

Lawyer

THE STATE BAR OF MONTANA

Major 9th Circuit ruling

The Indians' big gamble

*Tax decision calls them
'rich casinos,' undermines
tribal sovereignty
in favor of states*



BOOK REVIEW

**The life of
Louis Brandeis,
lawyer & justice**



Notary dilemma

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violate confidentiality?

INSIDE: THE 11 APPLICANTS FOR THE SUPREME COURT



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NOVEMBER INDEX

Cover Story

- The Indians' big gamble: Casino ruling undermines sovereignty 5

Features

- Notaries face new requirements 8
- Montana Attorneys: 11 apply for Supreme Court 9
- Volunteers win Mediation Center awards 10
- Disability advocates donate to MJF 18
- Book Review: The Life of Louis Brandeis 20

Commentary

- President's Message: Joys and sorrows 4
- Letter: Supporting the Self-Help Program 25

State Bar News

- September Board meeting summary 11
- Construction Law Section holds institute 13
- State Bar Calendar 15

Courts

- CLE rules amended 22
- Discipline 24

Regular Features

- Upcoming CLEs 14
- State Bar Bookstore 16
- News About Members 26
- Deaths 27
- Classifieds 29



PRESIDENT'S MESSAGE

Joyous gains, tragic losses

Why we need to grow our friendships

Cynthia Smith

As I write this month's President's Message, I am reflecting on the joys and sorrows of the past several weeks. On Oct. 6, I had the honor of welcoming new bar admittees at the Montana Supreme Court's swearing-in ceremony. It was a joyful and heartwarming day, filled with pride and promise.

At the ceremony, several special motions for admission were made. A daughter and mother approached the podium, and I expected the mother to move for her daughter's admission. Instead, the proud younger lawyer moved for her mother's admission, as the mother wiped away tears. A grandfather moved for his grandson's admission. That grandfather, former Montana Supreme Court Justice John Sheehy, noted that many members of his family are members of the Montana bar. But it was obvious that Justice Sheehy was nevertheless very proud and delighted to move for the admission of his grandson, Vinny Pavelish.

I watched fathers move for the admission of their daughters, sons, and even sons-in-law. One of those fathers, U.S. Magistrate Judge Keith Strong, joked that his son, Zach, had to overcome both "heredity and parenting" to earn his law degree. Watching these proud parents, I was reminded of the pride I felt many years ago when I moved for the admissions of my two sons, Brian and Rob, to practice before the Montana Supreme Court.

After the state court swearing-in, the new admittees moved over to federal court, where Magistrate Judge Strong welcomed them and encouraged them to take cases that brought them to federal court. Judge Strong also encouraged the new admittees to take pro bono cases, not just because they should but because they would find that pro bono work is good for one's soul.

THE SWEARING-IN DAY was also bittersweet, though. One movant, UM Law Professor Peggy Tonon, moved for the admission of a new attorney who had interned at the Missoula City Attorney's Office, under the supervision of "the late Judy Wang." That was the first time I heard that phrase used to talk about Judy. Judy had passed away just over a week earlier from injuries sustained in a car wreck. The Missoula community is still reeling from Judy's loss. Judy was a tireless advocate for the victims of domestic violence, and was instrumental in the enactment of legislation that protect those victims.

The Missoula legal community is also still reeling from the recent loss of several other attorneys who died too soon. In June, Debra Gilcrest died less than two weeks after being diagnosed with brain cancer. Debbie was a UM Law School graduate who practiced law in a couple of other states before she returned to Montana to settle down with her young family in her home town. Debbie was my classmate and friend, and I still can't believe she is gone.

Just a few days after Judy Wang's death, Missoula attorney Paul Meisner succumbed to cancer after a long battle that for a while seemed he could win. When Paul was in law school at UM, his moot court team won the national championship. One of his colleagues loved to tell the story that when Paul was on the moot court team, his coach insisted that he needed to wear black dress shoes for the competition. Paul's only dress shoes were brown, and he was a struggling law student who could not afford to buy a new pair of shoes just to be in a competition. Paul's solution was to paint his brown shoes black. It must have worked, because his team returned to Montana with the trophy.

In late October, Missoula also lost attorney John Fillner, who died at 41 after a long illness. John was a 1998 UM graduate who had a solo general practice. He followed his father, retired Judge Russ Fillner, into the legal profession. John was a warm and caring person, who left behind a loving family and countless friends. I wish I had taken the opportunity to know him better.

THESE LOSSES ARE a reminder of why we all need to take the time to love our families, and grow and maintain our friendships. A few years ago I lost a friend who I had come to know through Leadership Missoula. My friend and I rarely saw each other after our group's meetings ended, but when we did we always remarked about how much we enjoyed each other's company, and how we really needed to get together. Now I have lost my chance to do that, and I regret it deeply.

These losses are huge and will take time to process. But we also have cause to celebrate the new attorneys who are so full of promise. So, hug your family, make time to treasure your friendships, and reach out to these new attorneys who have just joined our bar. We have every reason to be proud of them, and I look forward to their participation in the State Bar of Montana. ○

Indian tribes and casinos

9th Circuit tax ruling
helps chip away
at tribal sovereignty

By David H. House
and Thomas Weathers

Some believe there is a judicial trend of restricting Indian law tax immunities. If so, this trend may be an offshoot of recent U.S. Supreme Court decisions chipping away at tribal sovereignty, or it may be influenced by a narrow and inaccurate view of tribes as “rich casinos.”

As Montanans know, thinking of tribes as “rich casinos” ignores the economic reality: Sizeable wealth generated at a small percentage of fortunately-located tribal casinos is a recent phenomenon; many Indian tribes do not have casinos, and many existing tribal casinos generate only modest income. Reducing tribes to “rich casinos” also ignores the more complex political, social and historical context: Tribes are governments that look after the welfare of their membership and the stewardship of their land, they represent multi-faceted cultures, and they maintain a unique historical place and legal status based, in part, on the history of the United States treating with tribes and recognizing tribal sovereignty.

Yet in *Barona Band of Mission Indians v. Yee*, 528 F.3d 1184 (9th Cir. 2008), the 9th Circuit emphasized a tribal casino construction project’s cost and the substantial revenues of the particular tribal casino in deciding that state sales taxes applied to the materials purchased for a casino expansion project on tribal lands. The court underscored “the Tribe’s multi-million dollar casino expansion” and “its highly lucrative gambling enterprise,” appearing to give these facts weight in its decision. *Id.* at 1186.

However, the amount of money that a building project on tribal lands costs, or will generate, are often considered irrelevant by most courts in determining whether state taxation applies, or whether a tribe is immune. Nonetheless, the *Yee* court underscored the project’s costs and the casino’s lucrative aspects in reaching its holding. This case’s rationale and results may shape or affect future tribal immunity cases to the detriment of tribes.

Background

The Barona Band of Mission Indians

operates the Barona Valley Ranch Resort & Casino on its reservation lands within San Diego County, California. In 2001, the Tribe entered a prime contract with a general contractor to expand the Casino. *Yee*, 528 F.3d at 1187. The general contractor then entered into subcontracts for various construction tasks, including a subcontract with Helix Electric Inc.

The prime contract addressed state sales taxation, setting forth a process designed to establish immunity from state sales taxes relating to the purchase of construction materials. The contract included the following terms:

- Delivery of construction materials to occur on tribal lands.
- Contractor, together with all subcontractors, designated as the Tribe’s “purchasing agent” for the procurement of construction supplies.
- Purchases officially consummated, with title transferring, on the Tribe’s property.

- Shipping orders and delivery receipts required to state, “THIS SALE IS NOT COMPLETE, AND TITLE DOES NOT PASS, UNTIL DELIVERY IS ACCEPTED BY THE BUYER ON THE BARONA INDIAN RESERVATION.”

- Contractor not permitted to make advance payments to suppliers for materials or equipment that have not been delivered or stored at the site on tribal property.

Id. at 1187-88.

The Tribe agreed to provide indemnification from state sales tax liability provided that this process was followed.

Subsequently, Helix Electric completed approximately \$4 million dollars in electrical work on the expansion project without paying state sales taxes, and thereafter the California State Board of Equalization conducted an audit and issued a Notice of Determination to Helix Electric demanding the payment of approximately \$200,000 in sales and use taxes. Helix Electric looked to the general contractor for indemnification, and the general contractor sought reimbursement from the Tribe. The Tribe then sued individual members of the Board of



The new Glacier Peaks Casino in Browning, Mont.

Equalization in their official capacities seeking a determination that the taxation was invalid.

The District Court invalidated the taxation, holding that the taxes were preempted under the balancing-of-interest test set forth in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

Case analysis

The 9th Circuit reversed, upholding the state sales taxes assessed against the purchases of construction materials. *Yee*, 528 F.3d at 1186, 1193-94.

No per se immunity. The *Yee* court recognized that “when Congress does not instruct otherwise, a State’s excise tax is unenforceable if its legal incidence falls on a Tribe or its members for sales made within Indian country.” *Id.* at 1189 (quoting *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 453 (1995)). Thus, a dispositive question was whether the legal incidence of the State’s sales tax fell on the Barona Band in connection with the purchase of the construction materials.

The court reasoned that “[t]he party bearing the legal incidence of a state tax may well differ from the party bearing the economic burden of that tax.” *Yee*, 528 F.3d at 1189. As such, the fact that the tax cost would ultimately be paid by the Barona Band did not mean that the tax’s legal incidence, or the legal obligation to pay the tax, rested with the Tribe. The court held that the legal incidence was on the subcontractor, Helix Electric, for reasons including that under California law “a construction contractor . . . is the ‘consumer’ of materials furnished later to a client pursuant to a construction contract” and “sales tax or use tax applies with respect to the sale of the materials to or the use of the materials by the construction contractor.” Accordingly, the per se tax immunity from state sales taxation of Indian tribes in Indian country did not apply because the *Yee* court determined that the tax fell on the subcontractor rather than the Tribe.

Moreover, the court decided that the subcontractor’s acting as the Tribe’s “purchasing agent” by contractual arrangement was not sufficient to defeat the tax. The court stated that it declined to extend the per se test, rooted in due respect for Indian autonomy, to provide tax shelters for non-Indian businesses. The parties may not alter the economic reality of a transaction – a subcontractor performing electrical work for a general contractor – to reap a windfall at the public’s expense. “The incidence of taxation depends upon the substance of a transaction. . . . To permit the true nature of a transaction to

be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of . . . tax policies.” *See Comm’r v. Court Holding Co.*, 324 U.S. 331, 334 . . . (1945).

The balance of interests favored the state. The *Yee* court then employed a balancing-of-interest test to determine if the state’s taxation was preempted by operation of federal law. The court explained that “[t]he test calls for careful attention

to the factual setting, requiring ‘a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.’” *Id.* (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980)). The court also listed factors to aid in balancing the respective interests: “the degree of federal regulation involved, the respective governmental interests of the tribes and states (both regulatory and revenue raising), and the provision of tribal or state services to the party the state seeks to tax.” *Yee*, 528 F.3d at 1190 (quoting *Salt River Pima-Maricopa Indian*

Community v. Arizona, 50 F.3d 734, 736 (9th Cir. 1995) (internal citation omitted).

The *Yee* court found the Tribe’s interests regarding imposition of the sales tax to be weak, the federal interests similarly minimal, and “the state interest in the application of its general sales tax to be greater than the combined federal and tribal interests.” *Yee*, 528 F.3d at 1192.

The court determined that the Tribe’s “right of territorial autonomy is significantly compromised by the Tribe’s invitation to the non-Indian subcontractor to theoretically consummate purchases on its tribal land for the sole purpose of receiving preferential tax treatment.” *Yee*, 528 F.3d at 1191. The court distinguished the Barona Band case involving the purchase of construction materials from cases addressing state taxation of non-Indians performing work on Indian land.

The *Yee* court recognized the Tribe’s interest in economic self-sufficiency and that, if the sales taxes were upheld, the actual cost of the taxes would be incurred by the Tribe. However, the court determined that the concern of the Tribe having to pay the tax costs “carries minimal weight in the context of a \$75 million casino expansion” and because the tax cost would have been the responsibility of the non-Indian subcontractor but for the Tribe’s agreement to provide indemnification for tax liability. The court also noted that the tax’s legal



The Court’s inference that all tribal casinos are ‘rich casinos’ doesn’t reflect reality, especially in Montana.

incidence fell on the non-Indian subcontractor.

Turning to the United States, the *Yee* court reasoned that federal interests are greatest when the government comprehensively and pervasively regulates the sphere that the state is seeking to tax or regulate, and that no comprehensive or pervasive regulations were at issue in the Barona Band case. The court found that through the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (IGRA), the federal government regulates Indian gaming and that the state's tax "is not on Indian gaming activity or profits, but rather on construction materials purchased by a non-Indian electrical subcontractor, which could be used for a multitude of purposes unrelated to gaming."

The court recognized the federal interest in tribal economic self-sufficiency, but found that interest fades "when the commercial activity is rigged to trigger a tax exemption." The court also repeated that the concern relating to "self-sufficiency necessarily lessens in the specific context of a multi-million dollar casino expansion."

Looking to the state, the *Yee* court ruled that the balancing of interests tips in its favor "where the state levies a neutral sales tax on non-Indians' purchases which – but for contractual creativity – would have occurred on non-Indian land." The court found that the state has a legitimate interest in raising revenue to provide general governmental services. (The court did note that the state interest is strengthened where a nexus exists between the taxed activity and the provided government function, and the court acknowledged that there was not such a connection.)

The *Yee* court also found that the state has an interest "in preventing the manipulation of its tax laws to aid a casino in shopping tax exemptions to local businesses who otherwise would remit sorely needed revenue to the state."

The Indian Gaming Regulatory Act did not preempt the taxation. The Tribe separately argued that the IGRA alone preempted the state taxation. The court disagreed, finding that the IGRA's comprehensive regulation of Indian gaming does not extend to third-party purchases of construction materials for gaming facilities. The court also found that the balancing-of-interest test developed in *Bracker* was the appropriate analytical framework to determine whether the sales taxes were preempted by operation of federal law.

Discussion

The *Yee* court described the contractual arrangement regarding the state sales taxation as an effort by the Tribe to "merely market[] a sales tax exemption to non-Indians as part of a calculated business strategy" and as a "strategic effort to receive construction services from non-Indians at a competitive discount by circumventing the state sales tax. . . ." Words like "calculated" and "circumventing" indicate disapproval. A contrary perspective would be that the Tribe merely attempted to diligently exercise its sovereign rights relating to a tribally-funded project on tribal lands.

The *Yee* court's application of the *Bracker* balancing-of-interest test raises points for consideration:

First, the outcome of the legal incidence test informs a court

as to which legal analysis to apply (i.e., per se or balancing test), but should not favor a state when the interests are then balanced. However, the *Yee* court appeared to count the fact that the tax's legal incidence fell on the non-Indian subcontractor as weakening the tribal interest. As a balancing test inherently applies only when the legal incidence of a tax does not fall on a tribe, it is surprising the court also balanced this factor against the Tribe.

Second, there is, generally speaking, nothing unusual about off-reservation vendors making sales on a reservation and state taxes not applying. As an example, the Supreme Court held that a state tax did not apply to an on-reservation sale of farm machinery to a tribal enterprise by a corporation that did not reside on the reservation because the taxation was preempted by the Indian trader statutes. *Central Machinery Company v. Arizona State Tax Commission*, 448 U.S. 160 (1980). However, in finding weak tribal interests, the *Yee* court disparaged the contractual arrangement for the construction material purchases.

Third, the court stated that the concern with respect to "self-sufficiency necessarily lessens in the specific context of a multi-million dollar casino expansion." However, in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the Supreme Court found a tribal interest in economic self-sufficiency relating to a tribal casino operation. *Id.* at 218-19.

Fourth, the *Yee* court favorably discussed *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980), for the proposition that tribes may not simply market tax exemptions for business advantage. *Yee*, 528 F.3d at 1190-91. However, the Colville issue was whether a state should be able to tax the sale of cigarettes by tribal smoke shops to non-Indians. In contrast, in the Barona Band's situation the question was whether the sales taxes, or the costs of the sales taxes, would be paid by the Tribe. (Even though the legal incidence was found to be on Helix Electric, the state's sales tax in the construction context is an upstream tax that would probably be passed on to the Tribe as a business matter, irrespective of whether an indemnification agreement was in place.)

Fifth, the *Yee* court stated that "IGRA is a gambling regulation statute, not a code governing construction contractors, the legalities of which are of paramount state and local concern." However, the court did not acknowledge that the locality with arguably the greatest interest in the legalities and governance of construction contractors is the Barona Band, which governs the land on which the casino is located and operates the casino.

Sixth, it can be noted that a state's general interest in raising revenue may not be enough to defeat tribal and federal interests, depending on the circumstances. The *Yee* court found that the state has a legitimate interest in raising revenue to provide general governmental services and this factor was important to its decision. *Id.* at 1192-93. However, elsewhere the Supreme Court and the 9th Circuit have held that a state's gen-

More on TRIBES & CASINOS, Page 25

New notary law vs. client confidentiality

Notaries must keep journal that ends up with county clerk; State Bar ethics opinion is pending

By **Betsy Brandborg**
State Bar legal counsel

Effective Oct. 1, 2009, all Montana notaries are required by statute to maintain a notary journal that could become a public document, raising lawyers' concern that the journal contains confidential client information.

Section 1-5-416(1)(g), MCA provides that all Montana notaries keep and maintain an official notary journal recording the details of each notarial act performed – including the date, the type of notarial act, the type and date of the document, name, address and signature of the individual and type of identification used, among other information.

Section 1-5-419, MCA mandates transfer of a notary's journal to the county clerk and recorder upon a notary's expiration, resignation, death or removal.

Montana attorneys who are notaries have requested an opinion from the State Bar's Ethics Committee addressing their concerns about disclosing confidential information in the journal. Examples of confidential documents causing the attorneys concern include pre-nuptial agreements and relinquishment of parental rights in adoption proceedings.

The Montana Rule of Professional Conduct 1.6 on confidentiality provides that a lawyer may reveal information relating to the representation of a client to the extent that the lawyer reasonably believes it is necessary to comply with other laws.

A key issue for the Ethics Committee is whether the administrative record keeping goal of the statute is trumped by a lawyer's mandate to maintain the confidences of clients within Rule 1.6.

THE ETHICS COMMITTEE would appreciate lawyer comments on the issue. The Committee, chaired by Mike Alterowitz of Missoula, is currently gathering information prior to issuing a formal opinion. Please submit your comments to betsyb@montanabar.org or call Mr. Alterowitz at (406) 542-9904.

In the interim, the Committee offers the following suggestions to lawyers who are notaries:

- Keep two journals; one for public record transactions and a second one for confidential matters. Firms should maintain private journals as property of the firm if the lawyer notary resigns, although there is no clarity in the statute on this issue.
- Not all documents require notarization. Confirm the necessity prior to recording otherwise confidential information.
- Prior to notarizing a document, distinguish whether the lawyer is performing the service as a witness or as a lawyer. The witness/lawyer rule potentially preempts future representation.
- Use general terms of art in the private journal. Prenuptial agreements can be referenced as contracts or agreements.
- Make arrangements for the journal to be sealed via interpleader upon the lawyer-notary's resignation, death, removal or expiration of term.

IN ADDITION TO the development of a formal ethics opinion, the State Bar is exploring alternative regulatory mechanisms with the Secretary of State's office, including amendment of the statute in the next legislative session.

THOSE SEEKING ADDITIONAL INFORMATION about Montana's current notary statutes can visit the Secretary of State's website at <http://sos.mt.gov/Notary/Changes.asp>.

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

11 apply for seat on Supreme Court

Comment period ends Nov. 18

The public will have until Nov. 18 to comment on any of the 11 Montana lawyers who have applied for the seat of Montana Supreme Court Justice John Warner, who is retiring on Dec. 31.

The state's Judicial Nomination Commission set the comment deadline after the 11 attorneys met the application deadline of Oct 15. After the comment period, the Commission will interview the candidates, then will narrow the field and submit the names of three to five finalists to Gov. Brian Schweitzer, who will appoint the next justice from that list.

Here are the applicants (you can review more details on each lawyer's application form at http://courts.mt.gov/supreme/boards/jud_nomination/default.mcpix):

■ **Roy Andes**, of the Roy Andes Law Office solo practice in Helena. He is 1977 graduate of the University of Virginia School of Law, and received a master's in dispute resolution at the University of Montana in 1988. He has served many years in private practice, mostly in civil and criminal litigation, and as an assistant attorney general for Montana. Mr. Andes has handled five cases before the Montana Supreme Court in the past five years.

■ **Carlo Canty**, with the Helena law firm of Browning, Kaleczyc, Berry & Hoven. Mr. Canty has a bachelor's degree from Carroll College and a law degree from the University of San Francisco. Before taking his present job in 2008, he worked as an assistant Montana attorney general for six years. He worked for 11 years as a deputy county attorney in Butte-Silver Bow. He also served as a special assistant U.S. attorney and an investigator and assistant to the chief staff attorney of the judiciary of Hawaii. Mr. Canty listed five cases that he handled before the Montana Supreme Court in the past five years.

■ **Brenda Desmond** of Missoula, standing master for the state judicial district that includes Missoula and Mineral counties and chief justice for the Fort Peck Tribes Court of Appeal. She was a co-founder of the Missoula Youth Drug Court and the Missoula Mental Health Court, and presides over the latter's weekly court sessions. She received her undergraduate degree from Katholieke Universiteit Leuven in Belgium and her law degree in 1976 from the State University of New York at Buffalo. Ms. Desmond has been court adviser for the Crow Tribal Court, and staff attorney for both Montana Legal Services and the Montana Legislative Council. From 1985-94, she was a visiting assistant professor at the University of Montana School of Law and supervising attorney for the law school's Indian Law clinic.

■ **JoAnn "Joey" Jayne** of the Joey Jayne Law Office in Arlee. She also works as the nurse student recruiter at the Salish & Kootenai College. A former state legislator, Ms. Jayne has a master's degree from the University of Arizona

Tucson and a law degree in 1993 from the University of Montana. She has served as prosecutor and attorney for the Salish & Kootenai Tribes, and focuses her present law practice mostly on family law, criminal law, and Indian law. She has handled one case before the Montana Supreme Court in the past five years.

■ **David Ortley**, Flathead County justice of the peace in Kalispell since 1999. He earned his law degree at Hamline University in Minnesota in 1983, has served in private practice in general litigation and as a contract public defender. Areas of practice included criminal, business, personal injury, estate planning, and family law. He has been a member of the state Commission on Courts of Limited Jurisdiction for the past six years. In his years in private practice, Mr. Ortley argued six cases before the Montana Supreme Court.

■ **Karen Powell**, of Helena, the chair of the State Tax Appeal Board. A graduate of Wesleyan University, she received her law degree from Stanford University in 2000. She has served as deputy state auditor and deputy state securities commissioner and as a civil litigator in the state Attorney General's Office. Ms. Powell presides over administrative hearings and issues orders in contested cases. She does not appear in court as an advocate, but several of her administrative orders have been appealed to the Montana Supreme Court.

■ **Peggy Probasco**, of Butte. A past president of the State Bar of Montana, Ms. Probasco is a child-support enforcement attorney. She received a law degree in 1983 from the University of Montana. Since 1991, she has been a staff attorney, and thus a special assistant attorney general, for the Child Support Enforcement Division of the Department of Public Health & Human Services. She was an attorney for Intermountain Administrators and for the District XI Human Resource Council. Ms. Probasco was a deputy county attorney in Ravalli County, a city judge in Stevensville, worked as a private attorney, and did public defender work. She was president of the State Bar from September 2006 to September 2007. She has one pending case appealed to the Montana Supreme Court.

■ **Jeffrey T. Renz** of Clinton, is clinical professor of law at the University of Montana and the director of the law school's Criminal Defense Clinic. He ran unsuccessfully for the

Montana Supreme Court in 2000 and unsuccessfully applied for appointment to a Court vacancy in 2003. Prof. Renz earned his JD at UM in 1979. He has been a Montana Supreme Court intern, an associate and partner in private law practices and has focused most of his teaching on criminal law and procedure and civil rights. He now has a solo law practice in addition to his professorship, focusing mainly on civil rights cases. He has handled 10 cases before the Montana Supreme Court in the past five years.

■ **John Warren**, partner of the Davis, Warren & Hritsco law firm of Dillon. He has a bachelor's degree from the University of California and a law degree in 1973 from University of Montana School of Law. In private practice throughout his career, Mr. Warren has focused on business and estate law and both civil and criminal litigation work. He is a former trustee of the State Bar and is chair of the state Commission on Practice. He has handled three cases before the Montana Supreme Court in the past five years.

■ **Ronald Waterman**, a senior partner of the Helena law firm of Gough, Shanahan, Johnson & Waterman. He ran unsuccessfully for the Supreme Court last fall. Mr. Waterman is a 1969 graduate of the University of Montana School of Law and served as a law clerk to U.S. District Judge William J. Jameson. At Gough, Shanahan since 1970, he has practiced mainly in business transaction litigation, insurance defense, construction law disputes, civil rights, gender equity, and family law. He has handled six cases before the Montana Supreme

Court in the past five years.

■ **Mike Wheat**, of Bozeman. Mr. Wheat is a former state legislator who lost a bid for attorney general. He now serves as "of counsel" with the Cok Wheat & Kinzler law firm in Bozeman after being a partner for 27 years. He served for four years in the Montana Senate where he was chair of the Senate Judiciary Committee. He received political science and law degrees from the University of Montana. Mr. Wheat was a deputy county attorney in Butte-Silver Bow for three years. His practice was almost exclusively plaintiff-oriented and appellate litigation, with an emphasis on personal injury, product liability, and insurance-related claims. He now performs mediation and arbitration. He has appeared before the Montana Supreme Court with two cases in the past five years.

YOU CAN MAKE COMMENTS about the applicants, either by telephone or in writing, by 5 p.m. Nov. 18. You may contact Dillon attorney Andrew Suenram, secretary of the Judicial Nomination Commission, by e-mail at asuenram@swmtlaw.com; by telephone at (406) 683-2391; or by mail at P.O. Box 1366, Dillon MT 59725. Or you may contact any other member of the Commission.

Besides Suehram, other members of the Judicial Nomination Commission are District Judge Ted Lympus of Kalispell, Shirley Ball of Nashua, Mona Charles of Kalispell, Monica Paoli of Missoula, Martha Sheehy of Billings, and Paul Tuss of Havre.

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Awards given to three volunteers by Missoula's mediation center

The Community Dispute Resolution Center of Missoula County presented awards on Oct. 7 to three outstanding volunteers in recognition of their mediation work.

CDRC relies on volunteers who are trained to provide mediations for all small claims and civil cases in Justice Court in hopes the cases will settle and not require trial time. Volunteers with specialized training also mediate parenting plans for low and no-income parties in Missoula County and host monthly parenting orientations.

The recipients of this year's awards:

● **Abby Rivenbark**, winner of the Sharon Auerbach Volunteer of the Year Award. Ms. Rivenbark, is a third-year law student at the University of Montana. She served two years in the Peace Corps before gaining her first

mediation experience while enrolled in the Intercultural Youth & Family Program at UM. Since that time she has provided many hours of mediation in justice court and with parenting plans.

Ms. Rivenbark has also assisted Montana Mediators (Art and Kitty Lusse) in conducting mediation training and programs in Missoula and the surrounding area. In 2007-2008, she was the coordinator for CDRC, set up mediations and referred people to other resources.

The award is named in honor of Sharon Auerbach, a model CDRC mediator for more than 13 years who died Feb. 14, 2009.

● **Annie Hamilton** won the Long Term Commitment to the CDRC award. Ms. Hamilton has volunteered for CDRC for more than 10 years. She received her

law degree from UM in 1988. During her first year after law school, she worked on Superfund litigation at Cogswell & Wehrle and has worked at ASUM Legal Services since then.

Ms. Hamilton also volunteers at Hellgate High School, Five Valleys Land Trust, Missoula Writing Cooperative Flagship Program, UM Move-in Crew, Foodbank, and Montana Public Radio, and takes pro bono referrals.

● **Noel Stout**, winner of the Consistent, Quality Mediations by a Rookie award. Mr. Stout is a retired businessman who was trained in mediation in May 2008. Since then, he has done more mediations than anyone else in the volunteer ranks, settling almost all his cases. He has assisted the CDRC Board of Directors with his management experience by improving its oversight of the Center's programs and continues to mediate weekly. In addition, he assists the Hamilton courts with mediations and parenting plans. ○

Summary of September Board meeting

The following is a summary of the minutes of the Sept. 16 meeting of the State Bar Board of Trustees, held in Missoula:

By Jill Diveley

Bar membership coordinator

PRESIDENT'S REPORT – Chris Tweeten

A Chinese lawyer delegation was in Helena on Aug. 31 as part of a visit to several western states. The lawyers met with representatives of the State Bar and received a tour of the Attorney General's Office, State Capitol, and the Montana Supreme Court.

SECRETARY-TREASURER'S REPORT – Joe Sullivan

Mr. Sullivan congratulated Paul Stahl for his election as the new secretary-treasurer for the Board.

BOARD CHAIR'S REPORT – Shane Vannatta

Mr. Vannatta welcomed attorneys Pam Bucy and Olivia Norlin to their first meeting as trustees, and congratulated re-elected trustees and new officers.

PAST PRESIDENT'S REPORT – Jock Schulte

The Past Presidents Committee met on Aug. 10-11 and selected the recipients for the Jameson (Jeremy Thane) and Haswell (David Kelly) awards. The Committee also discussed ways to improve the business of the Bar and what role the Bar might play in the upcoming constitutional convention referendum.

The Committee suggested that the Montana Values presented during the May trustees meeting should appear as a page in the Lawyers' Deskbook & Directory instead of being proposed as a resolution to the membership.

PRESIDENT-ELECT'S REPORT – Cindy Smith

University of Montana School of Law Dean Irma Russell suggested that part of the *Montana Law Review* money that is donated by the Bar be provided to the *Public Land Law Review* unless there are additional funds for a separate donation, Ms. Smith said.

REPORTS REQUIRING BOARD ACTION

■ Paralegal Section by-law revisions

The Board adopted amendments to the Paralegal Section by-laws that were proposed by the Section to clarify the definition of a paralegal.

■ Nonprofit Law Section

The Board voted to create a new Nonprofit Law Section of the State Bar after Helena attorney Tim Fox explained the need for such a section and the interest of Bar members.

■ Reciprocity petition

The Montana Supreme Court has indicated it may be willing to reconsider the issue of reciprocity, by which out of state attorneys might practice in Montana in exchange for Montanans practicing in those states. The Board voted to appoint a committee to examine the rules for reciprocity and pro hac vice and to give the committee permission to draft a petition for review and discussion at the December Board of Trustees meeting. The committee will be chaired by Cindy Smith with additional members Jason Holden, Mark Parker, Chris Tweeten, and Tammy Wyatt-Shaw.

■ Investment Policy language addition

Secretary-Treasurer Joe Sullivan recommended the current Board of Trustee Policy 2-121 language be amended to include the sentence, "The investment policy will be reviewed at least once every three years and more often should the Board of Trustees deem it appropriate." An annual review was required in the former policy. The Board approved the new language.

■ Web-developer member benefit

The Board approved adding the services of ESQ, a company that develops websites for lawyers and law firms, to the State Bar's member benefits, pending review of the final contract.

■ Child & Family Section by-law revisions

The Board approved a proposal by the Child & Family Law Section to amend the Section's by-laws to change the Section leadership from elected officials to a board structure, and to change the name to the Family Law Section. The changes were argued for by Missoula attorney P. Mars Scott, the Section's president, as a way to improve Section member participation in the Section's operations. He said membership in the Section has begun to lag.

REPORT FROM THE LAW SCHOOL – Dean Irma Russell and Professor Andrew King-Ries

Dean Russell reported the UM School of Law school was currently ranked sixth in the nation in "value" of all law schools by *The National Jurist* magazine. She also said 2009 first-year class had 83 students.

Professor King-Ries highlighted the draft strategic plan for the law school.

LAWYERS ASSISTANCE PROGRAM – Mike Larson

The Billings and Missoula support groups continue to grow. Mr. Larson and Bar Counsel Betsy Brandbord are teaching various CLEs to help satisfy the Substance Abuse Mental Impairment (SAMI) credit requirement.

EXECUTIVE DIRECTOR'S REPORT – Chris Manos

Mr. Manos noted that the pro bono and IOLTA reporting forms were to be available online in Oct. 15.

BAR COUNSEL'S REPORT – *Betsy Brandborg*

Ms. Brandborg explained the new statute that requires notaries to keep a log, and may require them to file their log and any paperwork where their seal appears to the clerk of court (see full story on Page 8).

LOCAL BAR REPORTS

■ **Western Montana Bar Association**

The WMBA has been largely moribund the past year with only two general membership meetings – one in March and one in June. The WMBA only recently restarted publication of a monthly newsletter, entitled *De Die In Diem*. The newsletter is being circulated only via e-mail and posted on the WMBA's webpage hosted by the State Bar of Montana (www.montanabar.org under Bar Groups).

Because the WMBA had no membership drive last year, only 39 members signed up. The new WMBA leadership has started an aggressive membership drive for 2009-10. Membership dues are \$25 per year.

At the two monthly general meetings, the WMBA had the following programs: in March, the WMBA Pro Bono Committee had a luncheon and free CLE on Pro Bono Family Law with about 70 attendees; in June, the WMBA hosted Greg Petesch of the Montana Legislative Council to review legislation from the 2009 Legislature with about 60 attendees.

At the June meeting, the WMBA members elected officers for the new year: president, John Haffey; vice-president, William McCarthy; secretary, Natasha P. Jones; treasurer, Ryan Phelan; directors, Thad Huse, Andy George, Patrick HagEstad, and James McCubbin

The new leadership proposes a full schedule of speakers and CLEs in 2010.

The WMBA Pro Bono Committee elected a new chair in 2009 – Scott Manning. He assumes the position from Shane Vannatta, who has directed the program since 2001. The Program completed a new solicitation for attorney preference sheets and donations in this model opt-out program. The Program received unprecedented support and endorsement from the 4th and 21st Judicial District judges, who have taken it upon themselves to review and respond to all requests to opt-out of the program. The program also received approximately \$6,100 in donations from area attorneys.

■ **Ravalli County Bar Association**

The Ravalli County Bar Association does not have officers at this point. However, its unofficial leader is Howard Recht, who has been acting as the lead for the past year. The current State Bar Deskbook & Directory directory incorrectly lists Jennifer Lint as the president. Howard Recht's contact information is telephone (406) 363-1040 and e-mail howard@rechtfirm.com.

In the past year, the Ravalli County Bar Association has met once a for a lunch and CLE that has been well attended. The Association has maintained contact with its members by devel-

oping an e-mail list with the assistance of the local district court administrator. An Oct. 13 CLE was to discuss easement cases.

■ **Lake & Sanders County Bar Association**

The local bar association for Lake and Sanders counties appears inactive and perhaps in use of guidance from the State Bar, according to at least one local member.

■ **New Lawyers' Section** – *Dwight Schulte & Erica Grinde*

Mr. Schulte reported that the Section provided care packages for the July bar examinees and will hold its annual CLE on Nov. 13 in Missoula. Ms. Grinde will attend the fall conference of the ABA's Young Lawyers Division.

■ **Paralegal Section** – *Barbara Bessey*

The Paralegal Section Board and Legislative Committee actively worked on legislation approved by the 2009 Legislature to amend Mont. Code Ann. §25-10-302, to include reasonable paralegal fees as a component of attorney fees awarded to a prevailing party.

The Paralegal Board sponsored its annual CLE held on March 6 in Missoula. Jennifer Allen, the Section's representative on the CLE Institute, lined up speakers and was the moderator for the day. There were 82 attendees.

The Paralegal Board has discussed establishing a committee to assist the chair with the Section newsletter, *The Montana Paralegal*. A Special Edition 2009 was e-mailed to members and posted on the Section's website in August.

The Section Board has had some initial discussion regarding participating in Law Day or similar Mock Trial Days at locations across the state with the New Lawyers Section of the State Bar. The Board has also discussed assisting the Elder Law Committee and the Legal Services Developer Program, to help Montana Legal Services for Indian will-drafting clinics.

The Section's annual banquet and election of officers was held on Sept. 18. The banquet honored the 10th Anniversary of the Paralegal Section.

At the State Bar Annual Meeting, the Paralegal Section secured an exhibitor's booth to promote the use of paralegals and encourage membership in the Section.

SECTION REPORTS

■ **Criminal Law Section** – *Jason Holden*

Missoula attorney Brian Smith is the Section's new chair.

■ **Business, Estates, Trusts, Tax & Real Property Section** – *Vicki Dunaway*

The Section continues to meet only once a year, namely at the Tax Institute held in the fall.

The section submitted a new Deed of Trust Act in the 2007 legislative session that would be an alternative to mortgages, contracts for deed, or small tract financing. The measure passed the Senate but did not pass in the House. However, the section will resubmit the legislation in the 2011 legislative session.

The only bill that the Section was involved in before the

2009 legislative session was Senate Bill 465, which dealt with the Department of Revenue or DNRC claiming as state land the streambed on rivers and streams never adjudicated as navigable. If the river is not navigable, the adjoining land owner owns to the middle of the stream or river. If it is navigable, then the state owns the river bed. The DOR is claiming as state land the riverbed on some rivers or streams that have had no adjudication regarding navigability without notice to landowners. The issue came up with large landowners whose taxable value went way down for no reason known to them and when inquiry was made, they found out the state had taken the streambed off the tax rolls. A bill was introduced to allow the DOR and/or DNRC to do this. Missoula attorney Chuck Willey, BETTR Section chair, testified for the Section and as a result, the bill was amended to require notice to the landowner if the state were going to claim the riverbed as state-owned land on a stream or river never adjudicated as navigable.

COMMITTEE REPORTS

■ Law Education & Information Committee – Joe Sullivan

The Board approved a name change for the Committee, to the Law-Related Education Committee.

Mr. Sullivan said a new VISTA volunteer would be avail-

able soon to assist the Committee and may work with the state constitution referendum issues.

COMMISSION REPORTS

■ Commission on Character & Fitness – Bob Carlson

The Board of Bar Examiners is looking at adopting a uniform bar exam. If it does, a nationwide exam would replace a Montana-specific portion of the bar exam.

■ CLE Commission – Paul Stahl

Mr. Stahl said the Commission may be revising the current CLE rules to address the qualifications of those who teach ethics. The Commission also is considering requiring CLE sponsors to provide a list of attendees.

NEW BUSINESS

The site of the Bar's 2010 Annual Meeting will be in Great Falls.

Shane Vannatta was re-elected as Board of Trustees chair.

THE NEXT MEETING of the Board of Trustees will be held on Dec. 4 in Helena at 10 a.m.

Bar's Construction Law Institute hosts 50 Montanans

The Montana State Bar Section on Construction Law held its 5th Annual Construction Law Institute in Bozeman on Sept. 25.

The program was attended by approximately 50 Montana lawyers and construction professionals. The program, titled "Current Issues in Construction Law: New Ideas for New Buildings," covered a variety of issues from green building to the mediation of construction disputes.

The Construction Law Section brought leading construction practitioners from throughout the nation to the program. The presenters included: Philip L. Bruner, Kath Williams, Hon. John Warner, James O'Connor, David R. Hendrick, and Tracy Axelberg. Additionally, the Construction Law Section presented an update on Montana issues by two of the Section's members: Eric Nord and Dorie Benesh Refling.

A highlight of the Institute was the Career Achievement Award which was given to William A. ("Andy") Forsythe, of the law firm of Moulton Bellingham of Billings. Mr. Forsythe was recognized for his significant contributions to the field of construction law through his many years of practice both as a lawyer for the State of Montana and in private practice.

The Construction Law Institute is a result of collaboration among many parties, including the State Bar of Montana Construction Law Section, the State Bar of Montana CLE



Andy Forsythe, right, accepts the Construction Law Career Achievement Award from Chris Nygren.

Institute, Montana State University, and the volunteer efforts of its speakers and presenters. Also, the Institute is strongly supported by its several sponsors, including: Barnard Construction Company, Martel Construction, West (Thomson Reuters), First West Inc., American Subcontractors Association of Montana, Montana Building Industry Association, Milodragovich, Dale, Steinbrenner & Nygren Law Firm, and Tarlow Stonecipher & Steele Law Firm.

Section, committee change names

Two state Bar groups have changed their names.

The Child & Family Law Section is now called the Family Law Section.

The Law Education & Information Committee is now called the Law-Related Education Committee.

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

November 13 Missoula – UM University Center

Masters in Trial 7.25 CLE credits, including .50 Ethics (no SAMI) credits. Presented by the American Board of Trial Advocates, (800) 779-5879 or www.abota.org

December 4 Billings – Crowne Plaza Hotel

Insurance Coverage Litigation 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. Presented by the National Business Institute, (800) 930-6182

December 7-9 Billings – MSU Billings campus

Fundamentals of Mediation 22.50 CLE credits, including 2.50 Ethics (no SAMI) credits. Presented by Montana Mediators, (406) 839-3323

December 10-11 Billings – MSU Billings campus

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

December 11 Helena – Great Northern Hotel

Insurance Coverage Litigation 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. Presented by the National Business Institute, (800) 930-6182

December 18 Helena – Metcalf Building, Capitol Complex

State Ethics Law 3.0 CLE credits, including 3.0 Ethics (no SAMI) credits. Presented by the state Personnel Division, (406) 444-3985

All other CLEs

November 6 Billings – Hampton Inn

Medicare Secondary Payer Act: Pirates at the Settlement Conference 6.75 CLE credits. Presented by MSP Education-Compliance, (406) 465-7455

November 10 Great Falls – Hampton Inn

Medicare Secondary Payer Act: Pirates at the Settlement Conference 6.75 CLE credits. Presented by MSP Education-Compliance, (406) 465-7455

November 14 Missoula – UM Law School building

10 Tips for Effective Legal Research 2.0 CLE credits. Presented by the UM School of Law, (406) 243-4311

November 17 Teleconference

A Litigator's Perspective on Fiduciary Liability 1.50 CLE

Other web & phone CLEs for Montana credit are:

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

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

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

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

credits. Presented by Cannon, (706) 353-3346

November 19 Missoula – City Courthouse

The Law, the Guardian & When to Involve DPHHS 1.0 CLE credit. Presented by the 4th Judicial District Court, (406) 258-3461.

November 20 Missoula – Grant Creek Inn

Medicare Secondary Payer Act: Pirates at the Settlement Conference 6.75 CLE credits. Presented by MSP Education-Compliance, (406) 465-7455

December 1 Helena – Metcalf Building, Capitol Complex

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

December 3 Helena – Metcalf Building, Capitol Complex

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

December 3 Missoula – DoubleTree Hotel

A Step-By-Step Guide to Understanding Easements 6.0 CLE credits. Presented by the National Business Institute, (800) 930-6182

December 8 Teleconference

Common Options for Small, Medium & Large Estates 1.50 CLE credits. Presented by Cannon, (706) 353-3346

December 10 Missoula – Ruby's Inn

Writing Administrative Rules of Montana 10.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

STATE BAR CALENDAR

November 5

Commission on Technology meeting, 1. p.m., Supreme Court administrator's conference room, Helena

School of Law students, noon, Law School, Missoula

November 6

State Bar Executive Committee meeting, State Bar offices, Helena

CLE Institute fall planning meeting, 10 a.m., State Bar offices, Helena

November 11

Veterans Day, State Bar offices closed

November 13

New Lawyers Section CLE, DoubleTree Hotel, Missoula

Advertising and content deadline for the December-January *Montana Lawyer* magazine (there will be no separate January edition)

November 16

State Bar presentation on nontraditional practice to UM

November 26

Thanksgiving, State Bar offices closed

December 1

IOLTA compliance forms deadline – must be completed online or returned by mail

December 3

State Bar Executive Committee meeting, 7 p.m., Helena

December 4

State Bar Board of Trustees meeting, 9 a.m., State Bar Offices, Helena

January 8

General Practice CLE, Glasgow

January 15-17

Annual CLE & Ski, Big Sky

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Verify your individual listing now for the
2010 Lawyers' Deskbook & Directory
online at www.montanabar.org.

(click on the Login button at the top of the homepage)

Or send an email to jdiveley@montanabar.org.

All changes are due no later than **November 18, 2009**

Attention all firms!

The law firm section* at the back of the Deskbook is by request only, so if you would like to be included please send the information to jdiveley@montanabar.org by **November 18, 2009**.

Don't forget to include all affiliated attorneys and staff!

*2 or more attorneys only please

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

LEGAL PUBLICATIONS

2008 Guide to Montana's Local and County Community Foundations

2008, 54 pages
Print only, free

Montana Students' Guide to Turning 18

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

Montana Probate Forms

2006, 288 pages
Book plus CD \$150

Civil Jury Instructions

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

Criminal Jury Instructions

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

Handbook for Guardians & Conservators

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

2009 Lawyers' Deskbook & Directory

Reduced price: Book or Midyear update
CD, \$20; set of both, \$30

MT Family Law Form Book

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

Public Discipline Under MT Rules of Professional Conduct

2006, 115 pages annotated
Book \$35

Public Information Flyers

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

Statute of Limitations Manual

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

Step-parent Adoption Forms

2003, 5 forms
Book \$20

U.S. & Montana Constitutions

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2. Fairness & Due Process in Disciplinary Proceeding – 1.0 Ethics credit
3. In Praise of the Guilty Project – .75 Ethics credit
4. The 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. Top 10 Malpractice Traps - 1.0 Ethics Credit
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

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5 CD set features 5 topics:
- Workers' Comp in a Nutshell
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CLE materials from 2009

Bench-Bar Conference

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

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

CLE & Ski

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

Easements

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

Family Law

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

Law Office Management

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

Malpractice Prevention

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

Oil, Gas & Wind Leasing in Montana

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

On the Water Front

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

CLE materials from 2008

Administrative Law & Procedure

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

Annual Meeting CLEs

Professionalism; Technology; Federal Tax Update; Family Law Update; Stress & Depression; Law

Practice Business; MTLA Update; Land Use; Judicial Conduct Rules; MDTLA Update; Depositions; Rules of Appellate Procedure; Criminal Law Update; Federal Court Rules

Bankruptcy

Litigating Consumer Claims; Risk Management; Best Practices; Chapter 13 Update; Judges Panel; Means Testing; Case Update

Bench-Bar

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

CLE & SKI

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

Construction Law

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

Family Law

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

General Practice

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

Leap Into Litigation

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

Oil & Gas

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

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Including Federal, Appellate, Workers' Compensation, Water Court and Local Rules

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

Water Rights for General Practitioners

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

To request CLE materials from 2007 or earlier, contact Gino Dunfee at 447-2206

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

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Go to www.ababooks.org and enter the code PAB7EMTB when ordering.**

A return gift from disability advocates

Montana Justice Foundation receives \$25,000 donation

In 1996, two former legal aid attorneys submitted a proposal to the Montana Justice Foundation (MJF) for seed money to open a much needed non-profit whose mission was to provide Social Security Disability advocacy for those who could not afford legal representation. The MJF responded by supporting these pioneers with grant funding and the People's Law Center (PLC) was born. Thirteen years later, the PLC is thriving and giving back to Montana communities including its former benefactor, the MJF.

People's Law Center is a 501(c)(3) nonprofit legal organization incorporated in 1996. It came into existence in response to a round of federal funding cuts and restrictions on civil legal aid in the mid-90s. The two original staff members, Russ LaVigne Jr. and Vivian Marie, were former Montana Legal Services Association staff attorneys. PLC was supported, in part, for the first four years by the MJF.

"In the beginning there, it was hand-to-mouth" said Susan Gobbs, executive director of the People's Law Center. "Without the financial assistance given by the Montana Justice Foundation it is doubtful that PLC would have survived its first few years and could not have become the organization that it is today."

As recently as 2004, the PLC had only two offices, in Great Falls and Helena, with one full-time attorney and a part-time support staff person in each. In January of 2004 and

September of 2006, two additional offices were established in Bozeman and Billings respectively. The PLC currently employs four staff attorneys and four support staff and is completely self-sustained through attorneys' fees.

The PLC's primary practice area is representing individuals who are attempting to get Social Security Disability benefits. Client income is generally at 250 percent of poverty or less. Cases are taken on a

contingency basis with a maximum fee of \$6,000 per case. In most cases the fees are much less and clients can return to the PLC if they later face losing their benefits and the PLC will represent them at no additional cost.

In addition, every attorney employed by PLC does a variety of pro bono work including counseling individuals not eligible for standard civil legal services, providing community and legal education classes, and working in clinics or taking individual direct representation cases. The PLC staff has an average of 20 years experience providing legal services to Montanans, primarily those who are low income.

All of this hard work and dedication has resulted in a new platform for the PLC – which is now in a position to award grants to social services agencies across the state, primarily those working with individuals who have little or no resources to pay for medications, medical equipment, vision and dental care.

And most recently, the PLC board has chosen to give back to the organization that provided them with the means for the PLC's start-up by making a \$25,000 donation to the Montana Justice Foundation.

"We are so grateful for the PLC's donation and it could not have come at a more critical time," said MJF Executive Director, Amy Sings In The Timber. "We stand in the wake of a 60 percent drop in overall funding for Montana access to justice programs."

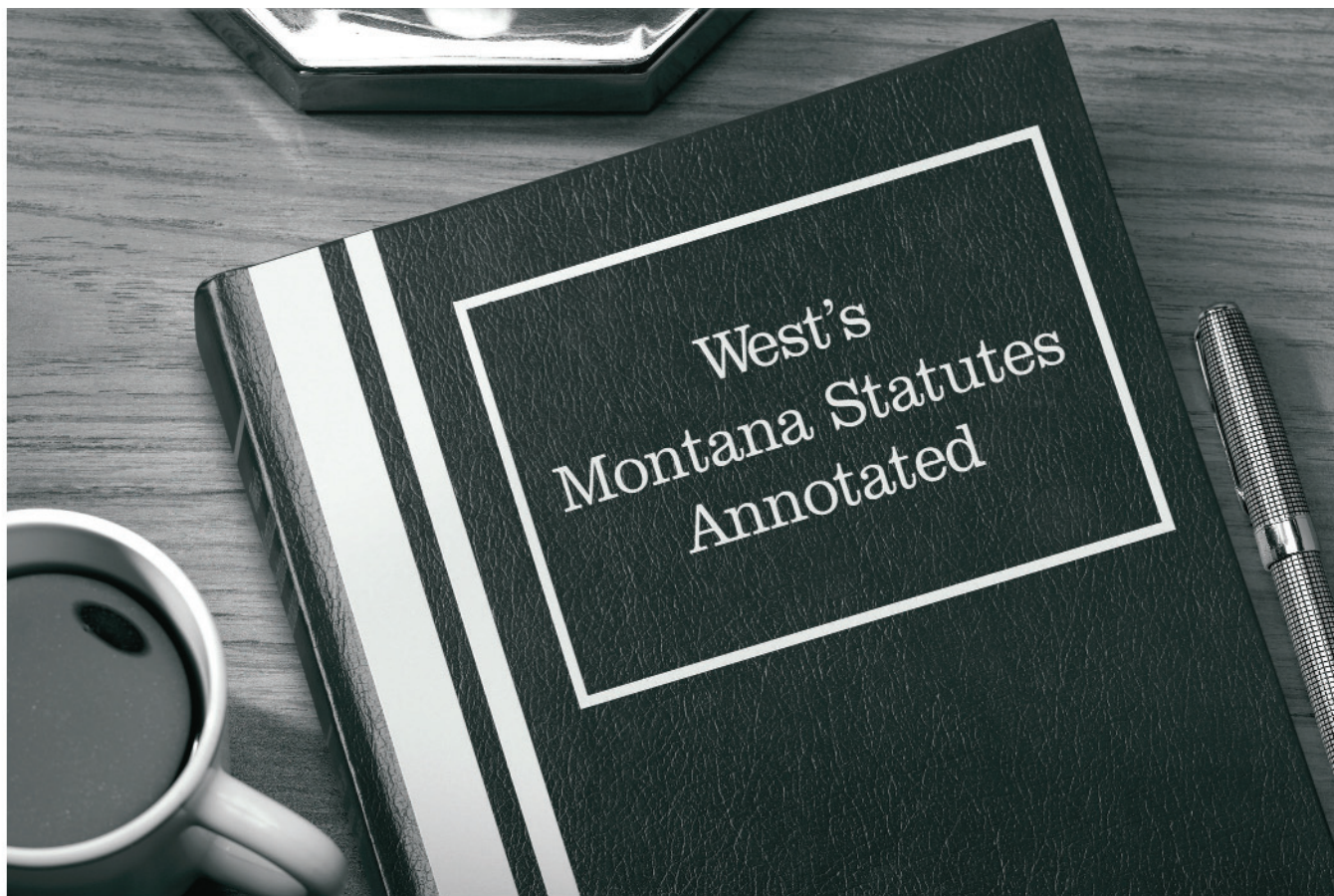
The main source of this loss is a historical drop in Interest on Lawyers Trust Account (IOLTA) funding. In an effort to protect the faltering U.S. economy, the Federal Reserve slashed federal fund rates in December 2008, causing a leveling of IOLTA revenues. And as recent as Sept. 23, 2009, the central bank announced that it would keep its benchmark overnight interest rate at virtually zero for "an extended period." ○

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The practice and the bench

Brandeis may be the greatest legal personage in American history

Louis D. Brandeis: A Life

By Melvin I. Urofsky

Illustrated. 953 00. Pantheon Books. \$40

By Alan M. Dershowitz, attorney
for the New York Times

The popular parlor game of ranking our presidents hasn't caught on for Supreme Court justices, perhaps because there are too many of them (Sonia Sotomayor is the 111th justice) or because Americans have so little knowledge of what they actually do. But if justices were to be ranked, three names would appear on the top of most lists: Chief Justice John Marshall, Justice Oliver Wendell Holmes and Justice Louis D. Brandeis. Similarly, if practicing lawyers were to be ranked, nearly every list would include John Adams, Daniel Webster, Abraham Lincoln, Clarence Darrow, and Brandeis.

Notably, the only person on both lists is Brandeis. He would also be included on a list of America's most important social reformers and innovators, having developed savings bank life insurance and new ways of practicing law. He was the co-author of what may well be the single most influential law review article in history — on the right to privacy. And he was the most significant American in helping to establish the state of Israel.

All in all, this son of Czech-Jewish immigrants, who grew up in Louisville, Ky., may well qualify as the greatest legal personage in American history.

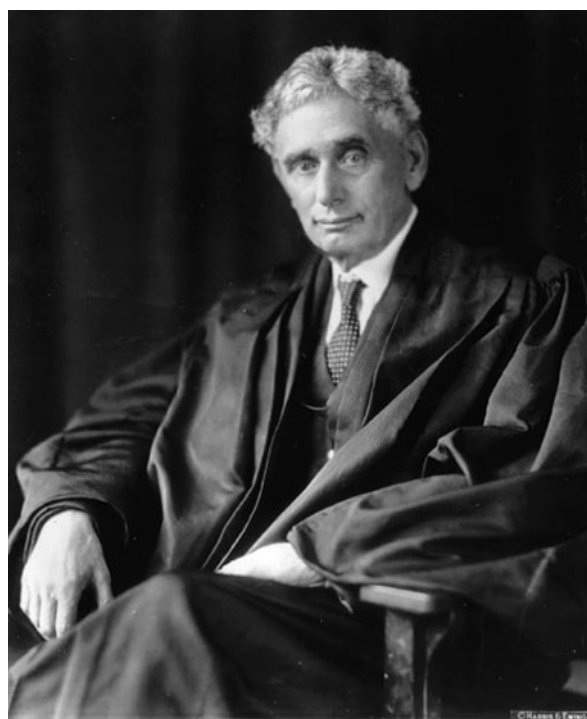
MELVIN I. UROFSKY — the author of this monumental, authoritative, and appreciative biography of the man Franklin D. Roosevelt called "Isaiah" — would surely agree. A professor of law and public policy at Virginia Commonwealth University, Urofsky has devoted much of his career to documenting the personal and professional life of

the great lawyer and justice. In "Louis D. Brandeis: A Life," he demonstrates, deploying a Brandeisian array of factual material, why Brandeis still matters, nearly 70 years after his death. The First Amendment's right of free expression, the Fourth Amendment's right to privacy and the due process clause's focus on personal liberty (rather than property) all owe their current vitality to the creative genius of Justice Brandeis, whose dissenting opinions have become the law of the land.

Today, Brandeis is seen by liberals as their patron saint because of his views on speech, privacy, liberty and social welfare, yet conservatives claim him as well, because of his commitment to judicial restraint. In many ways he defies labeling. He demonstrated through his judicial decisions that a living constitution, responsive to changing needs, is not incompatible with a modest view of the role of judges. He rejected judicial activism in favor of allowing legislatures — the voice of the people — to expand rights and extend protections to the most vulnerable. He said of the Supreme Court that "the most important thing we do is not doing."

This was, of course, easier to say in his day, when legislatures, for the most part, were more progressive than courts. He led the Supreme Court in upholding progressive (some called it radical) legislative innovations in the areas of labor law, protection of women and fairness to the poor. But unlike many of today's jus-

tices, who employ artificial jurisprudential constructs to further (and disguise) their political or religious ideologies, Brandeis was a judge who placed principle over politics, and who often voted to uphold legislation he personally despised, like the "big government"



Supreme Court Justice Louis Brandeis

aspects of the New Deal. For the most part, however, the laws he upheld were of the sort he, as "the people's attorney," helped to design and defend.

INDEED, HE DEVELOPED the legal technique — called "the Brandeis brief" — that was used by progressive lawyers to support legislation in the face of constitutional challenges, especially those based on the property rights of corporations. The Brandeis brief, which

has become commonplace today, not only presents the court with an analysis of legal precedents but also marshals current factual material — statistics, scientific experiments, governmental records — to demonstrate that the legislature had a reasonable basis for its actions.

It is difficult to overstate the revolutionary consequences of this tactic. Before the introduction of the Brandeis brief, the law was seen by conservatives as a formal series of rules representing eternal verities, unchangeable by new circumstances. Brandeis presented a direct challenge to the old regime by demanding that the law be responsive to new realities, based on new facts.

Urofsky acknowledges that Brandeis did not invent out of whole cloth his fact-based approach to the law. Oliver Wendell Holmes, in particular, had argued that the life of the law was “experience” rather than “logic.” And experience is, of course, fact based.

Brandeis was also the heir of Jefferson and Madison, who saw freedom of expression as the foundation of democracy. But unlike Holmes, Jefferson and Madison, Brandeis was a great legal practitioner who knew how to turn theory into practice. He created enduring structures that lawyers could use to implement the ideas propounded by Jefferson, Madison and Holmes.

THE IMPACT HE HAD on the practice of law when he himself practiced it, lucratively and effectively for over 35 years, was probably as great as the impact he had as a justice of the Supreme Court. He is one of the handful of justices — along with Thurgood Marshall, Benjamin Cardozo, William Howard Taft, Earl Warren and Arthur Goldberg — who would have been remembered by history even if he had never been elevated to the high court. (Today’s court has no one with Brandeis’s experience as a practicing lawyer — and it shows.)

Remarkably, it was his innovative work as an attorney that, along with his religion, almost kept him from being confirmed by the Senate when President Woodrow Wilson nominated him to the court in 1916. Urofsky believes that his religion played less of a role than his

radical approach to the law, but it is impossible to separate the two, because the bigotry of the day associated his alleged radicalism with his Jewish heritage.

One of Urofsky’s most fascinating revelations deals with Brandeis’s conversion from a Christmas-celebrating secular American of Jewish heritage to a committed Zionist and Jew. According to Urofsky, there was no single “aha” moment of revelation. Rather, Brandeis was convinced that Zionism was an outgrowth of his progressive values. The idea of Jews’ having a homeland, based on social justice and Jewish prophetic principles, seemed entirely natural to him. He poured his heart, soul, fortune and considerable energies into persuading American Jews, who were generally unsympathetic to European Zionism, that one could be a patriotic American while at the same time advocating a Jewish homeland for the oppressed Jews of Europe.

His most important contribution to Israel’s establishment was in turning Zionism from a theory alien to many American Jews into a pragmatic program to rid the Holy Land of disease, to increase its agricultural production and to make it feasible for European Jews to live in peace with their Arab neighbors. There are many who believe that without Brandeis’s advocacy, the United States would not have supported the establishment of Israel.

ALTHOUGH THIS IS an admiring biography, it is far from hagiographic. Urofsky presents the warts, few as there were. Brandeis’s approach to the practice of law in which he sometimes served as “counsel to the situation” — representing both parties to a dispute in an effort to achieve a just result — raised legitimate questions, as did his payments to his acolyte Felix Frankfurter when Brandeis was a justice and Frankfurter a Harvard Law professor who was promoting causes dear to both of them.

But on balance, Urofsky’s Brandeis brief in support of “Isaiah’s” important place in the annals of the law and history is convincing. ○

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COURTS

CLE reporting deadline changes; new rules for resigned attorneys

The Montana Supreme Court has approved a petition to amend the rules for continuing legal education to require that attorneys who have resigned from the State Bar, but wish to return to active status, fulfill the same CLE requirements as inactive members requesting transfer to active status.

The approved amendments also adjust the deadline for attorneys to file their mandatory CLE report – from April 1 to May 15 – to provide attorneys with a more complete record of their attendance at CLE programs during the prior year and to eliminate confusion with other deadlines.

The petition was filed by the Montana Commission of Continuing Legal Education after the Court requested such changes. The changes were put into effect on the date of the Oct. 7 court order.

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DISCIPLINE

Missoula attorney W. Arthur Graham was indefinitely suspended from the practice of law by the Montana Supreme Court on July 29.

Graham was charged by the Commission on Practice of violating seven rules concerning treatment of a client, and four rules concerning responsibilities to the court. He also failed to respond to the allegations, the Court order said.

Along with the requirement that he pay the fees for the disciplinary process, Mr. Graham was ordered to pay \$8,750 in restitution to a client.

Helena attorney Tari Elam has lost her license to practice law in Montana after she failed to comply with the conditions place on her admission in 2003 under the "conditional admissions" process.

Shane D. Peterson of Williston, N.D., was suspended from practicing law in Montana for six months and a day, beginning Oct. 21, by the Montana Supreme Court, which was taking reciprocal discipline after he was suspended for violating rules in North Dakota.

Two Helena attorneys – J. Cort Harrington and John Shontz – have been transferred by the Montana Supreme Court to disability/inactive status in the State Bar. Both attorneys requested the change from active status in lieu of disciplinary actions being taken against them.

ORAL ARGUMENTS

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

November 2009

■ Case No. DA 09-0322 PLAINS GRAINS LIMITED PARTNERSHIP, et al., Plaintiffs and Appellants, v. BOARD OF COUNTY COMMISSIONERS OF CASCADE COUNTY, et al., Defendants and Appellees, SOUTHERN MONTANA ELECTRIC GENERATION and TRANSMISSION COOPERATIVE, Inc., et al., Intervenor, Appellees and Cross Appellants.

Oral argument set for Wednesday, Nov. 18, at 9 a.m. in the courtroom of the Montana Supreme Court, Helena.

■ DA 09-0270 FALLON COUNTY, a political subdivision of the State of Montana, by and through its Board of Commissioners, Plaintiff and Appellee, v. STATE OF MONTANA, Department of Revenue, Defendant and Appellant.

Oral argument is set for Wednesday, Nov. 18, at 10:30 a.m. in the courtroom of the Montana Supreme Court, Helena.



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eral interest in raising revenue, alone, may not be sufficient to outweigh tribal and federal interests. See, *White Mountain Apache Tribe*, 448 U.S. at 150; *Hoopa Valley Tribe v. Nevins*, 881 F.2d 657, 661 (9th Cir. 1989).

Conclusion

The *Yee* court described the tribal casino as a sophisticated, multi-million dollar enterprise. This factor appears to have influenced the court's holding that the sales taxes applied. The court viewed the relative interest in tribal self-sufficiency as minimal, evidently because the casino is lucrative. In future cases, accordingly, the economic circumstances of a tribal enterprise may influence a court's disposition. Possibly, the *Yee* court's rationale will be applied more broadly than the factual circumstances of a successful tribal casino.

Based on the *Yee* decision, a reasonable conclusion may be that federal courts will increasingly interpret and apply tax immunities more narrowly. Contractual arrangements that formerly achieved tribal sales tax immunity will possibly not result in similar tax immunity going forward, at least in certain circumstances.

A few observations geared toward a tribal perspective:

■ Tribes should carefully consider whether to offer indemnification of third-party contractors, suppliers, or retailers in the event sales taxes are imposed. In *Yee*, the court denied the tax immunity in spite of the fact that the Tribe would ultimately pay the tax cost based on the indemnification agreement.

■ Sales and purchase arrangements meant to meet tax immunity requirements

A self-help law program is NOT a bad idea

In February 2009, I walked into the Missoula Self-Help Center not knowing what to expect. I did know that I was a single mother who had already spent what little I had in savings on an attorney who had helped me with family law the previous year.

I went to the Self-Help Center desperate for aid. As I opened the doors, six other people were already in line ahead of me, and there were many who came in after. I immediately saw people who were in even more dire situations than I. People who were desperate for help waited with me for someone to help them muddle through the legal jargon and piles of paperwork.

When my turn came, I was greeted with a friendly smile and a genuine concern about my situation. The staff pointed me in the right direction, and attorneys who volunteered there helped me complete the appropriate paperwork. I cannot express how much this program

helped me in a time when I had nowhere else to turn.

I read a comment in July's *Montana Lawyer* stating that people who can afford a private attorney will take advantage of a self-help center. This may be true, but so it goes with every other social aid program including unemployment, welfare, Medicaid, etc. Let's not throw the baby out with the bath water; just because few may do so, doesn't mean that it should affect the many who truly need a program like this.

The people who I saw in the waiting area, like myself, were obviously desperate and did not have the means to attain private legal counsel. Maybe if more attorneys would take pro bono cases, there would not be a need for a self-help program, but clearly this is not that case. I urge everyone to support programs like these. Those who cannot afford an attorney are perhaps those most in need of one.

— Stacie Johnston,
occupational licensing examiner
State of Alaska

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should be directly and clearly within the scope of the applicable immunity. In *Yee*, the court rejected the Tribe's arrangement of designating the contractor and subcontractors as "purchasing agents," stating that the contracting parties may not change the economic reality of a transaction in order to alter the tax liabilities.

■ An approach that may bolster a tribe's per se immunity position is for the tribe itself to negotiate, purchase, and take delivery of construction materials on its reservation or trust land.

Particular situations relating to state taxation and the immunity of an Indian tribe or tribal entity should be considered in light of the specific facts, circumstances, and laws at issue. In doing so, it is appropriate to reflect on the trends in this area of the law represented, in part, by the sales taxation that the *Yee* court permitted with respect to the construction work at the Barona Band's casino.

DAVID H. HOUSE, who resides in Bozeman, is an associate at Alexander, Berkey, Williams & Weathers, a law firm specializing in federal Indian law and

tribal representation. Mr. House's experience includes representing tribal governments and tribal business enterprises.

THOMAS WEATHERS is Aleut and a founding partner of Alexander, Berkey, Williams & Weathers. Mr. Weathers' primary focus is in the areas of tribal business matters, gaming, and the Indian Child Welfare Act. Mr. Weathers is also a past president of the National Native American Bar Association. They can be reached by accessing the firm's website – www.abwwwlaw.com.

NEWS ABOUT MEMBERS

Chris Fagan recently joined the Sullivan, Tabaracci & Rhoades law firm in Missoula as an associate attorney specializing in real estate and general litigation. Mr. Fagan completed his undergraduate studies in history and geography in 2000 at the University of Nevada, Reno. He earned his JD in 2004 from the University of Montana, and has lived and practiced in

Missoula since then. He gained experience in conservation land transactions and easement negotiations with a local non-profit organization before returning to Sullivan, Tabaracci & Rhoades. Mr. Fagan also serves on the Council for Montana Trout Unlimited.

The Billings law firm of Halverson & Gilbert announced the association of **Katherine S. Huso** and **Jameson C. Walker**.

Ms. Huso graduated from the University of Montana School of Law in 2007. She was a member of the NALSA Moot Court Team. Prior to joining the firm, she was an associate at Corette, Pohlman & Kebe in Butte for two years. Ms. Huso's primary areas of practice will be civil litigation and insurance defense.

Mr. Walker recently graduated from the University of Montana School of Law in 2009. He was the Student Bar Association president, the American Bar Association Law Student Division 12th Circuit governor, a member of the Trial Team, and the recipient of the 2009 Dean's Award. Mr. Walker will practice in the areas of civil litigation and insurance defense.

Hanna Warhank has joined the Great Falls law firm of Church, Harris, Johnson & Williams as an associate attorney. Ms. Warhank is a member of the firm's tax and transactional practice group, with an emphasis on business and estate planning, taxation, estate administration, and real property. She grew up in the small, Hi-Line town of Rudyard, Mont. She attended Carroll College in Helena and graduated with a BA in Accounting and Political Science. She continued on to the University of Montana School of Law and earned her juris doctor in May 2009.

The Crowley Fleck law firm has announced that six new associates have joined the firm. They are:

■ **Kelsey E. Bunkers**. Ms. Bunkers graduated magna cum laude from Creighton University School of Law in 2007,

Bruce Chessen, Ph.D.

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where she was a member of the Board of Editors of the *Creighton Law Review* and a member of the Moot Court Board. Following graduation, Ms. Bunkers served as a law clerk to Karen E. Schreier, chief judge for the U.S. District Court for South Dakota. Ms. Bunkers received her undergraduate degree, graduating summa cum laude, from Bates College, Lewiston, Me. cccccc, and was a member of Phi Beta Kappa. Ms. Bunkers is admitted to practice in Montana and South Dakota. She will practice in the Litigation Department in the Bozeman office.

■ **Hilary J. Oitzinger.** Ms. Oitzinger graduated with high honors from the University of Montana in 2005 with a BA in Journalism, Psychology, and Sociology and with honors from the University of Montana School of Law in 2008. Following law school, Ms. Oitzinger clerked for Justice John Warner of the Montana Supreme Court for one year while completing her master's degree in Public Administration from UM. She will practice in the Commercial Department in the Helena office.

■ **Eli J. Patten.** Mr. Patten graduated magna cum laude from George Washington University in January 2005 with a BA in Political Science, and from the University of Montana School of Law in 2009. He will practice in the Commercial Department in the Billings office.

■ **Kirsten M Sjue.** Ms. Sjue graduated from the University

of North Dakota in 2003 with a BA in Political Science, and from the University of North Dakota School of Law in 2006. After graduation, she served a one-year clerkship for Gerald W. Walle, chief justice of the North Dakota Supreme Court, and a two-year clerkship for Ralph R. Erickson, U.S. district judge for North Dakota. Ms. Sjue will practice in the Commercial Department in the Williston, N.D., office.

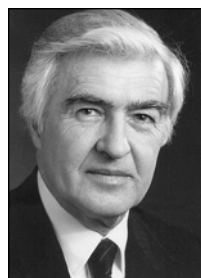
■ **Crystal A. Thorpe.** Ms. Thorpe joined the Commercial Department in the Bismarck office of Crowley Fleck. Prior to joining the firm, Ms. Thorpe worked at PricewaterhouseCoopers in Minneapolis as a tax associate. She is an active member of the State Bar of Minnesota. In 2004, Ms. Thorpe graduated magna cum laude from Regis University with a BS in Finance. Following two years of selling real estate as a broker-associate for Thorpe Realty & Auction, Ms. Thorpe attended the University of North Dakota School of Law, where she graduated with distinction in 2008.

■ **Jamie M. Wells.** Ms. Wells graduated from Carroll College in 2005 with a BA in Accounting. She then attended the University of Montana School of Law, where she received her JD in 2008. Ms. Wells recently graduated from the University of Florida Levin College of Law, where she received her LL.M in Taxation. She will practice in the Commercial Department in the Billings office.

DEATHS

L.C. Gulbrandson, former Supreme Court justice

L.C. Gulbrandson, 86, retired justice of the Montana Supreme Court, died Oct. 3 in Tucson, Ariz.



Born in Vida, Mont., he served as a combat pilot in World War II, receiving a Distinguished Flying Cross, Purple Heart and five Air Medals. After World War II, he graduated from the University of Minnesota School of Law School and devoted his life to serving the judicial systems in Montana.

He worked as an attorney in Glendive and as a district court judge for eastern Montana prior to being elected to the Montana Supreme Court in 1982.

Upon retiring from the Supreme Court in 1989, Justice Gulbrandson and his wife Billie moved to Tucson.

Justice Gulbrandson is survived by his wife and three stepchildren.

Judith Wang, prosecutor and victims' advocate

Missoula Assistant City Attorney Judith L. Wang, 56, died Sept. 25 of injuries received when her vehicle was hit by another vehicle while she was returning home from a Domestic Violence Conference in Billings. The collision occurred near Warm Springs, on Interstate 90.

"Judy Wang was a woman who was intensely driven to help others, to ensure justice, to improve the legal system and to make the world a better place," her obituary said. "She will be deeply missed by all those statewide and beyond who benefited from her trainings and other advocacy and by those of us who knew and loved her personally."

Ms. Wang was born in Oakland, Calif., but moved to Minneapolis with her family four years later. She attended Montana State University and was awarded a bachelor of science in Nursing degree in 1974. She went to work in the intensive care unit at Community Medical Center in Missoula.

Ms. Wang signed up for the Peace Corps in 1976, serving for two years

teaching nursing in Belize City, Belize. She returned to Missoula to work in the ICU at both Missoula hospitals.

Ms. Wang earned her juris doctorate from the University of Montana School of Law in 1984, while working as a nurse throughout graduate school. Her first position as an attorney was a clerkship with Workers Compensation Judge Timothy Reardon in Helena, followed by working for attorney Terry Trieweiler in Whitefish. From there, she came for what she assumed to be a transition job with the City Attorney's Office in Missoula. Instead, it became a 23-year career.

As the assistant city attorney, Ms. Wang supervised the criminal cases and the legal interns, as well as routinely prosecuting domestic violence and driving under the influence cases. She drafted domestic violence legislation and actively lobbied for it on both sides of the aisle in the Montana Legislature. She was a founding member of the Missoula Family Violence Council and its chairwoman for more than 10 years. She was a leader in the development of free legal assistance for victims of domestic violence.

Ms. Wang's skill and knowledge as a prosecutor were exemplified by her thorough and effective prosecutions. She rarely lost a case, her obituary said. She also served on the Attorney General's Fatality Review Team, traveling all over Montana seeking to design "best practices" for the legal system and volunteer services related to violence against women.

Ms. Wang sought to relieve suffering, hold perpetrators accountable, and even help perpetrators to seek counseling. Frightened children who came to her office received stuffed animals. Downtrodden women came away feeling believed, supported, and knowing that she would fight for justice for them. In 2004, she received a lifetime achievement award from the Montana Attorney General's Office, the State Bar of Montana, and the Montana Coalition Against Domestic & Sexual Violence.

Beginning when Tuenny McCoy was only 8 years old, Ms. Wang became her "big sister" through Big Brothers & Sisters for many year. She also helped Ms. McCoy go to college and graduate

from MSU in Architecture. Ms. Wang was an avid gardener and an expert on antiques.

Ms. Wang is survived by her husband, Carl Ibsen, and two stepsons.

John Fillner, Missoula attorney

Missoula attorney John C. Fillner, 41, died of natural causes on Oct. 17 at his home in Missoula.

He was born in Billings, the son of former District Judge Russell K. Fillner. He was the youngest of the Fillners' five children.

Mr. Fillner graduated from Billings Senior High in 1986, the University of Montana in 1990, and the University of Montana School of Law in 1998. He was a member of the Sigma Chi Fraternity.

"John loved the practice of law," his obituary said. "He believed in the justice system and worked to find an equitable solution for his clients."

He is survived by his parents, Russell and Jane Fillner of Ronan, formerly of Billings.

Paul Meisner, Missoula attorney

Missoula attorney Paul Carl Meisner, 54, died at his home on Sept. 27 due to cancer.

Mr. Meisner was born in Billings. He graduated with a juris doctorate from the University of Montana School of Law in 1981.

Mr. Meisner remained in Missoula after his graduation, where he practiced law until the time of his death. He began his career at the law firm of Garlington, Lohn & Robinson, where he eventually became a partner. Most recently, he opened his own firm, Meisner & Associates, where he practiced general civil litigation with an emphasis on personal injury matters. Mr. Meisner was licensed to practice in the U.S. District Court of Montana, 9th U.S. Circuit Court of Appeals, Confederated Salish Tribal Court, and Kootenai Tribal Court.

Mr. Meisner loved the outdoors, including fly-fishing and skiing. He was on the football team in high school; he also played the trombone and was an accomplished member of the debate team. He was on the moot court team that took the national championship in

New York City in 1981. He had a great love of American history and a passion for the history and modeling of the railroad system.

Mr. Meisner is survived by a daughter and two sons.

Edward Borer, former Great Falls attorney

Former Great Falls attorney Edward Wayne Borer, 80, of Arlington, Wash., died of natural causes Sept. 24 in Washington.

Mr. Borer was born in Forsyth, Mont., and raised by a widowed mother. Shortly after he married in 1950, he was drafted into the Army and served in a chemical weapons unit in Korea in 1951-52. After his military service, he and his wife moved to Minneapolis where Mr. Borer worked as a bank examiner. The couple then moved in 1954 to Missoula, where Mr. Borer graduated from the University of Montana School of Law in 1959 with top honors.

After graduation, they spent one year in Billings, where he clerked for U.S. District Judge William Jameson, and then moved to Great Falls where he joined Orin Cure's law firm in 1960.

Due to health concerns, Mr. Borer left behind a thriving practice in 1993, retiring with his wife to Marysville, Wash., to be close to his grandchildren.

Mr. Borer was a lover of the outdoors. Wilderness backpacking, hunting, skeet shooting, motorcycles, skiing, and fly fishing were some of his many activities. He was also an avid golfer and woodworker. He recently attended the 50th anniversary reunion of his law school class.

Mr. Borer Ed was preceded in death in June by his wife of 58 years, Mary Ann. He is survived by two sons.

Other deaths

- **Lois McKinley**, who became an advocate for the developmentally disabled in Anaconda in the 1950s and later worked for Montana Legal Services as a legal secretary, died on Oct. 12 in Billings at age 88.

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Box 908, Hardin MT 59034-0908. Applications must be received or postmarked no later than Nov. 13, 2009.

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