

Lawyer

THE STATE BAR OF MONTANA



Limited scope representation

To help meet legal needs, Montana's Supreme Court wants to 'unbundle' your law practice

The **minimum**
technology **stuff**
that ~~Montana~~ attorneys
should **know**



**Time for your
IOLTA and
pro bono
reporting**

Who are the new district judges? See Page 8



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Joe Sullivan

PRESIDENT'S MESSAGE

Ghost writers in the Big Sky

Is Montana ready for limited scope representation?

The term “limited scope representation” (LSR) describes a method of legal practice where an attorney is hired, not to handle a case or a transaction, but a *piece* of a case or transaction. This is sometimes referred to as unbundling legal services.

A form of “limited scope representation” is “ghost writing.” A ghost writer is an attorney hired to draft a pleading or brief. The finished product is provided to the client who uses the draft as his own while the client represents to the court that he is acting pro se. The actual author is never identified – thus, the ghost.

Imagine the law office of the future. I enter my six-by-six cubicle. I begin fielding phone calls. I listen to a person's problems. We go over a checklist of possible papers I can produce – draft a complaint, draw up papers needed to perfect service, draft a brief. Each item has a corresponding price like an entre on a restaurant menu.

Mind you, none of the listed items involve me stepping foot in a courtroom, making an oral argument, taking a deposition, or having any sort of contact with the opposing side. As to these aspects of the case, the client is on his own.

Once the client has placed his order, I convert the items chosen from the menu into a fee agreement which is electronically sent to the client. Within minutes the agreement is executed and returned, and an electronic transfer of the appropriate fees listed on the menu are transferred to my account.

I then take the information gathered, package it up, and e-mail it off to a legal research outsourcing company in India. There the pleading or brief is drafted and sent to the client. I never review the document. I never even meet the client face-to-face. The client then files the document under his own signature. I move on to my next phone call.

Is there anything wrong with this business model? If done well, probably not.¹ As with many things, however, the devil is in the details.

I SHOULD STOP for a moment and point out that

many good people are working hard to figure out ways to provide more legal services to a greater number of low income individuals. The Access To Justice Task Force,² the Commission On Self Represented Litigants, and the Equal Justice Task Force have recommended to the Montana Supreme Court the use of limited scope representation and ghost writing as methods to hopefully better serve the legal needs of low-income individuals.

BY ORDER, the Supreme Court has already signaled its intent to adopt unbundling of legal services (see story on Page 6). “It is the Court's intention,” the Court's order said, “to adopt rules to encourage LRS.”³ The rationale is that

LSR is “...one means of addressing the unmet legal needs of low- to moderate-income Montanans.”⁴

However, to implement what may be a good concept, the Montana Supreme Court is considering altering Rule 11 of the Montana Rules of Civil Procedure. The rule change adds to Rule 11 the language, “An attorney may help to draft a pleading, motion, or document filed by the otherwise self-represented person, and the attorney need not sign that plead-

ing, motion, or document.”

This exception for ghost writing would swallow the rule. Since the ghost writer is not required to be identified, the author can never be held accountable. Further, while the rule change is intended to help low- and moderate-income Montanans, it is not limited to those individuals.

Therefore, the business plan I outlined above is totally valid. I can construct a practice where I never need to leave my six-by-six cubical. I never need to meet my client. I never actually need to conduct any legal research nor check the legal research and writing. Why should I, I can never be held accountable for the content.

Taking it a step further, since unbundled legal services will be sanctioned by the Supreme Court, I can agree to represent the client as a ghost writer, allowing him to be deemed pro se as to anything that requires a written document be signed (I will just have the client sign it instead of me), and I can represent the client (not pro se) for any part

The challenge to you: read the Montana Supreme Court's proposed rule changes (see Page 6) and speak up. Consider how they would apply to or impact your practice.

of the case where my physical presence is required.
Therefore, I can sidestep Rule 11 in all my cases.

THE MAJOR FLAW in the proposed rule changes, as I see it, is the claimed basis of those rules. Many states have had some form of unbundled legal services for years. The Supreme Court's order states the currently proposed rules follow the rules implemented in Wyoming, Washington, and Iowa. I respectfully disagree. The currently proposed rules fail to follow any of the rules of these other states, at least as to the changes to Rule 11. At best, they take bits and pieces of these other rules and in so doing ignore the detailed work and study of these other states.

I can find no exception for ghost writing in Wyoming's Rule 11. In Washington, Rule 11(b) acknowledges that attorneys can help in the drafting of pleadings, motions, or documents filed by otherwise self-represented persons, but the attorney still needs to certify he has read the pleading, motion, or memorandum and that it is grounded in fact, warranted by law, and is not interposed for an improper purpose. In Iowa, Rule 1.423(1) recognizes limited scope representation in the form of drafting documents without signature by the attorney, but requires the attorney/author's name, personal identification number, address, telephone number, and facsimile number be on each document he prepares. Thus, none of these states appear to permit pure anonymous ghost writing and all three require the author be identified and held accountable in some way.

FINALLY, I RECENTLY ATTENDED a meeting in Spokane. Present were members of the Washington judiciary, Washington attorneys, and the supervisor of a legal clinic servicing low- and moderate-income individuals. I took the opportunity to question them about Washington's experience with unbundled legal services. I received some interesting anecdotal information:

- Washington dealt with this issue back in the 1990s.
- It never caught on in any major way.
- The one legal-services clinic represented has done very little unbundled legal work because it has not deemed it appropriate representation in most cases.
- The greatest problem (and, thus, maybe the greatest deterrent) with unbundling of legal services is clearly defining the extent of the work. Regardless of how detailed the discussion is with the client and no matter how detailed the paperwork outlining the legal services being provided, inevitably the client ends up questioning whether the services promised were provided.
- A major issue exists as to whether malpractice carriers will cover unbundled legal service (most likely for the very reason it is difficult to define the extent of the work

promised). Without specifics, it was suggested the easiest thing for an insurer to do is expressly exclude unbundled legal services from coverage.

FROM MY RESEARCH of other states' rules and from the anecdotal comments, I find myself with more questions than answers.

Have these types of proposed changes been validly shown to provide additional legal services to low- and moderate-income individuals? Apparently, that is not the case in the state of Washington.

Do we need to destroy the accountability provided in Rule 11 to accomplish an otherwise worthy intent? In Wyoming, Washington, and Iowa they did not seem to think so.

Will this create an entirely new market for attorneys (possibly in six-by-six cubicles)? Probably not, if the 10 to 20 years of experience of the Washington model is any example.

REMEMBER, IN MY prior messages I promised I would challenge you. Remember also the intended reason for these rule changes is a good one – to increase the availability of legal services to those who could not otherwise afford them. For this month's message, the challenge to you is read these rule changes and speak up. Consider how they would apply to or impact your practice. I am sure many of you reading this can come up with better examples, not only as to merely the impact on Rule 11, but as to other rules in the context of daily practice. I want to hear them.

Then I take the challenge a step farther. If you have suggested changes or improvements, please provide those also. Help build on the good intent that is the basis of these proposed rule changes.

A portion of next month's *Montana Lawyer* will be dedicated to the examples and suggestions you provide. Please send them to me, care of *The Montana Lawyer*, PO Box 577, Helena MT 59624, or to cwood@montanabar.org. Further, the Montana Supreme Court is seeking comment. Give them what they are seeking. If you are silent, you only have yourself to blame.

NOTES

1. With the exception of not using a legal outsourcing company in India, Montana Legal Services has been operating under this type of model for years.
2. Although the memorandum of Sept. 15, 2010, that outlined these recommended rule changes listed one of the three groups as the AJTF, I believe they meant the Access to Justice Committee of the State Bar.,
3. Order signed and filed Oct. 6, 2010, In Re Proposed Rule Changes To The Montana Rules Of Civil Procedure and The Montana Rules Of Professional Conduct to encourage limited scope representation(LSR) in Montana.

4. *Id.*

○

Limited scope representation

Montana Supreme Court on verge of allowing it

The proposed rules; pros & cons

In a surprise move, the Montana Supreme Court has proposed sweeping rule revisions that would expand the scope of “limited-scope” or “unbundled” representation by attorneys and encourage Montana attorneys to practice limited-scope representation “as one means of addressing unmet legal needs of low- to moderate-income Montanans.”

An attorney practices limited-scope representation (LSR) by handling only a part of a client’s case, or by ghost writing briefs on behalf of a self-represented litigant. It is also referred to as “unbundled” representation, which several states allow. Such piecemeal practice has been allowed under Montana rules, but only when “reasonable.” Montana Rule 1.2 is identical to the ABA Model Rule. Generally, Montana lawyers traditionally take on all elements of a case.

According to the Montana Court Administrator’s website, “LSR is a term borrowed from transactional lawyers – drafting a will, deed, or contract – and has long been institutionalized in bankruptcy. A lawyer assists with a specific task or tasks including legal advice, document preparation or review, and/or limited appearances. The client and lawyer agree upon and clearly define specific discrete tasks to be performed by the lawyer and by the client.”

Limited representation is permitted in Montana, “but its scope is not defined,” the Court website says. The current Rules of Professional Conduct provide:

Rule 1.2 - Scope of Representation [in part]

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

The current Rules go on to allow non-profit and court-annexed limited legal services programs to provide short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, subject to further conditions.

A 2007 ABA formal ethics opinion held that a lawyer may provide legal assistance to self-represented litigants appearing before tribunals by preparing written submissions without disclosing or ensuring the disclosure of the nature or extent of such assistance.

“The most recent amendments to the Rules together with other legal authority make clear limitations on representation should be respected as long as they are ‘reasonable,’” the website says. “And there are no specific statutes, rules, or orders prohibiting LSR, except an advisory-only State Bar of Montana Ethics Opinion (900409) declaring an attorney’s sale of ‘do it yourself’ kits, a violation of Model Rule 1.1.

“There are dozens of formal or advisory ethical opinions and court decisions nationally examining a myriad of ethical and legal considerations,” the Court Administrator’s website says. “Topics addressed include informed consent, candor toward the court, disclosure, conflicts of interest, and duty of confidentiality. Unfortunately, the resolutions vary widely.”

A COMMENT PERIOD on the limited scope representation rule changes has been set by the Montana Supreme Court, lasting through Jan. 4, 2011. Send your comments to the clerk of the Supreme Court.

The proposed new rules for Montana – requested by the Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, and the State Bar Access to Justice Committee – are being considered by the State Bar Ethics Committee. All of Montana’s attorneys and the public may comment on the proposed rule revisions through Jan. 4 by writing the clerk of the Supreme Court.

The three groups requesting that limited-scope representation be expanded argued its need in a letter to the Supreme Court. In it, they said that the LSR tool was necessary to help with the 200,000 cases of legal need that went unmet every year (2004 Montana Legal Needs Survey). They argued that:

■ LSR allows more transactions to take place in the legal services market. Those who were previously priced out of the market may enter and negotiate for discrete, or “unbundled,” services. Thus, rather than being forced to go it all alone, self-represented parties can, as consumers, choose the legal services they can afford and feel they need most.

■ LSR may benefit not just the self-represented parties, but

Montana's justice system itself. First, the groups say, court dockets could become more manageable for judges and administrators. Second, studies show a marked difference in attitudes that survey respondents had towards the justice system, depending on whether they were able to procure legal assistance.

■ LSR benefits lawyers in the same way it benefits self-represented parties, by allowing higher volumes of transactions in the legal services market, the groups argued. "Lawyers could enjoy new business drawn in from a wider client pool. The ABA reports first-time limited-service clients frequently come back as full-service clients." Also, lawyers should be better able to compete against online information services, non-lawyer document preparation services, financial institutions, real estate companies, tax preparation services, accounting firms, and others, the groups say. "As more and more people are representing themselves, these entities have become serious competitors for traditional full-service lawyers."

■ Finally the groups stated that Montana has already adopted, verbatim, the model rule set forth by the ABA in its effort to formulate policies that would encourage the use of LSR. "However, a few further modifications warrant consideration. The right rules encourage more lawyers to provide LSR, as they reduce uncertainties and provide ethical 'safe harbors.'"

THE STATE BAR OF MONTANA'S Ethics Committee, however, has some concerns about the proposed rules, including the rapidity in which the rule changes were being adopted. It called for the comment period, which the Court is allowing under its Oct. 6 order.

After learning that the Court was on the verge of adopting new rules, Ethics Committee members met with the State Bar's Executive Committee by phone to outline their thoughts about LSR. Among their concerns:

■ A big potential for trial-court overload as self-represented litigants take advantage of this LSR tool.

■ Unrepresented clients could cost represented clients money. Example, one lawyer doing a \$500 LSR divorce settlements vs. opposing attorney providing the whole package for \$10,000.

■ LSR will unleash some incompetent lawyers on the public. "Are we creating a different level of competence and diligence."

■ Attorneys will sign up, then abandon more clients, leading to more malpractice claims. LSR creates "complexities" that could be a problem with attorney malpractice insurance.

■ Lawyering might become a "drive-through service." It's self-help litigation "run amok."

■ The goals of LSR are lofty, but private law practitioners need a chance to comment on the proposals.

Some Ethics Committee members felt it would be a better idea – to help with the low- to moderate-income clients' needs – to have the Court make pro bono work by attorneys mandatory.

The State Bar Executive committee did not take a stand on

the LSR question, but it did recognize that there were highly divergent views on LSR in Montana, and passed a motion to request that LSR changes be taken off the "fast track."

THE FOLLOWING IS THE ORDER issued on Oct. 6 by the Montana Supreme Court containing the rule-change proposals:

The Montana Supreme Court Equal Justice Task Force, the Montana Supreme Court Commission on Self-Represented Litigants, and the State Bar Access to Justice Committee have petitioned the Court to adopt changes to the Montana Rules of Professional Conduct and the Montana Rules of Civil Procedure. The intent of the proposed rule changes is to encourage Limited Scope Representation (LSR) by Montana attorneys, as one means of addressing the unmet legal needs of low- to moderate-income Montanans.

The proposed rule changes are patterned after similar rules that have been implemented in the states of Wyoming, Washington, and Iowa. They involve amending Rules 1.1, 1.2, and 4.2 of the Montana Rules of Professional Conduct, and amending the Montana Rules of Civil Procedure by adopting new Rules 4.2 and 4.3 and adding language to Rule 11.

It is the Court's intention to adopt rules to encourage LSR. Before we do so, we invite public comment on the proposed new provisions, which are set forth in full below. In particular, we ask the Uniform District Court Rules Commission to suggest any changes to the Uniform District Court Rules that the Commission deems necessary to coordinate with adoption of the proposed new rules.

The provisions proposed to be added to the Montana Rules of Professional Conduct are highlighted and underlined below:

Rule 1.1 – Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer and client may agree, pursuant to Rule 1.2(c), to limit the scope of the representation. In such circumstances, competence means the knowledge, skill, thoroughness, and preparation reasonably necessary for the limited representation.

Rule 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer

[existing subsections (a) and (b)]

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(1) The client's informed consent must be confirmed in writing unless:

(i) the representation of the client consists solely of telephone consultation;

(ii) the representation is provided by a law yer

More LIMITED SCOPE, Page 22

Montanans elect 5 new district judges

Montanans elected three judges on Nov. 2 to fill the new district court judgeships created by the Legislature in 2009 for Billings, Helena, and Kalispell. And Missoula- and Libby-area voters elected two new district judges to replace ones who had retired. From the fully counted, yet unofficial Nov. 3 tallies:

■ **In Billings**, Municipal Judge Mary Jane Knisely defeated attorney Damon Gannett to become the sixth state judge in Yellowstone County. Knisely received 26,511 votes (almost 55 percent) to 21,817 for Gannett.

■ **In Helena**, the race for a new, fourth district judgeship in Helena was won by attorney Jim Reynolds. With all precincts in Lewis & Clark and Broadwater counties reporting, Reynolds had 13,259 votes – more than 51 percent – and attorney Dennis Loveless had 12,465 votes.

■ **In Kalispell**, Flathead County Justice of the Peace David Ortley will fill the new, fourth district judge seat in Montana's 11th District Court. Ortley, 54, garnered 15,918 votes to beat Kalispell Municipal Judge Heidi Ulbricht, who

got 12,878 votes.

■ **In Missoula**, Karen Townsend defeated Standing Master Brenda Desmond in the contest to replace Judge Douglas Harkin, who is retiring. Townsend, former chief deputy county attorney, defeated Desmond 23,823 to 9,333.

■ **In Libby**, Jim Wheelis was elected Lincoln County district judge with 3,952 votes (60.8 percent) to Robert Slomski's 2,548 votes. Wheelis will replace Judge Michael Prezeau.

■ **In Hamilton**, Ravalli County District Judge Jeff Langton was retained for a new term with 62 percent of the vote.

New constitutional convention rejected. Voters rejected a ballot question on whether the state should call a convention to rewrite the constitution. Every 20 years, a ballot measure asks the voters whether they want to call such a convention. About 59 percent of voters said no to the ballot question.

Harsh results from national study of money in judicial campaigns

State judicial elections have been transformed by money during the past decade, says a new report by three campaign watchdog groups.

The study of America's 2000–2009 high court contests shows that there were “tens of millions of dollars raised by candidates from parties who may appear before them, millions more poured in by interest groups, nasty and misleading ads, and pressure on judges to signal courtroom rulings on the campaign trail.

The study organizers – the Justice at Stake Campaign, the Brennan Center of Justice at NYU School of Law, and the National Institute of Money in State Politics – say that those conditions have “become the new normal.”

Titled “The New Politics of Judicial



Beth Baker

Lots of cash is funnelled into Montana Supreme Court race

Helena attorney Beth Baker defeated Livingston judge Nels Swandal on Nov. 2 in a Montana Supreme Court race that saw the candidates' total fundraising pushing the \$300,000 mark, much of it from attorneys.

Baker won an eight-year term on the Court, replacing retiring Justice William Leaphart. Unofficial returns with all precincts reporting showed Baker with 163,027 votes (52 percent) to Swandal's 147,760 votes.

With nearly a month to go in the campaign, October funding reports had Baker raising \$148,752 to Swandal's \$128,498, a total of about \$278,000.

IN THE OTHER Supreme Court election, Justice Mike Wheat, running unopposed to fill out an appointed term, won with 78 percent of the voters saying he should be retained.

Elections, 2000–2009: Decade of Change,” the study was praised by retired U.S. Supreme Court Justice Sandra Day O'Connor. “For 10 years, the ‘New Politics’ reports have played a

leading role in documenting the growing threat to the credibility of our courts,” she said in a forward to the latest study.

According to the report:

For more than a decade, partisans and

special interests of all stripes have been growing more organized in their efforts to use elections to tilt the scales of justice their way. Many Americans have come to fear that justice is for sale. Unlike previous editions, which covered only the most recent election cycle, this fifth edition of the "New Politics of Judicial Elections" looks at the 2000–2009 decade as a whole. By tallying the numbers and "connecting the dots" among key players over the last five election cycles, this report offers a broad portrait of a grave and growing challenge to the impartiality of our nation's courts.

The money explosion

The surge in spending is pronounced and systemic. Campaign fundraising more than doubled, from \$83.3 million in 1990–1999 to \$206.9 million in 2000–2009. Three of the last five Supreme Court election cycles topped \$45 million. All but two of the 22 states with contestable Supreme Court elections had their costliest-ever contests in the 2000–2009 decade.

Special-interest "super spenders" played a central role in this surge. A study of 29 elections in the nation's 10 most costly election states shows the extraordinary power of super spender groups. The top five spenders in each of

Helena forum to examine role of money in judicial elections

A free community forum investigating the problems in judicial elections and campaign fundraising will be held Nov. 16 at the Colonial Hotel in Helena.

The event – titled "Selecting Montana's Judges: Protecting Impartiality, Ensuring Accountability & Preserving Public Trust" – is a "bring an open mind" forum that "will focus on concerns about judicial elections, both nationally and in Montana," said one of the co-sponsors, retired Montana Supreme Court Chief Justice Karla Gray. "It also will present potential alternatives which are already working well in some of our sister states," she said.

Other co-sponsors of the forum are the Helena Education Foundation, the Montana Chamber of Commerce, and the American Judicature Society.

The forum will be from 1:30–4:45 p.m.; the Red Lion Colonial Hotel is at 2301 Colonial Drive in Helena. There will be no admission charge, and the forum is approved for 3.0 CLE credits for Montana attorneys. For more information on the program contact Karla Gray at (406) 449-6929.

these elections invested an average of \$473,000, while the remaining 116,000 contributors averaged \$850 each. In the most widely publicized case, one coal executive spent \$3 million to elect a West Virginia justice. The disparity suggests that a small number of special interests dominated judicial election spending even before the *Citizens United* case ended bans on election spending by corporations and unions.

In 2007–08, five states felt the worst

blast of the super spender phenomenon. When TV spending by political parties and special-interest groups is factored in, Pennsylvania broke the \$10 million barrier, while spending reached \$8.5 million in Wisconsin. Texas and Alabama each topped \$5 million, and Michigan, which had just under \$5 million in total spending, witnessed some of the cycle's most

More STUDY OF MONEY, Page 25

Online training for notaries meets the new notary laws

Secretary of State Linda McCulloch has launched the a free online training program for Montana notaries public. The online program was designed to aid notaries in compliance with the state's new training requirement, which took effect on July 1, 2010.

"Certified training raises the professionalism and knowledge of notaries public and protects Montanans from the dangers associated with inaccurate notarial acts," Ms. McCulloch said. "Our online program was designed exclusively for Montanans and fulfills the training requirements for all new applicants."

The 2009 Montana Legislature approved a series of new notary laws. July 1, 2010, marked the implementation of the final components – the 30-day residency and training requirements for new notaries. (1-5-402, MCA)

The new training component requires all persons applying for appointment to a new notary commission to complete satis-

factorily a training program certified by the Secretary of State.

"Knowledge is power," McCulloch said. "Our free online training not only fulfills the statutory requirements for new notaries, it is also an excellent review for current notaries and for those interested in learning more about the notarial process."

The free online training program is broken into five, 20-30 minute modules. Prospective notaries can take the course one section at a time, or continue through all sections at one sitting.

In addition to offering an electronic course, the Secretary of State's Office hosts in-person training across the state. Secretary McCulloch has also certified the training courses offered by a number of private organizations.

To find out more about training courses for Montana notaries, log on to the Secretary of State's website at sos.mt.gov/Notary.

Access the free online training course at

<http://sos.mt.gov/Notary/Training/Online/index.asp>

Group adds 6 acts for Montana to consider

By **Professor E. Edwin Eck**
University of Montana School of Law

The non-partisan Uniform Law Commission approved 10 acts at the Conference's annual meeting this summer in Chicago. Montana's Uniform Law Commissioners, Supreme Court Justice Mike Wheat, State Tax Appeal Board Chair Karen Powell, and I, along with Montana Life Member Joe Mazurek, participated in the seven-day meeting.

The newly approved acts include: a new Uniform Military and Overseas Voters Act, amendments to Uniform Commercial Code Article 9, amendments to the Uniform Collateral Consequences of Conviction Act, and an entirely revised Model State Administrative Procedure Act.

With the addition of these acts, the Uniform Law Commission currently recommends approximately 120 acts for enactment by legislatures across the country. The Montana Legislature has enacted about 70 of these Uniform Law acts including the Commercial Code, the Probate Code, the Anatomical Gift Act, the Fraudulent Transfer Act, the Premarital Agreement Act, and the Transfers to Minors Act.

Montana commissioners

Uniform Law commissioners must be lawyers. The commissioners are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys. Each state appoints commissioners in accordance with local law. In many states, governors appoint commissioners. Commissioners serve without compensation.

In Montana, the Legislative Council appoints commissioners. Commissioner Wheat was appointed in 2009, Commissioner Powell was appointed in 2008, I was appointed in 1989, and Commissioner Mazurek was appointed in 1984. Commissioner Powell serves as Legislative Liaison for the Montana delegation.

Memorials to Montanans

This summer's annual meeting included memorials to two well-known Montanans. Commissioner Wheat delivered a memorial for former UM School of Law Dean Robert E. Sullivan who was first appointed to the Commission in 1957. Commissioner Sullivan was an active member of many Uniform Law Conference committees during his 52 years of service on the Commission. Also, Havre native and 1938 graduate of the UM School of Law Frank Jestrab was recognized for his 54 years of active service on the Commission. Dean Sullivan died July 25, 2009 and Frank Jestrab died May 16, 2010.

Procedures for proposing new uniform acts

The first step in creating a new act occurs when Conference

leaders appoint a study committee to determine whether a uniform act on a particular topic is desirable and practicable. If such a determination is made, a drafting committee is formed.

Drafting committees usually meet three to six times over a one or two-year period to discuss and revise legislative drafts. In addition to the committee members, stakeholders in the subject matter of a proposed act – including ABA, ALI, and consumer representatives – are encouraged to attend committee meetings and participate. Once the drafting committee completes a draft, committee members read it word-by-word before commissioners from all over the country at an annual meeting. Commissioners debate the draft section-by-section.

Commissioners' suggestions cover everything from grammar to public policy. Commissioners contribute their expertise and represent their states.

After the draft is read the first time at an annual meeting, the drafting committee meets another two or three times over the following year to discuss their colleagues' suggestions. Drafting committee members incorporate suggestions into a revised draft, complete comments to the draft, and prepare explanations why some suggestions were not followed. At the next annual meeting of the entire conference, drafting committee members again read the revised draft word-by-word and all of the commissioners again debate the draft section-by-section.

After further modifications, the commissioners usually recommend that the act be presented to the state legislatures for consideration.

Even though four or five years are usually required to complete a single act, these thorough procedures ensure well drafted legislation that brings clarity and stability to critical areas of the law.

Montana's 2011 Legislative Session

Citizens and various private organizations urge legislators to adopt various uniform acts. Additionally Montana's commissioners identify specified acts which they think are important for consideration. The following acts are among those suggested by the commissioners for consideration during the 2011 session:

- Uniform Military & Overseas Voters Act
- Revised Uniform Limited Partnership Act
- Revised Uniform Limited Liability Company Act
- Revised Uniform Principal & Income Act
- Uniform Collateral Consequences of Conviction Act
- Uniform Unsworn Foreign Declarations Act

■ **The Uniform Military & Overseas Voters Act** provides military personnel and overseas civilians uniform voting processes in both federal and non-federal elections. Although

More *UNIFORM LAWS*, Page 26



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RESEARCHING
AND MORE TIME
LAWYERING."**

BEN SKJOLD
PARTNER, SKJOLD-BARTHEL
MINNEAPOLIS

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THOMSON REUTERS™

Why state needs your pro bono report

The reporting shows some promising trends in Montana

By **Patricia L. Fain**
Montana Supreme Court's
statewide pro bono coordinator

In Montana in 2009, almost 1,500 attorneys reported contributing 127,000 hours of pro bono publico service. Conservatively, the value of these services approaches \$20 million – an astounding number for a state with fewer than 4,000 lawyers – and this represents only the hours we know about.

Attorneys completing the 2009 Pro Bono Reporting Form contributed to Montana's distinction in leading the nation in submitting statewide pro bono reporting. In years through 2008, pro bono contributions to non-profit organizations consistently led all categories of volunteer service.

While contributions to non-profit organizations remains steady, 2009 reporting data represents the first time since recording of statistics that direct representation to individuals of limited means exceeds all other categories. This is a promising trend at least in part the result of developing the capacity of the private bar to engage in pro bono by creating, improving, and sustaining programs and opportunities that are both attractive, affordable, and sustainable.

We also continue to find ways for attorneys to be relevant to low-income Montanans in spite of being barred from addressing certain legal needs.

Reporting forms for both IOLTA (Interest on Lawyer Trust Accounts) and pro bono reporting are available online to State Bar members.

The mandatory IOLTA compliance certification form is due on Dec. 1.

Find the link to the forms at the State Bar website's home page at **www.montanabar.org**.

Please complete both the mandatory IOLTA certificate and the Pro Bono Report. Both forms come with easy instructions.

File both your mandatory IOLTA form and your Pro Bono Report form online

A word about professionalism

When I started this job as the statewide pro bono coordinator with the Montana Supreme Court, the natural platform for advancing pro bono initiatives seemed apparent: Professionalism. Rule 6.1 in the Rules of Professional Conduct begins with "Every lawyer has a professional responsibility to provide legal services to those unable to pay. . . ." I quickly learned my predecessors in the access-to-justice community had worked diligently to pass the word. I also discovered that the vast majority of attorneys expressed the belief that professionalism and ethics is every bit as important as a lawyer's legal knowledge and skills.

Dean Roscoe Pound (Harvard Law School) sums it up:

More PRO BONO REPORTING, Page 24

Last year's pro bono numbers in Montana

847 lawyers provided approximately **56,000** hours of service without expectation of fee to pro bono programs or organizations designed to assist people with limited means.

247 lawyers provided approximately **14,000** hours of service at a substantially reduced fee to pro bono programs or organizations designed to assist people with limited means.

507 lawyers provided approximately **34,000** hours of free service and **8,000** hours of service at a substantially reduced fee service to charitable, religious, civic, community, governmental, or educational organizations in furtherance of their organizational purposes.

Bar membership survey begins on Dec. 1

Starting Dec. 1, the State Bar of Montana will conduct a survey of its members to hear about the challenges they face and the ways the State Bar can improve its services to them.

You will be notified by mail around Dec. 1 and by the State Bar website (www.montanabar.org) that the survey form is available online. The deadline for your survey responses will be Jan. 7, 2011.

Asking questions about lawyer demographics – including compensation – law-practice issues, and Bar services, the survey will be the second comprehensive membership survey since the first one in 2005.

Although names of those who take the Bar survey are kept confidential, the information will provide an accurate

overall portrait of the Montana Bar and its members. Much of the data will be compared to the 2005 data, telling us how much the Bar and the practice of law has changed in the past five years. Some of the questions will be new, covering topics not on the radar in 2005.

The survey will be conducted for the State Bar by the ABA Division for Bar Services and will take from 15 to 20 minutes to fill out.

Although printed survey forms will be made available to those Bar members

who request them, the easiest way to take the survey is online. You will receive simple instructions and navigation prompts on the online form, and you can exit the survey before completing it and return at any time.

Your responses to the survey will be compiled and analyzed by the ABA Division for Bar Services. Results will be made available to members in early 2011.

As a token of the State Bar's appreciation for completing the survey, you will be entered into a drawing to win one of three gift cards, for \$100, \$75, and \$50. In order to do so, you must provide your name and email address in the demographic section at the beginning of the survey. Doing so will not compromise the confidentiality of your responses. ○



Last Chance!

Time's running out to verify your individual listing for the
2011 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 22, 2010.**

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 22, 2010.**

(Firms that appeared in last year's will automatically be included)

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

*2 or more attorneys only please

Reserve rooms now for annual CLE & Ski at Big Sky

The State Bar of Montana's CLE Institute will present its annual three-day CLE & Ski at the Big Sky Resort on Jan. 14-16.

Offering seminars worth 10.0 CLE credits, the event leaves plenty of time for skiing or lounging by the fireplace.

There will be discounted lift tickets at \$56 available to CLE & Ski attendees who register in Big Sky Resort accommodations.

A variety of hotel accommodations have been reserved. A deposit equal to one night's lodging is required within 10 days of making the reservation, but no later than 30 days before arrival. Any reservation canceled within 30 days of arrival will forfeit one night's deposit.

Huntley Lodge rates include a daily breakfast buffet in the Huntley Dining

Room, plus gratuity per each guest. Breakfast is served daily from 6:30-10:30 a.m. No credits or refunds will be offered. Children 10 and under stay free when in the same room as their parents with existing beds and enjoy complimentary daily breakfast buffet.

The following accommodations have been reserved for the State Bar group. Be sure to advise you are with the State Bar CLE & Ski group when making your reservation. Check-in is 5 p.m.; check out time is 10 a.m. Call (406) 995-5000 within Montana, (800) 548-4486 if you are out-of-state or in Canada.

● **Summit At Big Sky:** Studio \$210; Hotel: 2 Queen \$229; 1 King \$249; 1 bedroom (2-6 guests) \$379

● **Huntley Lodge:** 1st Class (2-4 guests): \$172 (1 prsn); \$197 (2 ppl); \$222 (3 ppl); \$247 (4 ppl)

● **Huntley Lodge:** Deluxe (2-4 guests): \$182 (1); \$207 (2); \$232 (3); \$257 (4)

● **Huntley Lodge:** Loft (4-6 guests): \$199 (1); \$224 (2); \$249 (3); \$274 (4); \$299 (5); \$324 (6)

● **Shoshone Condos:** Suite (4) \$329; Loft (6) \$415

● **Village Center:** Studio (2) \$179; 1 brm (4) \$449; 2 brm (6) \$579; 3 brm (8) \$809

More information on the CLE & Ski program and registration fees will be mailed to Bar members, and will appear at www.montanabar.org.

Benefits Trust looking for three trustees in upcoming election

The State Bar of Montana Group Benefits Trust was established in 2000 for the purpose of providing cost-effective medical options to members, employees, and their beneficiaries at group rates. The Trust has experienced significant growth in participant numbers and premiums collected.

A seven-member Board of Trustees oversees the Trust. Board members' terms expire on a

rotating basis at the end of each calendar year. Accordingly, elections are held each fall for members with expiring terms.

This year, three trustees are running for re-election for a three-year term. If you are interested in running for one of the trustee positions, please contact Chris Manos, executive director of the State Bar of Montana.

STATE BAR CALENDAR

November 15

Access to Justice Committee conference call, 2 p.m.

November 16

News and ad content deadline for December/January issue of *The Montana Lawyer* magazine (there will be no separate January issue)

December 2

State Bar Executive Committee dinner meeting, Helena

December 3

State Bar Board of Trustees meeting, 10 a.m., Montana Club, Helena

December 7

Equal Justice Task Force meeting 10 a.m., Disability Rights Montana offices, Helena

December 24

State Bar offices closed for Christmas holiday.

Dec. 31

State Bar offices closed for New Year's holiday.

January 4

Law School for Legislators, House chambers, Capitol, Helena

January 7

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

January 14-16

Annual CLE & Ski, Big Sky

Upcoming CLE seminars for Montana lawyers

CLEs with Ethics & SAMI* credits

**Substance Abuse / Mental Impairment*

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

November 18 Missoula – Wingate Inn

Hydropower in Montana 8.50 CLE credits, including 2.0 Ethics credits. Presented by The Seminar Group, (800) 574-4852.

November 19 Missoula – DoubleTree Hotel

Annual MDTL CLE Seminar 7.25 CLE credits, including 3.5 Ethics (no SAMI) credits. Presented by the Montana Defense Trial Lawyers, (406) 443-1160. See ad on Page 19 for details and registration form.

November 19 Glendive – Guesthouse Inn

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

December 10 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

February 23, 2011 – Great Falls

Annual Red Mass Ethics CLE (Topic to be announced).

Presenter: Retired Justice John Warner.

All other CLEs

November 13 Missoula -- UM School of Law

UM Football CLE: Injunction Practice in Montana 2.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-4311.

November 16 Helena – Red Lion Colonial Hotel

Selecting Montana's Judges: Protecting Impartiality, Ensuring Accountability & Preserving Public Trust 3.0 CLE credits. Co-sponsors: Hon. Karla Gray (ret.), Helena Education Foundation, Montana Chamber of Commerce, and the American Judicature Society, (406) 449-6929. See story on Page 9.

November 16 Teleconference

The Rocky Road Ahead for Charitable Giving 1.50 CLE credits. Presented by Cannon, (800) 775-7654.

November 18 Glendive – Guesthouse Inn

Privacy & the Right To Know 6.5 CLE credits. Presented by the state Personnel Division, (406) 444-3985.

Other web & phone CLEs for Montana credit are:

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

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

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

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

November 20 – Missoula, UM School of Law

UM Football CLE: Strategy & Tactics in Mediation Advocacy 2.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-4311.

December 7 Helena – Metcalf Building, Capitol Complex

Montana's Wrongful Discharge Act 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

December 7 Teleconference

Gathering Necessary Data 1.50 CLE credits. Presented by Cannon, (800) 775-7654

December 15-16 Helena – Metcalf Building, Capitol Complex

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

December 21 Helena – Metcalf Building, Capitol Complex

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

January 14-16 Big Sky Resort

Annual CLE & Ski 10.0 CLE credits. Presented by the CLE Institute of the State Bar of Montana, (406) 447-2206. See story on Page 14 for room reservation information and prices. Program details will be mailed to State Bar members and presented at www.montanabar.org.

State Bar of Montana Bookstore

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

LEGAL PUBLICATIONS

Montana Real Estate Transactions
2010, 360 pages, \$180

Montana Citizens' Guide to the Courts
2010, 20 pages, print copy \$10
Free download at www.montanabar.org

Montana Students' Guide to Turning 18
2008, 22 pages, CD \$10
Free download at www.montanabar.org

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

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

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

Handbook for Guardians & Conservators
2005, 60 pages incl. 5 forms
Book plus CD \$150

2010 Lawyers' Deskbook & Directory
Book, \$40
Mid-year update CD \$20
See order form on Page 15

MT Family Law Form Book
2005, 93 pages incl. 26 forms
Book and CD \$150

Public Discipline Under MT Rules of Professional Conduct
2009, 115 pages annotated
Book \$35

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

Statute of Limitations Manual
1998, 95 pages w/2001 Update
Book \$25

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

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

University of Montana Law Review
Subscribe at www.umd.edu/mlr

Public Lands Law Review
Subscribe at www.umd.edu/publicland

MONTANA CD/DVD SEMINAR RENTALS

(Maximum self-study credits is 5.0 per year)

2010 Eminent Domain Update
5 DVD set \$150 plus \$50 deposit
or separately for \$35, plus \$25 deposit
Includes written materials on CD

2009 Substance Abuse/Mental Impairment Presentation
1.0 SAMI credit
\$35, plus \$25 deposit
DVD, print materials included

2009 Criminal Law Ethics DVDs
6 DVDs may be rented as a set (\$150 plus \$50 deposit) or separately (\$35 each plus \$25 deposit)

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

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

1. Malpractice Traps - 1.0 Ethics credit

TO ORDER

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

Send the item(s) circled above to:

Name _____ Mailing Address _____

Street Address _____ City, State, Zip _____

E-mail address _____ Amount Enclosed _____

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

To pay by credit card, please see the online Bookstore at www.montanabar.org
(Payment must accompany all orders)

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

FOR THE FOLLOWING:

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

Consumer Law Series Phone CLEs – Parts I, II, & III

3.0 CLE credits, 3-CD set

Surviving Credit Card Debt

5.0 CLE credits
2 DVDs, print materials on CD included

2007 Montana Ethics CLE, Butte

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

2010 AUDIO CDS

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

- **Refresher on the Indian Child Welfare Act**
Phone CLE
1 Self-study "Other" CLE credit
\$50, includes written material
- **Tools to Help Manage Probates**
- **Guardianship & Conservatorship**
- **ADA Update**
- **Divorces Involving State Retirement Accounts**
- **Using Discovery in Family Law Cases**
- **What Every Attorney Needs to Know About the HITECH Act**
Two CDs
- Part I, General Overview
- Part II, Business Associates and Agreements under HITECH

CLE MATERIALS

on CD or via e-mail, \$35

CLE materials from 2010

Attorney-Paralegal Practice Tips

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

Basic Office Practice

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

Bench-Bar Conference

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

CLE & SKI

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

Elder Law

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

Eminent Domain

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

Energy Update

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

Foreclosure Update

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

General Practice (Glasgow CLE)

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

State and Federal Planning Rules

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

CLE materials from 2009

ABA Tech Road Show

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

Annual Meeting

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

Bankruptcy

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

& Adequate Protection

Bucking Horse CLE

New Privacy Rules; Unrepresented Opposing Parties; Americans With Disabilities; Business Law Update; Lawyer's Assistance Program; Legislative Update

Civil Litigation

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

Construction

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

Criminal Law Ethics

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

Easements

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

Family Law

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

Law Office Management

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

Malpractice Prevention

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

Mediation-Arbitration

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

Oil, Gas & Wind Leasing in Montana

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

On the Water Front

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

Women's Law CLE

Section 1983, School & Education Law, Gender Discrimination

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

The minimum tech stuff attorneys need to know

By **Cort Jensen**

attorney, State of Montana

member, State Bar Technology Committee

As lawyers, we have an ethical obligation to our clients to provide competent legal service. In order to do so, not only must we understand the nuances of the law but we must also have an understanding of the mundane workings of the world. In the modern world, that means technology in its myriad forms.

This is my attempt to provide some basic guidance on the minimum levels of technological understanding that must be possessed to practice law circa 2010. In other words, if a client were harmed because of an attorney's lack of technological competence to at least this standard, I would deem it to be malpractice.

- An attorney must know how to use a word processor, a spreadsheet, an internet browser, and an internet search engine.
- An attorney shall have mastered the basic use of any program an attorney brings into a courtroom.
- An attorney must know how to convert documents into pdfs.
- An attorney must back up his/her electronic files ideally at multiple locations
- An attorney must be able to create and modify a form legal filing.
- An attorney must understand the type of information that can be gained from:
 - Cell phone and cell phone records.
 - A computer including the fact that information may be retained after deletion.
 - Online search engines.
 - Social networking sites.
 - Internet service provider (ISP).
 - Dynamic website (as opposed to a static website).
 - Electronic data storage and retrieval.
 - Metadata cloud storage.
 - P2P(peer to peer) networks.
- An attorney must be able to scrub metadata from their own legal documents and understand the importance of

retrieving metadata from some forms of evidence.

- An attorney must understand the basics of social networking. Whether they choose to use it or not, an attorney must understand the basic concepts of what is out there and subject to discovery. This is important not only for the lawyers own ethical concerns but it is likely that clients, witnesses, and even jury members will use social networking to some extent.
- An attorney must know the basics of online legal research and if you don't use it, you must disclose this to potential clients.
- An attorney must be able to electronically file in any jurisdiction that requires it if the attorney advertise as being able to practice in front of that court.
- An attorney must understand how to perform electronic discovery and deal with the information provided to you.
- An attorney must take reasonable steps to secure both all computers (including laptops) and your network which at a bare minimum means a firewalls, log in system, and antivirus system. If you are running a wireless network system it must be encrypted. Client files should be encrypted.
- An attorney must not conduct confidential attorney/client business on an unencrypted wireless system.
- An attorney must have knowledge of what actions are necessary to create personal jurisdiction in your state for behaviors that occur online (i.e. what other than a website accessible in your state, is needed for your court's to have personal jurisdiction over the entities or individuals involved.)
- Given that lawyers keep more and more of their clients' files in electronic format ideally protected both by a log in and encryption, a lawyer has an ethical obligation to make sure someone can access those files in the event of their death or incapacitation.

While there are likely some disagreements on the specifics, I am confident, having talked to many attorneys, that this represents the minimum an attorney needs to know. An attorney lacking in one or more areas should seek training or professional assistance to reach these levels. ○

Montana Defense Trial Lawyers

Annual CLE Seminar

- What NASCAR, Jay-Z and the Jersey Shore Teach about Attorney Ethics and the Ethical Dangers of Social Networking — Stuart I. Teicher, Esq.
- Defending the Causation Issues
- Current Issues in Bad Faith
- Views from the Bench

November 19, 2010

7.25 CLE hours (includes 3.5 Ethics credits)

Doubletree Edgewater, Missoula, Montana

A limited block of rooms has been reserved for MDTL program participants. Call 406.728.3100 and ask for the MDTL room block.



Stuart I. Teicher, Esq.

Seminar Schedule

8:00–8:15 am	Registration	2:30–3:45 pm	Current Issues in Bad Faith Dale R. Cockrell, Esq., Bradley J. Luck, Esq., Guy W. Rogers, Esq., Leonard H. Smith, Esq., Mark S. Williams, Esq., Gary M. Zadick, Esq.
8:15 am–12 noon	What NASCAR, Jay-Z and the Jersey Shore Teach about Attorney Ethics and the Ethical Dangers of Social Networking Stuart I. Teicher, Esq.	3:45–5:00 pm	Views from the Bench Justice Michael E. Wheat, Montana Supreme Court; The Hon. Wm. Nels Swandal, Judge, 6th Judicial District; The Hon. Ted O. Lympus, Judge, 11th Judicial District
12 noon–1:00 pm	MDTL Meeting and Lunch (on your own)		
1:00–2:15 pm	Defending the Causation Issues Paul R. Haffeman, Esq., Steven W. Reida, Esq.		

Fees

	On or Before Nov. 3	After Nov. 3
<input type="checkbox"/> MDTL Member	\$250	\$315
<input type="checkbox"/> Nonmember	\$335	\$400
<input type="checkbox"/> Paralegal	\$165	\$205
<input type="checkbox"/> Claims Personnel	\$130	\$150
<input type="checkbox"/> Law School Students	\$25	\$25
<input type="checkbox"/> Members of the Judiciary	Complimentary	Complimentary

Payment must accompany registration **Total Enclosed \$** _____

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Registration Policies: The registration fee includes all sessions and course material. Payment must accompany registration form to receive early registration discount. **Cancellations received in writing by November 3 will be subject to a \$25 service charge. No refunds will be made after November 3.** Course material will be mailed to pre-paid registrants who were not able to attend the conference. Registration substitutions may be made at any time without incurring a service charge.

Registration

Name _____

Nickname for badge _____

Firm _____

Address _____

City/State _____ Zip _____

Telephone _____

Cell Phone _____

Fax _____

E-mail _____

Send registration to:

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Even female law partners suffer wage disparities

By **Jesse Ellison**
Newsweek magazine

Even female attorneys within the highest-ranks of elite law firms are paid, on average, roughly \$66,000 less than their male counterparts, according to a new study done by the Project for Attorney Retention and the Minority Corporate Counsel Association.

“Frankly, the numbers are so stark that it really does call into question whether there is a systemic problem,” says employment attorney William

veyed, more than half of equity partners and two-thirds of income and minority partners say they are dissatisfied with the way compensation was determined at their firms – compared to nearly three-quarters of men who reported high levels of satisfaction with those systems, according to an earlier study. Complaints include a lack of diversity within compensation committees, a lack of wage transparency, and too much weight given to factors such as billable hours and too little to institutional investments like developing a firm’s human capital and

experiences at work, which was made clear through comments they submitted online. “The anger comes from the fact that they see these patterns of gender bias, double standards, and double binds in their everyday lives.”

Further fueling that anger is that a third of those surveyed reported being threatened, bullied or intimidated into giving up what law firms call “origination credit.” If a lawyer is thought of as being responsible for originally bringing in a new client, they can earn 20 to 30 percent of that client’s billing, sometimes for decades after the fact.

The conventional wisdom, as Williams notes, is that women bring in fewer clients because their domestic responsibilities preclude them from being able to go golfing, have late dinners, and engage in other activities that cultivate those relationships. But the study found that female lawyers believe

that they do just as much “rainmaking,” but then are denied legitimate claims to credit. “I was surprised at the fervor and surprised that that’s the way they felt,” Williams says. “It’s very clear that senior women lawyers are just incensed about their firms’ compensation systems.”

Some of these findings, according to the study’s authors, explain why there are such high levels of attrition among senior

women attorneys – not just those in their childbearing years – and why, despite the fact that 50 percent of law school graduates are women, fewer than 20 percent of law partners are female. Those figures ring true across other fields – just 3 percent of Fortune 500 companies are headed by women, and women make up only a quarter of politicians.

○

Fewer jobs for law-school grads

From the **Washington Monthly**

The job outlook for newly minted lawyers is getting worse.

Back in January *College Guide* wrote that there simply aren’t enough legal jobs for all the lawyers the country produces. Recently, a *Wall Street Journal* article said only 71 percent of the law class of 2009 have real legal jobs. This is down from 75 percent, which is also pretty low, for the class of 2008.

Or, as an Indiana University law professor put it a year ago, “It is painfully obvious to everyone

that it does not matter where you went to school, or who you clerked for – a lawyer in his or her first

year of practice is just not worth \$275 per hour.”

It’s gotten so bad that the Gawker website weighed in, writing that:

“Most recent law school grads are now doing stand-up comedy or ‘consulting’ or dumpster diving or strongarm robbery, because the economy tanked and suddenly everyone figured out, hey, we don’t really need to be paying insane salaries to thousands upon thousands of unmotivated twentysomethings languishing here at our law firm just because they couldn’t figure out anything better to tell their dad they were doing after they graduated from Sarah Lawrence.”

Martucci.

The study, called “New Millennium, Same Glass Ceiling?,” found that the oft-cited explanation for the gap – that family responsibilities mean women are less ambitious, more distracted, and less productive than men – is ultimately an inadequate excuse. The biggest contributing factors, according to the study’s authors, are not nearly as benign: they include stereotyping, gender bias, and even bullying and intimidation.

Of some 700 female lawyers sur-

nurturing young associates.

Female lawyers also reported being stymied by the “double bind,” saying that for women it’s virtually impossible to be simultaneously respected and well-liked. “You must engage in self-promotion but you’re penalized for doing so if you’re a woman,” says Joan Williams, a professor at UC’s Hastings College of the Law and an author of the report. But Williams says that she was perhaps most surprised by the fact that the survey respondents were so incensed by their

employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer's representation consists solely of providing information and advice or the preparation of courtapproved legal forms; or
(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

- (i) the representation is limited to the attorney and the services described in the writing; and
- (ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

[existing subsections (c) and (d) re-designated as (d) and (e)]

Rule 4.2 – Communication with Person Represented by Counsel

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Rule 4.3 – Dealing with Unrepresented Person

(a) [existing rule]

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance

with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of representation.

The provisions proposed to be added to the Montana Rules of Civil Procedure are highlighted and underlined below:

Rule 4.2 Limited Representation Permitted – Process.

(a) In accordance with Rule 1.2(c) of the Montana Rules of Professional Conduct, an attorney may undertake to provide limited representation to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of Rule 5(b) and does not authorize or require the service or delivery of pleadings, papers, or other documents upon the attorney under Rule 5(b).


(c) Representation of the person by the attorney at any proceeding before a judge or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to 25-3-401, except to the extent that a limited notice of appearance as provided for under Rule 4.3 is filed and served prior to or simultaneous with the actual appearance. Service on an attorney who has made a limited appearance for a party shall be valid only in connection with the specific proceedings for which the attorney appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders.

(d) The attorney's violation of this Rule may subject the attorney to sanctions provided in Rule 11.

Rule 4.3. Notice of Limited Appearance and Withdrawal as Attorney.

(a) Notice of limited appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney's role may be limited to one or more individual proceedings in the action.

(b) At the conclusion of such proceedings the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of comple-



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tion of limited appearance.

Rule 11. Signing of Pleadings, Motions, and other Papers – Sanctions.

(a) [existing rule]

(b) An attorney may help to draft a pleading, motion, or document filed by the otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

IT IS ORDERED that public comments will be accepted on the above proposed changes to the Montana Rules of Professional Conduct and the Montana Rules of Civil Procedure for 90 days following the date of this Order. Such comments shall be filed, in writing, with the Clerk of this Court. ○

ORAL ARGUMENTS

The Montana Supreme Court will hear the following oral arguments:

November

■ Case No. DA 10-0099 – IN THE MATTER OF THE ESTATE OF: WILLIAM F. BIG SPRING, JR., Deceased. JULIE BIG SPRING and WILLIAM BIG SPRING, III, Appellants, v. ANGELA CONWAY, DOUG ECKERSON, and GEORGIA ECKERSON, Appellees

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

December

■ Case No. DA 10-0185 – CAROL A. WALTERS, individually as the Mother to her deceased son, Timothy Dwayne Walters and as Personal Representative of the Estate of Timothy Dwayne Walters, Plaintiff and Appellant, v. FLATHEAD CONCRETE PRODUCTS, INC., a Montana Corporation and its successors, and DOES 1-100, Defendant and Appellee.

Oral argument is set for Wednesday, Dec. 8 at 10:30 a.m. in the courtroom of the Montana Supreme Court, Justice Building, Helena.

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

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- Fellow, College of Commercial Arbitrators
- Charter Member, National Academy of Distinguished Neutrals
- American Arbitration Association Commercial Arbitration Panel; Large, Complex Case Panel; National Construction Panel; National Energy Panel
- Oft-cited author and frequent speaker on the topic of arbitration and ADR
- Former lead defense and plaintiff's counsel, and former special counsel to a F100 Company responsible for the litigation, management, and settlement of over \$3 billion in contract-related claims
- Former Director, International Dispute Resolution Program, CEPMLP, University of Dundee, Scotland
- Fellow, Chartered Institute of Arbitrators (2002-2009)
- Task Force Member, National Summit on Business to Business Arbitration, Washington DC 2009



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The term [professionalism] refers to a group pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose.

Your unique legal skills and a license to practice provide what others outside the practice cannot. Perhaps more importantly, my experiences reveal you are a decent and empathetic lot. You are men and women of character. For you, the challenge is not in the principle, but putting the principle into practice in a meaningful way. Our job is to provide avenues where you can so you can ask “how can I not?”

Pro bono won't solve all problems – but will solve some really important ones

Pro bono work can't be substituted and it can't solve all of the problems associated with unmet legal needs in Montana. It does, however, have a substantial impact on the entire legal system and the people that use it.

In speaking with Montana's judges, I find the most commonly held sentiment is the belief that the outcome of a case might have been different if a self-represented litigant would have had a lawyer to address at least one of the legal issues best presented or argued by a trained professional. This draws

the bright line between access and *meaningful* access.

The dilemma for judges is apparent: providing the appropriate amount of guidance while maintaining judicial neutrality. In an effort to arrive at a just outcome, a two-hour hearing expands to a 8-hour hearing because a self-represented litigant isn't capable of giving the court what it needs in the form it needs. The impact on the efficiency of our courts is undeniable and that should matter to the entire profession as it causes delays for you and for your clients.

Why we need you to complete the pro bono reporting form

Assessing individual pro bono efforts and programs is important. Data collected from reporting forms provides a more broad-scale view of pro bono efforts in Montana. It delivers the good news in the opening paragraph. It helps us assess the many factors that may influence pro bono participation and identify barriers to participation.

Each individual and program is a part of a system for delivering legal services. Those with legal needs will enjoy greater access to our courts and the justice it can deliver if aligned with everything and everyone who is working toward that same goal.

Pro Bono reporting allows us the unique opportunity to assess the overall system, to replicate successes and opportunities to fix what is broken, provides pro bono attorneys the support and training they aren't getting, and provides manageable opportunities to those waiting for the chance. Complete the form even if you don't have pro bono hours to report – this information is important.

If we don't work together, we can't utilize or leverage available resources. We don't have time for redundancy or money for alternatives. We owe you an opportunity to impact someone's life – someone who would otherwise never receive any legal assistance. We need to know where we are so we can figure out where we are going. A culture is created by the actions of its members. I hope you will join us in our efforts to do and be better.


How to report

Visit the State Bar of Montana Website at www.montanabar.org and look for the link to the online 2010 Online Pro Bono Reporting Form.[alongside the mandatory IOLTA Compliance Reporting Form, due on Dec. 1] The electronic reporting should take you less than five minutes and will be automatically submitted on your behalf. Instructions are included on the electronic form.

A final word of gratitude

To all of the attorneys who have and continue to provide pro bono legal services – you are legal heroes. You live the pledge of equal justice under law and you represent the very best of what the legal profession does and is. Salute.

○




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brutal TV ads.

Partisan races drew the most cash, but that may be changing. Candidates in partisan Supreme Court elections raised \$153.8 million nationally in 2000–09, compared with \$50.9 million in nonpartisan elections (retention election candidates raised \$2.2 million). But in some states, notably Wisconsin in 2007–08 and Georgia in 2006, nonpartisan races have been just as costly and nasty as their partisan counterparts.

Special-interest money sometimes comes with a cost. The candidate who raised the most money won 11 of 17 contested high court races in 2007–08. But three well-funded incumbent chief justices were defeated, perhaps in part because they were tied to special-interest patrons.

The trends continued in 2009. In Pennsylvania, Wisconsin and Louisiana, candidates and independent groups spent a total of about \$8.7 million on 2009 elections. And in each race, candidates accused opponents of being ethically tainted.

The rise of costly attack ads

Spending on TV ads has helped fuel the money chase. From 2000 to 2009, an estimated \$93.6 million was spent on air time for high court candidate TV ads. That total includes TV spending in odd-numbered election years, which for the first time is included in the New Politics data.

New records were set in 2007 and 2008. Including costly 2007 elections in Wisconsin and Pennsylvania, the 2007–08 cycle was, at \$26.6 million, the most expensive biennium ever for TV ad spending on Supreme Court races. Eight states set all-time records for spending on TV ads during the two-year period, and there were more ad airings than ever before in 2008.

Average spending on TV continues to surge. Continuing a trend seen in 2004 and 2006, in states where TV advertisements

ran, an average of more than \$1 million was spent on campaign ads. In 2008, in the 13 states where Supreme Court ads aired, the average was \$1.5 million.

Outside groups played a critical role in the TV wars. Special-interest groups and party organizations accounted for \$39.3 million, more than 40 percent of the estimated TV air time purchases in 2000–09. In 2008, special-interest groups and political parties accounted for 52 percent of all TV spending nationally – the first time that noncandidate groups outspent the candidates on the ballot.

Special-interest group ads are often harsher than candidate ads. Independent groups remain the “attack dogs” of judicial TV ads. But in 2008, Wisconsin Judge Michael Gableman’s spot attacking Justice Louis Butler provoked lingering ethics and legal challenges.

Who played? Who won?

Tort wars have become court wars. Judicial elections have become a multi-million-dollar duel, pitting business and conservative groups against plaintiffs’ lawyers and unions. High court justices know that their decisions could trigger support or retaliation in the next election.

The two sides bring starkly different profiles. The right has brought together big-name groups like the U.S. Chamber

of Commerce and National Association of Manufacturers, leaders of corporate giants such as Home Depot and AIG Insurance, and political actors like Karl Rove. Bankrollers on the left tend to be wealthy plaintiffs’ lawyers, who often use state party organizations to hide the extent of their financial backing of a candidate.

Secret money dominates; players can give big sums with little publicity. In Alabama, the Montgomery law firm of Beasley Allen gave more than \$600,000 to Judge Deborah Bell Paeur’s unsuccessful supreme court campaign, without ever appearing on her contribution records. This approach has been emulated in other states, including Texas.

The battle inside the courtroom

Federal courts have been increasingly pulled into state judicial election controversies, especially in the areas of campaign finance, candidate speech and recusal (when a judge avoids a case with potential ethical conflicts). Many of these cases are designed to strengthen or challenge rules that would insulate judges from special-interest pressure.

The U.S. Supreme Court declared that campaign spending could disqualify a judge from cases involving major supporters. The landmark *Caperton v. Massey* decision creates an incentive for every state to craft meaningful rules for

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when judges must step aside.

Campaign finance laws face growing litigation challenges. North Carolina's judicial public financing law was upheld by the federal courts. But a more recent Supreme Court case, *Citizens United v. Federal Election Commission*, overturned longstanding bans on election spending from corporate and union treasuries—posing a special threat in judicial elections.

A 2002 Supreme Court decision, *Republican Party of Minnesota v. White*, loosened restrictions on judicial campaign speech. Interest groups are using questionnaires to pressure judges into

signaling courtroom decisions on the campaign trail. Professional norms are becoming more important in helping judicial candidates steer clear of special-interest pressures and political agendas.

The public takes note

The new politics of judicial elections has made the public fear that justice is for sale. More than seven in ten Americans believe that campaign contributions affect the outcome of courtroom decisions. Nearly half of state judges agree.

After years of slow progress, reform gained steam in 2009. Wisconsin enact-

ed public financing for court races, joining North Carolina and New Mexico, and in March 2010, West Virginia's legislature also enacted a pilot public financing program. In Michigan, the Supreme Court adopted tough new recusal rules. Polls show continued strong public support for reform measures—such as public financing of judicial races, election voter guides, recusal reform and full financial disclosure for election ads.

In a pair of 2008 county-level ballot measures, voters in Kansas and Missouri opted for appointment systems over competitive elections for judges. ○

UNIFORM LAWS, from P. 10

recent federal law has improved participation by overseas voting in federal elections, the return of ballots by military and overseas voters remain less than the return by other absentee voters and the rate of overseas ballot rejection remains higher than the rejection rate of other absentee ballots. This new act addresses the causes of these problems.

■ **The Uniform Limited Partnership Act** provides a flexible and stable

basis for the organization of limited partnerships which helps states stimulate new partnership business ventures. Although Montana has adopted the 1976 act, Montana has not adopted the 2001 revisions which recognize modern-day uses of limited partnerships by providing greater flexibility and protection.

■ **The Uniform Limited Liability Company Act** permits the formation of limited liability companies which prove the owners with the advantages of both corporate-type limited liability and partnership tax treatment. Although

Montana adopted the 1996 uniform act, Montana has not yet adapted the 2006 revision. The 2006 revision provides the best elements of the original act; addresses questions that have arisen in practice and in litigation; and offers a modern, updated “second generation” Uniform Limited Liability Company Act.

■ **The revised Uniform Principal & Income Act** provides procedures for trustees administering trusts in allocating assets between principal and income. The act governs the proper distribution of assets to beneficiaries. Although Montana has adopted the act, it has not considered amendments made in 2008 which update the act to reflect the current policy of the Internal Revenue Service and to clarify technical language regarding withholdings.

■ **The Uniform Collateral Consequences of Conviction Act** addresses the various penalties and disqualifications that individuals face incidental to criminal sentencing, which are often known as “collateral consequences.” The act improves the understanding of such penalties. The act's provisions are largely procedural. The provisions address the holding of the U.S. Supreme Court in *Padilla v. Kentucky*,



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■ **The Uniform Unsworn Foreign Declarations Act** would permit, in state court proceedings, unsworn declarations under the penalty of perjury to be executed by witnesses physically located outside the boundaries of the United States for specified purposes.

In addition to these acts, Montana commissioners help legislators and citizens who wish to learn more about other uniform and model acts.

If you are interested in any uniform or model acts proposed by the Uniform Law Commission, contact any of Montana's commissioners. Karen Powell can be contacted at kpowell@mt.gov or (406) 444-5394.

Justice Wheat can be contacted at (406) 444-5494. I can be contacted at e.eck@umontana.edu or (406) 243-6534.

Also, you can locate copies of Uniform Acts, including act summaries and section-by-section comments, on the Commission's website at www.nccusl.org. ○

NEWS ABOUT MEMBERS

The Holland & Hart law firm announced the addition of **Adrian Miller** to its Billings office. Ms. Miller, a native of Fort Benton, is an associate in the firm's Commercial Litigation Department. Prior to joining Holland & Hart, Ms. Miller completed two legal internships. She holds a JD from Hofstra Law School and a BA in Sociology from Montana State University.

U.S. Attorney Michael W. Cotter announced the hiring of four new attorneys for positions in Indian Country in the District of Montana:

■ **Jessica Betley** received her law degree in 2007 from Ohio State University and practiced law in the Bozeman City Attorney's Office following graduation. Ms. Betley will be prosecuting felony crimes in Indian Country out of the Great Falls U.S. Attorney's Office.

■ **Danna Jackson** received her law degree from the University of Montana. Ms. Jackson spent 10 years in Washington, D.C., working for Senator Tim Johnson (D-SD) advising him on Indian Appropriations and Judiciary Committee matters. During her time in Washington, D.C., she also served as staff attorney for the National Indian Gaming Commission and worked with Akin Gump Strauss Hauer & Feld in Indian law and policy issues. Ms. Jackson will fulfill the duties of tribal liaison out of the Helena U.S. Attorney's Office.

■ **Laura Weiss** received her law degree in 2009 from the University of Pennsylvania Law School and recently completed a clerkship for Justice William Leaphart of the Montana Supreme Court. Ms. Weiss holds a public policy and business certificate from the Wharton School of Business. Ms. Weiss will prosecute felony crimes in Indian Country out of the Great Falls U.S. Attorney's Office.

■ **Michael Wolfe** received his law degree in 2009 from the University of Montana and recently completed a clerkship for Justice Brian Morris of the Montana Supreme Court. In addition to his legal career, Mr. Wolfe is also an avid competitor in ultra-marathons. He recently placed second out of 2,500 competitors in a 62-mile race, the Ultra Trail du Mont Blanc in southeastern France. Mr. Wolfe will prosecute felony crimes in Indian Country out of the Helena U.S. Attorney's Office.

David Moon, editor of *The Water Report*, was a speaker at the Idaho Water Law Conference in Boise, Idaho, in late

September. Mr. Moon spoke on a panel that addressed "Water Litigation Update: Recent Cases." His presentation dealt with litigation regarding "exempt wells" in Washington, New Mexico, and Montana. He has practiced water law his entire career and helped co-found *The Water Report*, a professional newsletter that covers water rights and water quality issues, in 2004.

Lewistown, Mont., native and State Bar of Montana member **Susan Machler** was sworn in as governor of the 9th Congressional District for the Washington State Bar Association on Sept. 23. She is a partner in the Seattle law firm of Osborn Machler. Born and raised in Lewistown (she graduated from Fergus High School in Lewistown), Ms. Machler has resided in the Seattle area for 23 years. She received her bachelor's degree from the University of Idaho. She received her law degree magna cum laude from the University of Puget Sound School of Law (now Seattle University). She has devoted her legal career to personal injury

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and civil litigation. She is frequently called upon to be a speaker and instructor in the area of trial preparation and practice. Ms. Machler provides pro bono legal services for persons with disabilities, and has worked with women and men in child support and custody matters. She serves as a City of Kent, Wash., arts commissioner and is a member of the advisory council of the Lutheran Public Policy Office.

The Montana Legal Services Association (MLSA) has added three new Equal Justice Works AmeriCorps Legal Fellow attorneys to its staff. Funded in part by the Corporation of National & Community Service, the Equal Justice Works AmeriCorps program places attorneys across the country to facilitate pro bono opportunities and expand legal resources in low-income and underserved communities. The new MLSA attorneys are:

■ **Bernadette O'Donnell**, who serves with MLSA's Indian Law Unit in the Billings office. Originally from Westbrook, Maine, Ms. O'Donnell received her undergraduate degree in sociology at the University of Maine, and is a recent graduate of the City University of New York School of Law in Queens, N.Y. Before law school, she served with a different AmeriCorps program in Tacoma, Wash., and taught English in China through the WorldTeach program. At MLSA, Ms. O'Donnell develops materials for self-represented litigants on Montana's Indian reservations, recruits law students and pro bono attorneys to work on Indian law issues, and provides direct services to clients in the areas of estate planning, consumer law, and housing law.

■ **Jessie Lundberg**, who serves with MLSA's Consumer Law Unit in the Missoula office. Originally from Missoula, Ms. Lundberg received her undergraduate degree in social



work and her law degree at the University of Montana. Before law school, she was a foreclosure prevention specialist and financial educator at homeWORD, a housing non-profit in Missoula. During law school, she was a Steiger fellow with the Consumer Protection Bureau of the Montana Attorney General's Office, and also drafted consumer-law forms for MLSA's Self-Help Law Unit. After law school, Ms. Lundberg clerked for the 9th Circuit Court of Appeals for Judge James Browning and Judge Sidney Thomas. She also practiced for one year with Bohyer, Simpson & Tranel in Missoula. Her primary role at MLSA is coordinating quarterly statewide clinics for people filing bankruptcy petitions. Ms. Lundberg is a founding board member, coach, and skater for the Hellgate Roller girls, Missoula's flat-track roller derby league.

■ **Jillian Haynal** serves with MLSA's Self-Help Law Unit. Originally from College Place, Wash., Ms. Haynal received an undergraduate degree in Spanish from Walla Walla College. She studied epidemiology and completed her master of public health degree and a certificate in Chinese Studies at Loma Linda University in California. She then worked as a Spanish teacher, food safety instructor, and LSAT teacher. Ms. Haynal graduated from law school at New York University in 2009. As part of MLSA's Self-Help Law Unit, she helps develop resources for self-represented litigants and assists litigants in preparing and filing their own court papers.



Jim Elshoff, formerly of Helena, Great Falls, and Bozeman, was recently admitted to the bars of the U.S. Supreme Court and the federal courts in Texas. He has remained fully licensed in all courts in Montana since 1985. Mr. Elshoff has been adjunct faculty professor of criminal law and criminal procedure at Texas State University, San Marcos, for the past few years, and has recently been added to the faculty of Kaplan University, where he teaches an on-line course to graduate students in criminal procedure. He will also be the supplements editor for the next edition of the criminal procedure text he has been using at the undergraduate level.

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Jack Moore, Cut Bank attorney

Retired Cut Bank attorney John Patrick Moore III, 87, died of Parkinson's disease on Oct. 17 at Glacier Care Center in Cut Bank.

Mr. Moore was born in Omaha and attended Creighton Prep School and Creighton University. After two years at CU, he was called into the Navy, and rose to the rank of Lieutenant JG. After World War II, he went to the University of Washington to finish his education. He was accepted to the University of Montana School of Law, from which he graduated in 1949. His professional career began in Cut Bank with Seldon Frisbee, who hired him in 1950.

Mr. Moore served the community as a member of St. Margaret's Catholic Church, Cut Bank Jaycees, Montana State Oil & Gas Commission, trial attorney, county attorney, and was a board member and president of the American Field Trial Association (for hunting dogs and their owners). "He was extremely passionate about his work as a lawyer for more than 50 years, and never formally retired," his obituary said. He was a rabid fan of the Notre Dame football team, was an avid hunter, fisherman, and skiing enthusiast at Big Mountain, traveled with his friends to many ski resorts, loved his golf game, and took pride in his dogs that won many blue ribbons and trophies.

Survivors include his wife, Mary Jane; and two sons.

Gene Fopp, Great Falls attorney

Former Great Falls attorney and FBI agent Gene P. Fopp, 96, died of an apparent heart attack on Oct. 16 at his residence at Azalea Place Assisted Living in Great Falls.

Mr. Fopp was born in Somers to parents who had immigrated

from Italy. He graduated from Flathead High School in 1932. He attended the University of Montana, graduating with a bachelor's degree in Law in 1938 and a juris doctor degree in 1940. He became an FBI agent in Washington, D.C., that same year. He served in FBI field offices in Philadelphia, New York, Salt Lake City, and in the Montana-Idaho Division.

During his service in the FBI during World War II, Mr. Fopp specialized in espionage, sabotage, and internal security cases. He was featured as a firearms expert and performed demonstrations of skilled shooting from coast to coast. He also was a senior resident agent in Great Falls.

In June 1964, Mr. Fopp resigned from the FBI to practice law in Great Falls. In his law practice, he specialized in the construction field throughout the U.S. and devoted considerable time to developing gas, oil, and gold-mining properties and real estate.

Mr. Fopp had been a member of the American, Federal, and Montana bar associations, Phi Delta Phi Legal Fraternity, Phi Delta Theta, the University of Montana Alumni Association, and the Meadow Lark Country Club. He was an avid fly fisherman, hunter, and golfer. On an elk hunt in the Bob Marshall Wilderness, he was attacked by a charging grizzly bear; he defended his life by shooting and killing the bear at 30 feet.

Mr. Fopp is survived by his wife, Joan, and two daughters.

Other deaths

● **Kenneth Snively**, 82, former Hardin city magistrate and Big Horn County justice of the peace, died Oct. 16 in Billings.

● **Betty Jo Palo**, 81, a former longtime legal secretary in Billings, died Oct. 5 in Kalispell.

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