et seq., and 50-6-801 and specifically MCA § 50-16-542; See also MCA 53-21-165 and 166. The organization was recently denied psychotherapist notes by a mental health services provider asserting that the Montana Rules of Professional Conduct mandate that the client/patient have access to all information in their attorney's file and that the attorney cannot prevent access to the notes by the client/patient. The organization disagrees, explaining that it needs the information to advocate for the client/patient's social security benefits. The organization's attorneys explain to their clients that it is within their attorney's rights to keep the psychotherapy notes from the client/patient. To date, keeping the records from the client/patient has not been an issue because the issue is explained to the clients and the clients accept that it is in their best interest not to see their psychotherapy notes.

Question presented

When representing a client in a social security matter, does an attorney have a right to withhold a client's psychotherapy records from a client under the Montana Rules of Professional Conduct?

Short answer

In this limited context, yes. The Committee accepts as an assumption that there are regulatory procedures within HIPAA that define the restrictions surrounding psychotherapy notes.¹ Subject to those procedures, an attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation – including restricting access to psychother-

apy notes. Further, a client is not entitled to the complete attorney file, particularly if there is language in the attorney fee agreement – to which the client agrees – setting forth that the client is not entitled to a specific portion of the file.

Discussion

The general rule is that clients are entitled to their attorney's file upon termination of their relationship with an attorney. There are, however, some limited exceptions to this general rule and what a client is entitled to in connection with litigation. For example, a lawyer is entitled to retain and is not obliged to deliver to a client or former client papers or materials personal to the lawyer or created or intended for internal use by the lawyer. A discussion of these limitations is found in Ethics Opinion 950221.

Similarly, the regulatory mechanisms of HIPAA provide tight restrictions on access to psychotherapy records—for the patient/client and for that client's the patient's attorney. Notably, however, the HIPAA regulations concerning psychotherapy notes specifically provide for use discovery of the notes in judicial and administrative proceedings, with many provisions² with restrictions. See, e.g. 45 CFR 164.508 and 164.512(e). The HIPAA regulatory system recognizes the necessity of a patient's attorney and a tribunal's access to the reality that psychotherapist's notes may be discoverable and used in litigation just as other health care information is used to allow the attorney to advocate their client's claim, while blocking access of the same information to the patient.

The Montana Rules of Professional Conduct strike a similar balance. There is no mandate in the Rules of Conduct that require disclosure of psychotherapist's notes obtained by the attorney on a client's behalf. As the information moves from the psychotherapist to an adjudicator, there are filters that can be put in place to protect a patient/client from this most sensitive information.

Montana Professional Conduct Rule 1.16 (d) provides that upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client's interests. Included within those is the obligation to surrender papers and property "to which the client is entitled." Neither the HIPAA regulations nor the Montana Uniform Health Care Information Act nor Rules of Professional Conduct provide an entitlement to a client of their psychotherapist's notes.

Lawyers routinely act as custodians, conduits, and safe keepers of clients' property, including client files. Lawyers have a duty to deliver and account for a client's property, including the file. The duty is triggered when the lawyer's custodial obligations have come to a close and the client is entitled to take possession. But the Rules of Professional Conduct also set forth several common-sense exceptions to the prompt disbursement requirement: (1) when the agreement

with the client provides otherwise; (2) when the rule states otherwise (most notably, when there is a legitimate dispute as to ownership of the property); and (3) when otherwise permitted by law. The “when otherwise permitted by law” exception encompasses the protections addressed in the HIPAA regulations.

Montana Professional Conduct Rule 1.2 addresses the scope of representation and allocation of authority between a lawyer and client. Rule 1.2(a) provides in part that a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4 on communication, shall consult with the client as to the means by which they are to be pursued. The rule also provides that “A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.”

The organization in the facts presented here can include specific language in their attorney-client representation agreement that there are limitations on access to psychotherapy notes. The agreement can further explain that the lawyer is bound to follow the constraints imposed by state and federal law pertaining to health care records, and that the constraints override the client’s access to the notes. If the attorney explains the limitations on their responsibilities to the client in this fashion, the client has no claim to the restricted portion of the file upon termination of the representation. In addition, the organization can enter a separate agreement with the mental health facility, providing that psychotherapy notes will not be released to the client/patient. Case law and other state’s ethics

opinions are clear that if a lawyer has an agreement with a non-client regarding disposition of funds or property, the lawyer must honor that agreement.²

THIS OPINION IS ADVISORY ONLY

Notes

1. It is not within the Ethics Committee’s purview to interpret HIPAA or the regulations promulgated thereunder, nor the relationship between HIPAA and the Montana Uniform Health Care Information Act.

2. See South Carolina Ethics Op. 93-14 (1993) (attorney who agreed to honor all written statements signed by client regarding lien for medical care provider may ignore client’s instruction to do otherwise); Washington Ethics Op. 185 (if lawyer guaranteed payment to creditor, he must—after advising client of effect of such guarantee—pay creditor unless there is good faith dispute as to amount of debt); see also ABA Informal Ethics Op. 1295 (1974) (not improper for lawyer to allow client to sign agreement with physician directing lawyer to withhold from future recovery funds necessary to pay physician’s bill. If the lawyer ignores a duty owed to a third person and pays the disputed amount directly to the client, the lawyer may be held liable to the nonclient. See *Kaiser Found. Health Plan Inc. v. Aguiluz*, 54 Cal. Rptr.2d 665 (Cal. Ct. App. 1996) (personal injury lawyer who knew that client had agreed to repay health care provider from settlement proceeds but who nevertheless paid entire amount of settlement to client anyway is liable to client’s creditor for amount that client owes creditor), disapproved on other grounds in *Snukal v. Flightways Mfg. Inc.*, 3 P.3d 286 (Cal. 2000); *Herzog v. Irace*, 594 A.2d 1106 (Me. 1991) (attorneys held liable for breach of assignment; court rejected lawyers’ argument that they must ethically follow client’s instruction to ignore valid assignment).

February 2010 Bar Exam Successful Examinees

The February Bar Exam took place Feb. 22-24 in Helena. Fifty-five examinees sat for the exam and 45 passed.

The Montana Supreme Court will hold a swearing-in ceremony for the successful examinees on Tuesday, May 4, at 11 a.m. in the Supreme Court Chambers. New attorneys in federal court will be sworn in at the Paul G. Hatfield Courthouse at 2 p.m. the same day.

Those passing the Bar Exam were:

Alsentzer, Guy
Baldwin, Timothy
Bjorkman, John
Brodsho, Kelsey
Brown, Bruce
Carlson, Katie Jo
Cowan, Patrick
Cromwell, Charles
Curtis, Charles

Cycholl, Tyra
Decker, Benjamin
Galiher, Louise
Greenwell, Robert
Griffel, Lindsay
Griffith, Margaret
Henderson, Jason
Hill, Amanda
Jacobs, Bruce
Karr, Christopher
Kolter, Benjamin
Libby, Kasey
Mayfield, Shannon
McCrady, Erin
Meyer, John
Myers, John
Norwood, Tyler
O’Brien, Kelly
O’Neil, Brett

Pebley, Tyler
Peters, Jodi
Peters, Sarah
Quinn, Marcel
Renner, Scott
Roberts, Kevin
Rossi, Sarah
Steigerwalt, Debra
Strickland, Wilton
Thibodeau, James
Thorne, Jonathan
Tucker, Michael
Valentine, Gabriel
Ward, David
Warzecha, Timothy
Weiss, Laura
Whatley, Stephanie

Nominations sought for 8 trustees, 2 officers

The State Bar of Montana will take nominations through July 9 for five trustee positions and the offices of president-elect and ABA delegate for the Bar elections in September.

On the nomination form at right, a candidate for trustee must submit signatures of at least 10 active State Bar members who live in the candidate's area. Candidates for president-elect and secretary-treasurer must have 25 signatures.

Up for election are:

- One trustee in Area A (Flathead & Lincoln counties).
- Three trustees in Area B (Missoula, Sanders, Lake, Mineral & Ravalli counties).
- One trustee in Area C (Silver Bow, Powell, Granite,

The nomination form

Deer Lodge, Jefferson, Beaverhead & Madison counties).

- Two trustees in Area D (Cascade, Teton, Pondera, Glacier & Toole counties).
- Two trustees in Area G (Gallatin, Park & Sweetgrass counties).

The filing deadline for the nominating petitions is July 9. Ballots will then be mailed to Bar members by Aug. 10, and must be returned postmarked or hand-delivered to the Bar by Aug. 31. The ballots will be counted on Sept. 10. ○

Lawyer Assistance gets a local look

The statewide committee running the Montana Lawyer Assistance Program (MLAP) has created nine regional committees that will coordinate volunteers help attorneys and judges overcome problems with addictions and mental impairments.

In a March meeting to map out MLAP's future, the MLAP Committee decided to revamp the 20-year-old Lawyer Helping Lawyer Network (LHL) with a more locally-based structure. The Committee is creating a three-person LHL committee to coordinate volunteer assistance in each of the following

Judicial Districts:

Flathead: Districts 11, 19, and 20
 Missoula: Districts 4 and 21
 Butte: Districts 2, 3, and 5
 Bozeman: Districts 6 and 18
 Great Falls: Districts 8 and 10
 Havre: Districts 9 and 12
 Billings: Districts 13 and 22
 Helena: Districts 1 and 14
 Eastern Montana: Districts 7, 15, 16, and 17

It is anticipated that most of the regional committee members will be lawyers, but there may be some non-lawyers who are well connected to the

addiction or mental-health recovery community. It is also desired that the committee members be familiar with recovery issues, and how those issues relate to attorneys. The committees will be available to assist the MLAP Director Mike Larson with issues including substance abuse, mental illness, other types of dependency and general stress and burnout.

It is important for current volunteers on the network to reaffirm their commitment to this program, Mr. Larson said. Please review the nine regional committee areas above. If you are still interested in volunteering on LHL, or if you are newly interested, please contact Mike Larson at (406) 660-1181. ○

Karla Gray Award to honor judge working for access to the courts

The Karla M. Gray Equal Justice Award will be presented at the Annual Meeting of the State Bar of Montana in September. The annual award honors a judge who has demonstrated dedication to improving access to Montana courts by:

- Personally accomplishing noteworthy work improving access for all people, regardless of income, to the Montana court system.
- Taking part in local access-to-justice efforts, including program development, cooperative efforts between programs, and support for community outreach efforts to improve understanding of and access to the courts.
- Actively supporting citizen involvement in the judicial system

- Actively committing to increasing involvement of volunteer attorneys in representing the indigent and those of limited means.

- Making other significant efforts that exhibit a long-term commitment to improving access to the judicial system.

Winner of the award will be selected by the State Bar Executive Committee after receiving recommendations from the State Bar Access to Justice Committee, the Supreme Court Equal Justice Task Force and the Supreme Court Commission on Self-Represented Litigants.

If you want to nominate a judge contact: Patty Fain or Peggy Probasco, co-chairs of the State Bar Access to Justice Committee; Andrew King-Ries or Bernie Franks-Ongoy, co-chairs of the Supreme Court's Equal Justice Task Force; or Judy Meadows or Judge Russell Fagg, co-chairs of the Supreme Court's Commission on Self-Represented Litigants.

See more award nomination details on Page 14-16

State Bar officer & trustee election

2010 nomination petition

I, _____, residing at _____, Montana, am a candidate for the office of () President-Elect; () ABA Delegate; () Area A Trustee; () Area B Trustee; () Area C Trustee; () Area D Trustee; () Area G Trustee, at the election to be held on Sept. 10, 2010. I am a resident of Montana and an active member of the State Bar of Montana. I request my name be placed on the ballot.

Signature _____

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

NAME

ADDRESS

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____

Return to State Bar of Montana, PO Box 577, Helena MT 59624. Must be postmarked no later than July 9, 2010.

2010 William J. Jameson Award

This is the highest honor bestowed by the State Bar of Montana. The Past President's Committee will be guided in its selection by the extent to which, in its judgment, the candidate:

1. Shows ethical and personal conduct, commitment and activities that exemplify the essence of professionalism.
2. Works in the profession without losing sight of the essential element of public service and the devotion to the public good.
3. Possesses an unwavering regard for the Rules of Professional Conduct, the Creed of Professionalism, the State Bar's Guidelines for Relations Between and Among Lawyers, and the State Bar's Guidelines for Relations Between Lawyers and Clients.
4. Assists other attorneys and judges in facing practical

and ethical issues.

5. Participates in programs designed to promote and ensure competence of lawyers and judges.
6. Supports programs designed to improve the discipline process for judges and attorneys.
7. Participates in programs that aid the courts in ensuring that the legal system works properly, and continually strives for improvements in the administration of justice.
8. Is actively involved with public and governmental entities to promote and support activities in the public interest.
9. Actively participates in pro bono activities and other programs to simplify and make less expensive the rendering of legal services.
10. Actively participates in programs designed to educate the public about the legal system.

Nominee: _____

Address: _____

Please describe activities you believe qualify your nominee for the Jameson Award. Please attach additional pages as needed, and other supporting documents. Note: Awards will not be made posthumously and may be given to more than one person.

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations must be postmarked no later than **June 15**. Send them to:

**Jameson Award
State Bar Past Presidents Committee
P.O. Box 577
Helena MT 59624
or e-mail mailbox@montanabar.org**

George L. Bousliman Professionalism Award

The award will recognize lawyers or law firms who have:

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

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

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

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

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

- Subordinating business concerns to professional concerns.

Nominee/Individual or firm: _____

Address: _____

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

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations and supporting documents will not be returned. Send them no later than **June 15** to:

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

AWARD NOMINATION FORMS

Neil Haight Pro Bono Award

The State Bar Access to Justice Committee is seeking nominations for the annual Neil Haight Pro Bono Award.

The deadline for nominations is July 1.

An award recipient may be a lawyer who provides outstanding legal services to the indigent, or another individual such as a court reporter, paralegal, psychologist, or social worker who has provided pro bono services in aid of pro bono legal representation in Montana.

Nominations also are accepted for law firms, teams of lawyers, and associations of Montana lawyers and pro bono programs, who did not receive any form of compensation or academic credit for doing pro bono work, and the work was not a non-legal public service.

Attorney nominees must be admitted to practice in Montana. Nominees cannot be employees of organizations that provide free or low-cost services to the poor.

Nominations should include a description of pro bono services the nominee has provided, the number of hours he or she has donated and the approximate number of cases involved. Also include a brief description of the nominee's professional career.

Nominee: _____

Address: _____

Attach extra sheet with the information required in the opening paragraphs of this form.

Your Signature: _____

Print Your Name: _____

Your address: _____

Your Phone: _____

Please mail the nomination by July 1, to:

**Pro Bono Awards
c/o Patricia L. Fain
State Pro Bono Coordinator
PO Box 21304
Billings MT 59104-1304**

STATE BAR CALENDAR

May 15

CLE affidavits due back at State Bar

May 21

State Bar Executive Committee meeting, 8 a.m., Gallatin Gateway Inn

May 21-22

State Bar Board of Trustees strategic planning meeting, 10 a.m., Gallatin Gateway Inn

June 2

Commission on Self-Represented Litigants meeting, 1 p.m., State Law Library, Helena

June 3

Practice & Technology Management CLE, Hilton Garden Inn, Missoula

June 3

Access to Justice Committee meeting, Butte

June 3-5

Jackrabbit Bar Conference, Fargo, N.D.

June 4

Practice & Technology Management CLE, Hilton Garden Inn, Great Falls

June 25

State Bar Road Show, Holiday Inn, Bozeman

New Lawyers' Workshop (formerly Rookie Camp), Holiday Inn, Bozeman

July 26-28

Bar Exam, Missoula

Upcoming CLE seminars for Montana lawyers

CLEs with Ethics & SAMI* credits

**Substance Abuse / Mental Impairment*

5.0 Ethics credits required every 3 years – 1.0 of them must be a SAMI credit. See www.montanabar.org for SAMI updates.

May 10-11 Helena – Carroll College

Mediating the Civil Case 22.50 CLE credits, including 2.50 Ethics (no SAMI) credits. Presented by Montana Mediators, (406) 839-3323

May 17 Billings – MSU Billings

Mediating the Civil Case 22.50 CLE credits, including 2.50 Ethics (no SAMI) credits. Presented by Montana Mediators, (406) 839-3323

May 21-22 Helena – Holiday Inn Downtown

Understanding, Attacking & Winning DUI Cases 12.0 CLE credits, including 1.0 Ethics (no SAMI) credits. Presented by Fact Finder Investigations, (208) 340-2933

May 24-28 Missoula – UM School of Law

Advanced Trial Advocacy Program 30.0 CLE credits, including 1.0 Ethics (no SAMI) credit. Presented by the University of Montana School of Law, (406) 243-4311

May 26 Helena – Carroll College

Family Mediation/Divorce 15.0 CLE credits, including 1.50 Ethics (no SAMI) credits. Presented by Montana Mediators, (406) 839-3323

June 1 Billings – MSU Billings

Family Mediation/Divorce 15.0 CLE credits, including 1.50 Ethics (no SAMI) credits. Presented by Montana Mediators, (406) 839-3323

All other CLEs

April 30 Glendive – Dawson County Courthouse

Navigating the Changes in Commitment Laws 4.0 CLE credits. Presented by the 7th Judicial District Court, (406) 377-2666

May 4 Helena – Metcalf Building, Capitol Complex

Montana's Wrongful Discharge Act 8.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

May 21 Billings – Billings Hotel & Convention Center

Child Development: Implications for the Court in Parenting Decisions 3.0 CLE credits. Presented by Intermountain, (406) 442-7949

Other web & phone CLEs for Montana credit are:

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

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

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

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

May 26 Helena – Holiday Inn Downtown

Montana Water Laws & Regulations 6.0 CLE credits. Presented by HalfMoon LLC, (715) 835-5900

May 26 Teleconference & webcast

Paralegal Seminar on Practical Recordkeeping Strategies 1.0 CLE credit. Presented by the Institute for Paralegal Education, (800) 793-5274

June 3 Missoula – Hilton Garden Inn

Practice & Technology Management 6.75 CLE credits. Presented by the CLE Institute of the State Bar of Montana and the Technology Committee, (406) 447-2206. See details of program, speakers and registration at www.montanabar.org

June 4 Great Falls – Hilton Garden Inn

Practice & Technology Management 6.75 CLE credits. Presented by the CLE Institute of the State Bar of Montana and the Technology Committee, (406) 447-2206. See details of program, speakers and registration at www.montanabar.org

June 4 Bozeman – call presenter for location

Child Development: Implications for the Court in Parenting Decisions 3.0 CLE credits. Presented by Intermountain, (406) 442-7949

June 15 Teleconference

GRITs & GRATs for Traditional Family Planning 1.50 CLE credits. Presented by Cannon, (800) 775-7654

State Bar of Montana Bookstore

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

LEGAL PUBLICATIONS

Montana Citizens' Guide to the Courts

2010, 20 pages, print copy \$10
Free download at www.montanabar.org

Montana Students' Guide to Turning 18

2008, 22 pages, CD \$10
Free download at www.montanabar.org

Montana Probate Forms

2006, 288 pages
Book plus CD \$150

Civil Jury Instructions

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

Criminal Jury Instructions

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

Handbook for Guardians & Conservators

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

2010 Lawyers' Deskbook & Directory

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

MT Family Law Form Book

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

Public Discipline Under MT Rules of Professional Conduct

2009, 115 pages annotated
Book \$35

Public Information Flyers

tri-fold brochures, \$10/bundle of 100
Client Bill of Rights
Dispute Resolution
Divorce in Montana
How Lawyers Set Their Fees
Purchasing Your Home
Renting a House or Apartment
Small Claims Court
After an Auto Accident
When You Need a Lawyer
Wills & Probate

Statute of Limitations Manual

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

Step-parent Adoption Forms

2003, 5 forms
Book \$20

U.S. & Montana Constitutions

Pocket-sized booklet
\$4 each

University of Montana Law Review

Subscribe at www.umd.edu/mlr

Public Lands Law Review

Subscribe at www.umd.edu/publicland

MONTANA CD/DVD SEMINAR RENTALS

**(Maximum self-study credits
is 5.0 per year)**

2010 Eminent Domain Update

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

2009 Substance Abuse/Mental Impairment Presentation

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

2009 Criminal Law Ethics DVDs

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

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

Malpractice Prevention Ethics Series

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

1. Malpractice Traps - 1.0 Ethics credit

TO ORDER

To pay by check, please fill out the mail-in form below:

Send the item(s) circled above to:

Name _____ Mailing Address _____

Street Address _____ City, State, Zip _____

Amount Enclosed \$ _____

Mail order & check to: **State Bar of Montana, PO Box 577, Helena MT 59624**

To pay by credit card, please see the online Bookstore at www.montanabar.org

(Payment must accompany all orders)

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

FOR THE FOLLOWING:

Send 2 checks – one for \$75 rental fee, one for \$25 security deposit

Consumer Law Series Phone CLEs – Parts I, II, & III
3.0 CLE credits, 3-CD set

Surviving Credit Card Debt
5.0 CLE credits
2 DVDs, print materials on CD included

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

AUDIO CDS

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

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

CLE MATERIALS

on CD or via e-mail, \$35

CLE materials from 2010

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

Basic Office Practice

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

Bench-Bar Conference

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

CLE & SKI

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

Elder Law

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

Eminent Domain

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

Energy Update

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

Foreclosure Update

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

General Practice (Glasgow CLE)

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

State and Federal Planning Rules

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

CLE materials from 2009

ABA Tech Road Show

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

Annual Meeting

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

Bankruptcy

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

Bucking Horse CLE

New Privacy Rules; Unrepresented Opposing Parties; Americans With Disabilities; Business Law

Update; Lawyer's Assistance Program; Legislative Update

Civil Litigation

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

Construction

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

Criminal Law Ethics

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

Easements

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

Family Law

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

Law Office Management

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

Malpractice Prevention

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

Mediation-Arbitration

Online Resources, Fair Arbitrator's Act, Advice from a Mediator, Who Goes First and How Much, Neuroscience & Conflict Resolution

Oil, Gas & Wind Leasing in Montana

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

On the Water Front

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

Women's Law CLE

Section 1983, School & Education Law, Gender Discrimination

To request CLE materials from 2008 or earlier, contact Gino Dunfee at 447-2206

For online CLE seminars, go to www.montanabar.org under "CLE"

**State Bar of Montana members get 15% discount off all ABA publications.
Go to www.ababooks.org and enter the code PAB7EMTB when ordering.**



POLYCOM
MORE TIME

**BETTER
PRODUCTIVITY**

Vision Net hosts a network of videoconferencing locations around the state that can help you increase productivity and give you more time for the things that matter.

With more than 150 sites in Montana including 30 district courts and access to locations all across the country, Vision Net is helping the legal profession save on travel costs and gain increased productivity

Videoconferencing Room Rental
Polycom Videoconferencing Systems
Polycom Audioconferencing Systems

406-467-4712 Call us today!
Or Visit us on the web
<http://www.vision.net>

Vision Net Inc
1309 NW Bypass
Great Falls, MT 59404



Baker leads Swandal in early campaign funds

In the state's only contested state Supreme Court race, Helena attorney Beth Baker had the early fundraising lead over opponent District Judge Nels Swandal of Livingston, according to the Lee Newspapers State Bureau.

Although the race for the seat being vacated by Justice William Leaphart is supposed to be nonpartisan, the April 23 article said the donor lists "have something of a partisan flavor." But both candidates told Lee Newspapers Reporter Mike Dennison that they are not concentrating on donors from a particular political party for the November election.

Here's how the Lee Newspapers story broke down the initial campaign-finance reports:

MS. BAKER, in private practice in Helena, had raised about \$34,000 for her campaign through the first week of April, Mr. Dennison wrote, adding that she "has plenty of prominent Democrats among her contributors."

"I think my (fundraising) results show broad support from all segments of the community and all geographic areas of Montana," Ms. Baker said. "I honestly don't know the political party of most of my contributors."

She told Mr. Dennison that she has Democrats and Republicans on her steering committee and noted that the two Montana attorneys general that she worked for – Joe Mazurek, a Democrat, and Marc Racicot, a Republican – each gave her a campaign donation.

Her contributors up to early April, according to Lee Newspapers, included former Supreme Court Chief Justice Karla Gray, former state Democratic Party Chairman Bob Ream, former state Sen. Mike Halligan, D-Missoula, and state Natural Resources & Conservation Director Mary Sexton.

Ms. Baker's campaign has paid \$1,500 in campaign consulting fees to Tara Jensen of Missoula, who worked on Barack Obama's presidential campaign in Montana in 2008, Mr. Dennison wrote.

JUDGE SWANDAL raised \$15,400 through the same period, and "counts many well-known Republicans" among his contributors, the article said.

Dustin Frost, senior adviser to Judge Swandal's campaign, told Mr. Dennison, "Montanans all across the political spectrum are jumping behind (Swandal's) campaign." He noted that Judge Swandal's contributors include Dorothy Bradley, a Democratic former state legislator and gubernatorial candidate.

Judge Swandal's contributors also include several current and former Republicans state legislators, 2008 Republican attorney general candidate Tim Fox, 2008 Republican lieutenant governor candidate Steve Daines, and former Supreme Court Justice Jean Turnage, the article said.

Mr. Frost is a former state director for U.S. Rep. Denny Rehberg, R-Mont.

NEWLY APPOINTED Supreme Court Justice Mike Wheat, who must run for election to his seat in November, has no opponent, but has raised more campaign funds than either Ms. Baker or Judge Swandal, Mr. Dennison reported.

Justice Wheat raised nearly \$46,000 in campaign funds through the first week of April, primarily from fellow attorneys, the article said. "He also raised most of his funds before he knew he wouldn't have an opponent," Mr. Dennison wrote.

Justice Wheat, appointed to the court last year by Gov. Schweitzer, is running to fill out the final four years of the term of former Justice John Warner, who retired at the end of last year. Voters this November will choose whether to retain Justice Wheat on the bench.

2 named to Commission on Practice

Following recent elections for nominees, the Montana Supreme Court has appointed two attorneys to the Commission on Practice.

Kalispell attorney Tracy Axelberg will represent State Bar Area A and Helena attorney Daniel McLean will represent Area E.

The two new Commission members will serve four-year terms.

ORAL ARGUMENTS

The following oral arguments will be heard by the Montana Supreme Court:

May

■ Case No. DA 08-0499 – STATE OF MONTANA, Plaintiff and Appellee, v. DAVID W. GUNDERSON, Defendant and Appellant.

Oral Argument is set for Friday, May 14, at 9:30 a.m. in the courtroom of the Montana Supreme Court, Helena.

June

■ Cases No. DA 09-0404 and DA 09-0405 – WESTERN SECURITY BANK and GLACIER BANCORP, INC., Plaintiffs and Appellants, v. EIDE BAILLY LLP, Defendant and Appellee.

Oral argument is set for Friday, June 10, 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.

By USA Today

States seek savings with big cuts in the courtroom

Unprecedented layoffs and courtroom closings across the country have resulted in recession-driven court delays, legal experts say.

At least 15 states have put court workers on furloughs, eight have cut pay, six have imposed layoffs, and six have closed courtrooms to save money in the face of state funding cuts, even as the number of legal cases is rising, according to the Virginia-based National Center for State Courts. [So far, Montana has avoided such drastic measures for its courts.]

"The longer this continues, the more the public is going to feel it," said Gregory Hurley, analyst for the National Center for State Courts. "It's going to be significant. ... Worse than anybody here remembers."

Cutbacks have been most severe in California, where courts are closed across the state one day a month as a cost-saving measure. In Los Angeles, where 100,000 people a day go through the largest county court system in the USA, 19 of 580 courtrooms have been closed and as many as 50 more are to be closed by September, Presiding Judge Charles "Tim" McCoy said.

Los Angeles last month began laying off 829 court employees, and by the end of the year expects what once was a 5,400-worker system to be reduced by about 20 percent, McCoy said.

The state's budget crisis has cut \$133 million from the Los Angeles court system's \$800 million budget, McCoy said.

Longer wait times

Criminal cases are given priority because of speedy trial laws, but wait times are getting longer for those with civil, family, juvenile and traffic cases, McCoy and other court officials said.

After California, Hurley said other states seeing the biggest impact include:

■ **New Hampshire.** All courts were shut down April 2 for the first of three furlough days over the next two months; there will be as many as 11 more furlough days to follow, said John Broderick, chief justice of the state Supreme Court. Court staff

has been cut 10 percent over the past year, and the district and family courts, which handle 84 percent of all cases, have seen a reduction in court sessions of 12 percent. the equivalent of 30 court days a year, to cut costs.

"As disruptive as the furloughs are on judges, masters and staff, ultimately ... the citizens of New Hampshire

will pay the highest price when it comes to access to justice," Broderick said.

■ **Florida.** The state had a full or partial hiring freeze for more than a year and laid off 280 employees out of its 3,100-person workforce. Pay for judges and other elected officials has been cut 2 percent, and clerks of court have closed satellite offices, said Lisa Goodner, spokeswoman for the court system.

■ **Minnesota.** A statewide hiring freeze is in effect, so judicial positions are left vacant. Court hours have been cut, and even jurors are being paid less: \$10 per day instead of \$20. The state is also reducing and consolidating judicial districts.

The cuts are delaying sometimes urgently needed decisions in child custody and child support matters, said Judge Mark Juhas, assistant supervising judge of family law in Los Angeles. One family court has closed, and five may close in September, he said.

"It's taking six to eight weeks to get into mediation, and ... about eight to 10 weeks to get on a calendar if you file a motion" such as for custody, child support or divorce, Juhas said.

'Tragedy for all of us'

Outside Los Angeles' main traffic courthouse, lines of people trying to pay or contest citations routinely stretch around the block. On a recent afternoon, more than 400 people were still in line when the courts closed for the evening.

"If we do not find adequate solutions to these difficult problems, not just the folks in California but elsewhere will find the courts simply cannot be responsive to their needs as in the past," McCoy said. "And that's a real tragedy for all of us."

The state Supreme Court recently closed its clerk's office in Los Angeles, forcing all filings to be handled in San Francisco.

○

Montana's Lawyers Assistance Program Hotline

1-888-385-9119

Call if you or a judge or attorney you know needs help
with stress and depression issues or drug or alcohol addiction

Suspension follows felony conviction

Missoula attorney Steven Mark Fletcher was suspended from the practice of law by the Montana Supreme Court on April 14 following his conviction on two felony counts of criminal endangerment.

Fletcher was given a six-year deferred sentence in Missoula District Court for pointing a loaded shotgun at two people. The Court ordered the Office of Disciplinary Counsel to file a formal complaint that may lead to further disciplinary proceedings, including disbarment, which is common after an attorney commits a felony.

Attorney's suspension given big extension

Helena attorney R. Clifton Caughron, already suspended for a minimum of two years for a previous infraction, must now face an extended minimum four-year suspension, the Montana Supreme Court ordered on March 24.

Caughron also was ordered to return documents to a James Patterson and to pay \$6,000 restitution to Mr. Patterson.

The reason for Mr. Caughron's extended suspension was not disclosed in the Supreme Court order because Mr. Caughron submitted a conditional admission to the infraction under Rule 26 of the Rules for Lawyer Disciplinary Enforcement. Rule 26 allows details of an attorney's disciplinary proceeding to be confidential.

Public censure followed by report requirement

Helena attorney Stephen R. McCue was given a public censure by the Montana Supreme Court on April 21 and placed on two years probation for professional misconduct that is being held confidential under the Rule 26 conditional admission clause.

The Court ordered McCue to provide semi-annual written reports to the Office of Disciplinary Counsel concerning his conduct and confirming that he is using engagement letters and billing software, depositing all retainers into his trust account, and maintaining his practice at a manageable level.



FORENSIC ENGINEERS

Real Experts with Advanced Degrees Specializing in...

CONSTRUCTION DISPUTE RESOLUTION & PRODUCT FAILURE

Offering over 20-years of professional experience and expert witness testimony:

- Product Failure and Testing
- Construction Management
- Settlement and Slope Stability
- Foundations and Floor Slabs
- Soil and Groundwater Problems
- Roads and Construction Materials

Please contact us today for references or to discuss your case:

Michael A. Dworsky, P.E., President

406-543-3100 x3, 406-544-3435 (cell)
mdworsky@orioneng.net



State Bar of Montana

SPRING 2010 New Lawyers' Workshop

Mark your calendars!

What: New Lawyers' Workshop & Luncheon
(formerly the Rookie Camp Program)

When: June 25, 2010

Where: Bozeman, MT (Holiday Inn)

Time: 8:00 a.m.-1:00 p.m.

- It's *free* to attend
- Earn *FREE CLE* credit
- Lunch features **keynote speaker** Chief Justice Mike McGrath
- Gain valuable network opportunities
- Attend the social event sponsored by the New Lawyers' Section

Attend the State Bar's Road Show program following lunch and earn additional *FREE CLE*!

Watch for more details coming soon in *the Montana Lawyer* magazine and on the web at www.montanabar.org.

Questions? Contact Jill or Betsy at the State Bar (406) 442-7660.

PUT SOME **DRAMA** INTO YOUR CLE WITH THESE ENGAGING MOVIE WEBCASTS!

2010 WEBCAST DATES ...



Clarence Darrow: Crimes, Causes and the Courtroom

Featuring Graham Thatcher as Clarence Darrow

They called him "Attorney for the Damned" ... and he was!

(June 9 and December 22, 2010 • 10:00 a.m. MT)



Maxims, Monarchy and Sir Thomas More

Featuring Graham Thatcher as Sir Thomas More

In 1535 one lawyer chose personal conscience over public loyalty and so threatened those in power that they killed him!

(July 28, 2010 • 10:00 a.m. MT)



Impeach Justice Douglas!

Featuring Graham Thatcher as Justice William O. Douglas.

His passions were protection of the environment, civil rights, freedom of speech and the right of the individual to non-conformity and dissent!

(September 15, 2010 • 10:00 a.m. MT)



THURGOOD MARSHALL'S COMING!

Featuring T. Mychael Rambo as Justice Thurgood Marshall

Winner of the ABA 2005 Silver Gavel Honorable Mention Award in Theatre!

He wanted JUSTICE and EQUALITY Under the Law. Was that too much to ask?

(November 3, 2010 • 10:00 a.m. MT)

For Program Details and Registration – Go to <http://periaktos.bizvision.com>

3 Hours of CLE Credit in Ethics/Professionalism and/or General Credit Approved In...

AL, AZ, IL, LA, ME, MS, MT, ND, NE, NH, OK, OR, SC, TN, UT, WY

(Other States Pending – Call or email for further information)

PERIAKTOS
PRODUCTIONS, LLC
... the *Dramatic* difference in CLE

Anna Marie Thatcher, J.D.
Managing Producer
3213 West Main Street #272
Rapid City, SD 57702 • 605-787-7099
productions@periaktos.com

Justice & mental illness: a landmark decision by the MT Supreme Court

By **Matthew J. Kuntz**, executive director
NAMI (National Alliance for Mental Illness) Montana)

Last fall, I received a call from a distressed father asking me to review his son's case. His son had been diagnosed with bipolar disorder (manic depression). The son was on parole for a crime that he had committed when he was in a manic stage. He quit taking his medication again, went manic, and committed another series of crimes. The son was eventually sentenced to 70 years in prison with 20 suspended.

I talked with the son's attorney before sentencing and expressed my sorrow that the parole officer, family, or someone else hadn't been able to force the son into treatment when it became clear that he was off his medication and about to become dangerous. In many cases, a couple of days or a few weeks with the proper medical care would be all that it takes to stabilize a patient's brain chemistry so he can return to his normal life.

The attorney looked at me in disgust and responded, "But that would have violated his civil rights."

His words were a clear depiction of our profession's inability to grasp the basic realities of mental illness. Serious mental illnesses wage malevolent attack upon the brain and thus the lives of those affected by them. In the case of bipolar disorder, the illness drastically alters the release of the brain chemicals dopamine, serotonin, and norepinephrine. The different levels and timing of these chemicals affect mood regulation, stress responses, pleasure, reward, and cognitive functions to cause mania, depression, or even a mix of both. A man or woman in the grips of a manic or depressive episode has effectively been drugged by the illness.

The protection of the civil rights of someone gripped by mental illness induced psychosis is akin to protecting the civil rights of someone involuntarily

dosed with a powerful narcotic that affects how the individual, thinks, feels, and acts. Those protections had better be balanced against the realities of medical neglect or the results will be anything but just.

In mid-April, the Montana Supreme Court decided *In Matter of the Mental Health of L.R.* The decision clarified the constitutionality of Montana's commitment laws. This decision will allow the legal and medical communities to effectively balance the civil rights, neglect, and public safety issues involved in mental illness crises. The National Alliance on Mental Illness for Montana (NAMI Montana) was one of the strongest advocates for these commitment laws when the bills were adopted by the Legislature in 1997. We are happy to have

them finally interpreted as they were intended and know that it will make a major difference in the lives of those impacted by mental illness crises.

In the Matter of the Mental Health of L.R. is a major decision. It has the potential to lower Montana's suicide rate and the number of individual with serious mental illness incarcerated by the criminal justice system.

NAMI Montana cannot thank the Montana Supreme Court, Attorney General Steve Bullock, and Powell County Attorney Lewis Smith enough for their work on this groundbreaking case. ○

The protection of the civil rights of someone gripped by mental illness induced psychosis is akin to protecting the civil rights of someone involuntarily dosed with a powerful narcotic.

What can a Certified Computer Examiner do for You?

Computer forensics can corroborate or refute an argument with

- recovery and analysis of intentionally or accidentally deleted data;
- reconstruction of Internet, email, and/or chat history; and
- analysis of cell phones or PDAs to determine call records, text messages, and contacts even when deleted.

As a member of the International Society of Forensic Computer Examiners®, www.isfce.com, we at AtaData can accomplish these tasks and many more in a forensically sound manner to ensure reliability in court.

Contact **James Andrew Holmes, CCE**

406.498.5193 jaholmes@atadata.info

AtaData



AtaData, LLC
www.atadata.biz

on both sides of the aisle.”

Thomas was nominated to the U.S. 9th Circuit Court of Appeals in 1995 with the backing of Sen. Max Baucus, D-Mont. Although then Sen. Conrad Burns, a conservative Republican, stalled the nomination for months in a bid to split the huge circuit court, he backed Thomas.

Baucus said he’s known Thomas a long time and described him as “one of the most qualified, outstanding judges in the nation.”

“I think he’s got as good a chance as any,” said Senior U.S. District Judge Jack Shanstrom of Billings. “He’s not branded as too liberal. Our political philosophies are a little bit different, but I wouldn’t ask for a better judge than Sid Thomas.”

Although he has been in the public eye since his college days, when he was appointed one of the first student members of the Montana Board of Regents in 1974, Thomas has not been a polarizing figure. He served on that board while an undergraduate at MSU and was reappointed in 1976 while at UM.

After receiving his law degree, Thomas moved to Billings and joined the firm of Moulton, Bellingham, Longo & Mather, where he was a senior partner at the time of his appointment to the appeals court.

Among his specialties were 1st Amendment and media law. His clients included the *Billings Gazette*, NBC, CNN and other newspapers and radio and television stations. He also served as a director and former president of Friends of KEMC (now Friends of Public Radio), Montana Public Radio, and vice president of Billings Community Cable Corp., where he was a frequent election-night commentator.

The primary focus of his practice was commercial litigation, including product liability, employment, environmental, and mineral rights, representing both plaintiffs and defendants. He has represented the State of Montana, the City of Billings and other Montana cities and counties. He was appointed trustee in more than 1,500 bankruptcy cases.

Judge Cebull said he started working with Thomas right after Thomas moved to Billings in 1978. They sometimes represented different defendants in the same lawsuit, he said. “I got to know him first as a trial lawyer,” Cebull said. “He was a great trial lawyer. What a great addition that would be — someone who tried real cases in a real courtroom. The Supreme Court needs that kind of experience. It needs a trial lawyer’s point of view.”

U.S. District Judge Don Molloy of Missoula also has known Thomas for decades. Molloy was a couple of years ahead of Thomas in law school, and both worked as counselors at Boys State. They also knew each other through years of private practice in Billings. “He’s an incredible person,” Molloy said. “I think it’s a great choice. He has many characteristics I’ve read that Judge Stevens has — the same quiet, courteous demeanor.”

Judge Shanstrom agreed. “When you talk to him, he’s really quiet and down-to-earth,” he said. “Even when he overrules you, he does it in a way that doesn’t make you feel too bad.

“Just to be on that short list shows what respect he has in the legal field,” Shanstrom said.

Thomas maintains chambers in Billings and travels to San Francisco to hear oral arguments. He is married to Billings attorney Martha Sheehy.

If Thomas were to be named to the Supreme Court, he would be the first Montanan to serve in that capacity. Of the sitting justices, eight graduated from Ivy League law schools — four from Harvard, three from Yale, and one from Columbia. Seven hail from east of the Mississippi. Justices Anthony Kennedy and Stephen Breyer are from California, but both went to Harvard. ○

JUDGE KIRSCHER, from Page 9


2007. He has served on several circuit committees including the Court-Council on Bankruptcy Judge Appointments, the Bankruptcy Judges Education Committee, and the Public Information and Community Outreach Committee.

A native of Livingston, Judge Kirscher received a BA from the University of Montana in 1974; an MPA from American University in Washington, D.C., in 1975; and a JD from the University of Montana School of Law in 1979. He engaged in private practice in Montana from 1979 to 1999.

The BAP was established in 1979 by the Judicial Council of the 9th Circuit as an alternative forum for hearing bankruptcy appeals. Since then, it has disposed of more than 15,000 cases, including more than 5,250 decided on the merits.

BAP judges are appointed by the Judicial Council of the 9th Circuit. They serve a term of seven years and are eligible for a 3-year extension. Other bankruptcy judges from around the circuit also serve on appellate panels on a pro tem basis. The 9th Circuit BAP is based in the Richard H. Chambers U.S. Courthouse in Pasadena, Calif. It received 332 appeals in 2009, about 51 percent of all appeals originating out of bankruptcy courts throughout the 9th Circuit (district courts hear the remainder of the appeals). ○

available now!



case compendia
by john moore

two comprehensive books summarizing all cases in Montana

| | |
|--|--|
| <p>Privacy and the Right to Know: Montana Cases and Considerations (2009)</p> <p>148-page book \$28 ea CD-ROM \$28 ea Both book and CD \$40 ea</p> | <p>Wrongful and Unlawful Discharge: Montana Cases and Considerations (2010)</p> <p>212-page book \$32 ea CD-ROM \$32 ea Both book and CD \$46 ea</p> |
|--|--|

— to order —

call 406.444.3871 • email pdcc01@mt.gov

Advanced Trial Advocacy Program at UM in May

The University of Montana School of Law's 23rd Advanced Trial Advocacy Program is scheduled for May 24-28.

This intensive hands-on course in trial advocacy offers techniques and tips from jury selection to closing argument. The program purchases and provides National Institute of Trial Advocacy materials and is taught by a Montana trial lawyers, judges, and communication specialists.

The topics included are effective jury selection, compelling opening arguments, dynamic trial visuals, courtroom communication techniques, direct examination strategy, cross examination, presenting and attaching expert testimony, persuasive closing arguments, and ethical pitfalls.

This year's course uses a medical malpractice/products liability case involving the death of an individual following a heart transplant where the surgeon and the suture manufacturer are both sued.

The total fee for the program is \$970 for practicing lawyers. Enrollment is limited, on a first-come, first-enrolled basis. The course is approved for 30 CLE credits (includes 1.0 Ethics credit). Visit the website at www.umt.edu/law/alumni/events/ata2010.htm for the registration form and to review scholarship information for public interest lawyers. Contact Holly Kulish at holly.kulish@umontana.edu or (406) 243-6509 with questions.



In business and in real estate, sound decisions demand sound information.

There's too much at stake in securitized real estate transactions to make decisions without thorough analysis. Members of the Appraisal Institute's Montana Chapter offer:

- A network of valuation professionals
- Critical front-end analyses—cost/benefit, feasibility and market trends
- Analytic financial knowledge

Delivered with advanced knowledge, demonstrated experience and a commitment to strict professional ethics and standards. You expect such excellence from professionals.

Please contact the Appraisal Institute at, www.appraisalinstitute.org/findappraiser to locate a Montana Chapter member in your area.



Coming
June 3 – Missoula
June 4 – Great Falls

Practice & Technology Management: Faster, Better, Easier

By the CLE Institute of the State Bar of Montana
and the Bar's Technology Committee

at the Hilton Garden Inn in both cities
6.75 CLE credits

Register for \$200; 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, or call (406) 447-2206

Topics include:

- Software to manage your practice
- Affordable IT support for small practices
- Hidden Windows & Office tricks for lawyers
- 30 websites in 30 minutes
- Getting to paperless – a step-by-step guide
- Conquering the e-mail storm
- PDF-ing for lawyers

Hill-Hart wins assistantship for work on Indian child welfare compliance

The Women's Law Section of the Montana State Bar of Montana announced that the 2009-2010 recipient of the Margery Hunter Brown Law Assistantship is Jennifer Hill-Hart.

Ms. Hill-Hart presented her research and activities regarding Indian Child Welfare Act Compliance in Montana at the Native American Law Student Association's Indian Education for All series in April.

The Assistantship encourages scholarly commitment to human equality and the resolution of issues concerning Indian Law, public land and natural resources law, the rights of women and minorities, or a combination of these areas. The award recipient receives between \$500-\$1,000. The recipient presents at a seminar or other appropriate forum the results of research, a project or activities in which the recipient has been engaged.

The Margery Hunter Brown Law Assistantship was established in 1993 in honor of Professor Brown, upon her retirement from the University of Montana School of Law. As professor and dean of the Law School, she inspired generations of lawyers. She established the Indian Law Clinic, began the Public Land & Resources Law Review, helped form the 1972 Montana Constitution, and was a leader on the Human Rights Commission.



Jennifer Hill-Hart

Justice Foundation recognizes Motl for commitment to equal access

By Amy Sings In The Timber
Montana Justice Foundation

Twenty-four years ago this month the *Helena Independent Record* counted attorney Jon Motl among Helena's "Fifty Who Make a Difference" – a celebration of those whose work makes a true positive impact in their community. Nearly a quarter of a century later, the Montana Justice Foundation recognized Mr. Motl for his lifelong commitment to make a difference for those seeking equal access to justice under the law.

In the same year that newspaper published its "Fifty," Mr. Motl joined the volunteer board of directors of the Montana Justice Foundation (MJF) – the a non-profit organization that provides funding and other support to civil legal aid and access-to-justice programs in Montana.

On Feb. 18, 2010, at its Helena Lunch for Justice Event, the MJF recognized Mr. Motl for his 23 years of service on the MJF board (from 1986 to 2009), and his lifetime commitment to equal access to justice.

Mr. Motl was the first Helena attorney to build his law practice around consumer advocacy – often representing non-traditional clients in tough-to-win cases. During his tenure on the MJF board, he spearheaded many "firsts," starting with a conversation with Mountain West Bank to provide favorable rates on lawyers' IOLTA accounts. That resulted in a five-fold increase in interest rates on IOLTAs held with Mountain West and spawned the MJF's Leadership Bank Program, setting the stage for lasting partnerships between the legal and banking communities for the benefit of civil legal aid and increasing statewide IOLTA revenues triple-fold from 2005 to 2007.

In 2004, Mr. Motl and co-counsel Kim Wilson entered into negotiations to name the MJF as recipient of residual funds in a class-action settlement, or cy pres. Their efforts resulted in the first-ever cy pres award to the MJF totaling \$166,000 for use in providing legal services to low-income Montanans.

Throughout his 23 years of board service Jon led the MJF through several critical transitions to ensure the organization was positioned to actualize its roles as an IOLTA program, statewide bar foundation, and advocate for access to justice both locally and nationally.

Jon continues to serve as an MJF emeritus director, advising on IOLTA Program enhancement and providing ongoing support for the MJF's Cy Pres Award Campaign.



Jon Motl

SAVE TAXES!
With A 1031 Property Exchange



Specializing in tax-deferred property exchanges
800-237-1031

Competitive Rates

Free Consultation

www.irc1031x.com

acci@irc1031x.com

WE ARE A NATIONALLY
RECOGNIZED LEADER IN
THE EXCHANGE BUSINESS

P.O. Box 1031
8 So. Idaho, Suite C
Dillon, MT 59725

NEWS ABOUT MEMBERS

Helena attorney **Bernie Jacobs** has been promoted to head the Office of Legal Affairs of the state Department of Public Health & Human Services (DPHHS).

"Bernie has demonstrated a remarkable ability to move our legal matters forward during these tough financial times," said DPHHS Director Anna Whiting Sorrell. "This position is so critical to the many issues that come before this department. Whether it's watching out for the best interests of children, protecting seniors from abuse, or public health issues, our legal team is usually at the forefront."

Mr. Jacobs, who has been serving as the acting chief legal counsel, replaces **Russ Cater** who retired in December 2009.

Mr. Jacobs, 60, was raised in Missoula and graduated from the University of Montana School of Law in 1997. He also holds a bachelor's degree in political science and a master's in public administration from UM as well.

Mr. Jacobs began working at DPHHS in 2006 as deputy chief legal counsel. Previously, he represented the Department of Labor & Industry and the Department of Livestock.

In his new position, Mr. Jacobs will oversee a staff of 13 lawyers and four administrative support staff, all based in Helena. As chief legal counsel, he provides representation for the department in court actions and administrative hearings and personally provides legal advice to the department's director and administrative staff.

He retired last year as master sergeant from the Montana Army National Guard after 24 years. He is a Vietnam Veteran and also served in Operation Iraqi Freedom as a helicopter flight engineer.

Mr. Jacob's annual salary will be \$90,480, DPHHS said.

DEATHS

Bill Kirkpatrick, Butte attorney

William M. "Bill" Kirkpatrick Jr., 67, died April 20 in Butte.

He was born in Chicago, educated in Butte, and graduated from Gonzaga University and the University of Montana School of Law.

Mr. Kirkpatrick worked in private practice in Butte; was a law clerk for federal Judge W.D. Murray; was assistant county attorney for Silver Bow County; and worked for Butte Legal Services, for Saudi Arabian Parsons Ltd. in Saudi Arabia, for Hill International in the United Arab Emirates, and for CUP in Malaysia.

Mr. Kirkpatrick returned to Butte when he retired.

Frank Burgess, Butte attorney

Frances C. "Frank" Burgess, 85, of Butte died March 25 after a short illness.

Mr. Burgess was born in Hebron, N.D., and attended grade school and high school at the Assumption Abby in Richardton, N.D., where his parents ran a weekly newspaper. The family moved to Livingston, Mont., where Mr. Burgess graduated from high school. He attended the University of Montana where he obtained a law degree.

In the late 1950s, Mr. Burgess opened his law practice in Butte where he continued to practice until his retirement in the late 1990s. His firm was known as the "Law Center" where he practiced with Jack Whelan, Tom Joyce, John Prothero, Bob O'Leary, Bill Joyce, Frank Joseph, David Vicevich, and Bob Whelan.

Mr. Burgess was preceded in death by his wife, Virginia, and daughter, Shelley.

Other deaths

● **Josette Elizabeth Greer**, who was a legal assistant for Bozeman attorney Daniel Buckley, died at age 40 in Bozeman.

● **Bonnie Wallem** of Kalispell, "a staunch advocate for criminal justice reform" who served on the Youth Justice Council and the state Board of Crime Control, died on April 8 at age 69



Tompkins & Peters CPAs, P.C. ***Certified Public Accountants & Advisors***

- Certified in Financial Forensics
- Certified Valuation Analyst
- Expert Witness
- Fraud & Forensic Accounting
- Business Valuations
- Estates & Trusts
- Accounting & Auditing
- Bookkeeping & Payroll
- Tax Planning & Preparation



Dana L. Tompkins,
CPA, CVA, CFF

Member: AICPA, MSCPA, NACVA, PCPS

www.TPcpas.com

Hamilton: (406) 363-0097 ~ Helena: (406) 449-4272 ~ Missoula: (406) 251-4272

CLASSIFIEDS

CLASSIFIEDS POLICY: Minimum charge of \$40 for all ads. Ads over 50 words charged at 80 cents per word. Send classified ads to *The Montana Lawyer* magazine, PO Box 577, Helena MT 59624 or e-mail to cwood@montanabar.org. Include billing address. Deadline for June issue is May 14. Call (406) 447-2200 for information.

ATTORNEY POSITIONS

ASSOCIATE ATTORNEY: Established Billings firm seeking a litigation attorney. Experience with insurance coverage and defense background preferred. Strong research and writing skills necessary. All applications kept confidential. Competitive salary and benefits package. Send application, writing sample, transcripts, and resume to Halverson & Gilbert PLLC, Hiring Partner, PO Box 80470, Billings MT 59108-047

ASSOCIATE ATTORNEY: Doney Crowley Bloomquist Payne Uda PC, with offices in Helena and Dillon, seeks an attorney for its Dillon office with experience and interest in water law, litigation, business and real estate. The firm offers generous benefits and competitive salary. E-mail letter, resume and writing sample to solsen@doney-law.com.

LITIGATION ATTORNEY: Crowley Fleck PLLP, a progressive and established 100-plus attorney law firm, based in Billings with regional offices in Bismarck and Williston, N.D. and Bozeman, Helena, Kalispell and Missoula, Mont., seeks a litigation attorney with 2 to 4 years of experience to practice in our Williston, N.D.. Successful applicants must be licensed to practice law in North Dakota, have a strong academic record, solid research and writing capabilities. Very competitive salary. All applications will be held in confidence. Please submit your cover letter, resume and transcript to: Crowley Fleck PLLP, Attn: Joe Kresslein, PO Box 2529, Billings MT

59103-2529 or via e-mail to jkresslein@crowleyfleck.com. See our website at www.crowleyfleck.com.

ATTORNEY POSITIONS SOUGHT

APPELLATE COUNSEL can bring fresh perspectives to your case. Unburdened by any personal investment in the trial strategy, appellate counsel can objectively evaluate the arguments made below, and adjust or amplify them for persuasive presentation to the appellate court. We are admitted and have advocated before the U.S. Supreme Court, the Montana Supreme Court, the New Mexico Supreme Court, the Washington Supreme Court, the U.S. 9th Circuit Court of Appeals, the U.S. 8th Circuit Court of Appeals, the U.S. 10th Circuit Court of Appeals, the New Mexico Court of Appeals, the Washington Court of Appeals, U.S. Court of Appeals for the Armed Forces, the U.S. 9th Circuit Bankruptcy Appellate Panel, and the U.S. Board of Immigration Appeals, for both appellants and appellees, on briefs, in oral argument, and as appellate mediators. We provide a complete array of timely assistance, from initial evaluation to full appellate representation. Sullivan, Tabaracci & Rhoades, (406) 721-9700, www.montanalawyer.com.

BUSY PRACTICE? I can help. Former MSC law clerk and UM Law honors graduate with 5-plus years legal experience available for all types of contract work, including legal/factual research, brief writing, court/depo appearances, pre/post trial jury investigations, and document review. For more information, visit <http://www.meguirelaw.com>; e-mail robin@meguirelaw.com; or call (406) 442-8317.

LEGAL RESEARCH & OTHER SERVICES

THE BRIEF WRITER: University of Washington Law School graduate with seven years experience performing investigation, legal research and writing. Pleadings experience in federal, state, and administrative courts. Access

to Westlaw, Lexis-Nexis and the state law library. Sample writings and references available. For competitive rates, call Genet McCann at (406) 443-8107 or e-mail thebriefwriter@gmail.com.

LEGAL RESEARCH AND WRITING:

Fast, accurate and thorough legal research. Effective legal writing—briefs, motions, pleadings, appeals. Document review. Licensed attorney with civil litigation experience. (JD, UCLA; admitted in California and New Mexico.) Very reasonable rates. References. HLWashburn@aol.com; (406) 442-1298

OFFICE SPACE / SHARE

MISSOULA: Downtown office suite for lease. Call Cindy Smith at 541-7177.

BOZEMAN: Office space for rent, located at 25 Apex Dr., Ste A, Bozeman MT 59718. Conference room, fax and copy machine. (406-586-2228).

CONSULTANTS & EXPERTS

BANKING EXPERT: 34 years banking experience. Expert banking services including documentation review, workout negotiation assistance, settlement assistance, credit restructure, expert witness, preparation and/or evaluation of borrowers' and lenders' positions. Expert testimony provided for depositions and trials. Attorney references provided upon request. Michael F. Richards, Bozeman, Mont. (406) 581-8797; mrichards_59730@yahoo.com.

EXPERT APPRAISERS: Timothy Gordon Appraisals provides informative, professional photo-illustrated reports written to the highest USPAP Standards for legal purposes. Probate, IRS, equitable division, trusts, etc. Certified Appraiser, ISA AOA. We have appraised collections as large as 1 million objects. We are expert marketers, specializing in the sale of single rare items or entire estates and large collections at top national value (not in a small local auction format.) Antiques, art, jewelry, collections, libraries, coins,

electronics, autos, personal assets of all kinds. 20 years experience. For more information: www.timothygordonappraisals.com; (406) 728-1812.

CERTIFIED COMPUTER EXAMINER:

Forensic analysis of computers, hard drives, CD/DVD media, floppy disks, cell phones, PDAs, and any other digital storage devices. Civil, criminal, interoffice, or personal cases welcome. Certified by the International Society of Forensic Computer Examiners. Contact James Andrew Holmes, CCE, AtaData LLC at (406) 498-5193, jaholmes@ata-data.info, or www.atadata.biz.

COMPUTER FORENSICS, DATA RECOVERY, E-DISCOVERY:

Retrieval and examination of computer and electronically stored evidence by an internationally recognized computer forensics practitioner. Certified by the International Association of Computer Investigative Specialists (IACIS) as a Certified Forensic Computer Examiner. More than 15 years of experience. Qualified as an expert in Montana and United States District Courts. Practice limited to civil and administrative matters. Preliminary review, general advice, and technical questions are complimentary. Jimmy Weg, CFCE, Weg Computer Forensics LLC, 512 S. Roberts, Helena MT 59601; (406) 449-0565 (evenings); jimmyweg@yahoo.com; www.wegcomputerforensics.com

FORENSIC ENGINEERING:

Registered professional engineer with over 20 years experience specializing in construction dispute resolution, structural and road distress determination, ground settlement/groundwater, construction materials, and slope stability issues. Exceptional writing and oral skills. Contact Michael A. Dworsky, PE, MBA; Missoula, Mont.; (406) 543-3100 x3 or (406) 544-3435. References available. Web site: www.orioneng.net

CERTIFIED LEGAL NURSE CONSULTANT:

Professional, affordable assistance with medical lawsuits. Certified legal nurse consultant, Registered nurse, 20-plus years' experience. Screen cases for merit, assess causation/damages, interpret medical records, facilitate communication. Accept cases involving health, illness, injury, worker's compensation, general

negligence, defendant or plaintiff. Marni Allen, RN, CLNC. (406) 690-4314; www.medicallegalprofessional.com.

INTERPRETING & TRANSLATIONS SERVICE:

English into Spanish or Spanish into English. Over 15 years of experience. Simultaneous, consecutive, interpreting and translations of documents, in the legal and medical fields, workers' comp or any miscellaneous documents. References upon request. Call: (406) 370-6049 or (406) 777-2802. See web site: www.spanishinterpretingservice.com.

FORENSIC DOCUMENT EXAMINER:

Trained by the U.S. Secret Service and U.S. Postal Inspection Crime Lab. Retired from the Eugene, Ore., P.D. Qualified in state and federal courts. Certified by the American Board of forensic Document Examiners. Full-service laboratory for handwriting, ink and paper comparisons. Contact Jim Green, Eugene, Ore.; (888) 485-0832. Web site at www.documentexaminer.info.

BAD FAITH EXPERT WITNESS:

David B. Huss, JD, CPCU & ARM. 30 years insurance claims and law experience. Former insurance adjuster and defense counsel. (425) 776-7386.

MEDIATION

ARBITRATION / MEDIATION:

Civil litigation, labor & employment, contracts. Attorney with more than 43 years experience. Pat McKittrick, PO Box 1184, Great Falls MT 59403; (406) 727-4041.

ROBERT KOLESAR:

Attorney for all types of mediation and ADR; all district and appellate courts. 25 years of legal practice, plus education and experience in engineering, forestry, trust administration, and business start-ups. Will travel, or videoconferencing is available. Robert Kolesar, PO Box 594, Bozeman MT 59771; (406) 586-5192.

SARAH H. SEILER, LCSW, LAC:

Specializing in family dispute resolution, child-centered divorce mediation, guardian ad litem representation and custody investigations. Contact Resolution Consultants Inc., PO Box

604, Townsend MT 59644; (406) 980-1615 or 266-5475; e-mail: lovetwofish@yahoo.com.

MICHAEL H. KEEDY: As a former district court judge, I bring 12 years valuable experience to bear in settling your case. In addition, I have over 30 years' experience in a variety of other legal pursuits. Conference rooms are available at our Kalispell offices. Please call me at (406) 752-7122 or 888-865-8144.

INVESTIGATORS

INVESTIGATIONS & IMMIGRATION

CONSULTING: 37 years investigative experience with U.S. Immigration Service, INTERPOL, and as private investigator. President of the MT PI Association. Criminal, fraud, background, loss prevention, domestic, workers' compensation, discrimination and sexual harassment, asset location, real estate, surveillance, record searches, immigration consulting. Donald M. Whitney, Orion International Corp., PO Box 9658, Helena MT 59604. (406) 458-8796 / 7.

INVESTIGATIONS, SURVEILLANCE

& LOCATES: Professional, affordable, private detective agency led by 27-year Great Falls Police Lt. Bryan Lockerby. FBI Academy graduate. Surveillance, statements, more. Database for locating witnesses. (No criminal defense work.) Lighthouse Investigations LLC, PO Box 3443, Great Falls MT 59403; (406) 899-8782; www.lighthouseinvestigations.net.

EVICCTIONS

EVICCTIONS LAWYER:

We do hundreds of evictions statewide. Send your landlord clients to us. We'll respect your "ownership" of their other business. Call for price list. Hess-Homeier Law Firm, (406) 549-9611, thesshomeier@msn.com. See website at www.montanaevictions.com.

WEB

flatheadlaw.com

"The single resource for legal information in Northwest Montana."

You can find every federal agency <http://www.flatheadlaw.com/federal-depts-agencies.html>

THE MONTANA *Lawyer*

State Bar of Montana
P.O. Box 577
Helena MT 59624

PRESORTED
STANDARD
US POSTAGE PAID
PERMIT 1
BILLINGS MT



**Proven STABILITY and INTEGRITY
Exactly What You Need**

**Your State Bar of Montana endorsed professional liability program
and the legal community's trusted advisor for over 20 years**



**FOR YOUR NO-OBLIGATION QUOTE CALL (800) 367-2577
OR VISIT US ONLINE AT WWW.ALPSNET.COM**