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# Lawyer

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THE STATE BAR OF MONTANA

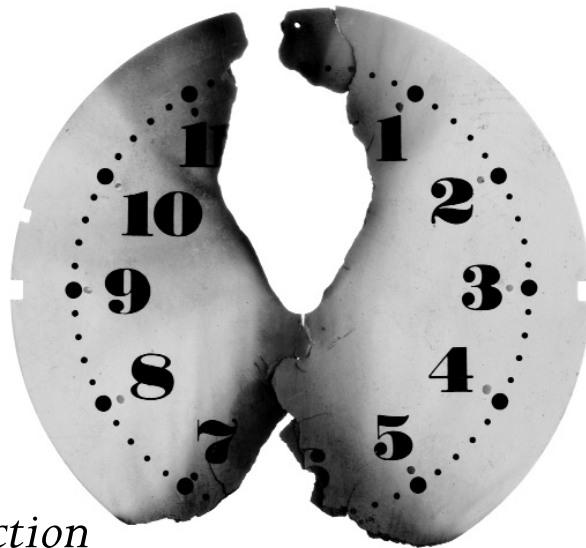
## A Jameson for the professor

*Duke Crowley among Bar award winners  
featured inside*



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## Probate & civil hearing delays



*Bar section  
suggests ways to solve  
the nagging statewide problem*

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**Ethics opinion**

Conflicts in a small town

## Before there's a new Con-Con

*UM Law Review*  
presenting  
a major  
symposium  
on Montana's  
Constitution  
ahead of vote  
in November



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State Bar of Montana



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## PRESIDENT'S MESSAGE

# Keep diversity discussion going

*Bar has made strides, but there's a long hike ahead*

Cynthia Smith

**A**s much as I dreaded writing this column every month, I feel melancholy now as I write my last President's Message. I have truly enjoyed representing the State Bar as its president. I know that "it has been an honor and a privilege" is a trite saying, but it is exactly how I feel.

I think bar presidents everywhere want to leave their mark during their presidencies. They probably all look back at the end of their terms and think they did not do enough. I feel that way. When I took office, I wanted to champion the underdog. I wanted us as a bar to look at prejudice and the way it injures its victims. In particular, I wanted us to examine how certain groups experience barriers in the access to justice because of biases held against them. I believed that if we did so, we could all realize that those biases are unreasonable and unfounded and we could all therefore lay them aside. (It would not be the first time I have been called "Pollyanna").

We did begin that examination. Last year the State Bar trustees heard a panel discussion that examined the impact of gender, sexual orientation, race, and poverty on access to justice. The only part of the discussion that turned out to be controversial was the issue of sexual orientation. Later I wrote a column about the issue, asking why it had to be controversial. I received some nice comments about my columns during the past year, and I appreciate all of them very much, but the great majority of the comments were in response to that particular column.

**ON THE ISSUE OF GENDER**, in one of my past columns I asked members to contact me if they believed gender bias still exists in Montana's legal system. In response to that column, I received a few joking comments from law school classmates who felt they had been discriminated against because they are

men. I did not receive any comments about gender bias from women.

I don't take the absence of serious comments to mean that gender bias is gone for good. But I do think we have come a long way. In fact, in June I attended a regional bar association meeting in North Dakota. Six states' bar presidents attended the meeting. Of those six bar presidents, four were women. As of last month, one-third of the United States Supreme Court justices are women. You can't argue about that kind of progress.

**AS TO RACE**, we are not a particularly diverse state. But we do have a large Native American population, one that is under-represented in our bar. We need to work on encouraging more Native American students to go on to law school after college, and making sure more Native

Americans become bar leaders. We will all benefit from that increased diversity.

As to poverty, the State Bar and the Montana Supreme Court both have committees and sections that are working to increase access to justice for people who cannot afford a lawyer. I admire the work of those committees and commissions and I know they will continue.

**I HOPE THAT THE DIVERSITY** discussion won't end with my term as State Bar president. One of the last things I will do as president is appoint a working group to examine diversity in our bar and suggest ways we can improve it. If any of you would like to serve on this working group, please let me know.

I want to close my last column by thanking all of you for giving me the opportunity to serve as Bar president. It has truly been an honor and a privilege.

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**One of the last things I will do as president is appoint a working group to examine diversity in our Bar and suggest ways we can improve it.**

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# The 'Duke' gets his due

*Beloved UM law professor earns this year's Jameson*

Having "influenced more Montana lawyers than any other person," William F. "Duke" Crowley, professor emeritus at the University of Montana School of Law, will receive the 2010 William J. Jameson Award at the Bar's Annual Meeting on Sept. 16.

The award, named after the late Montana federal judge William J. Jameson, is the State Bar's highest award. It goes annually to the attorney who has exemplified the highest values of the legal profession throughout his or her career.

The following is from the nomination letter and letters of support sent to the State Bar's Past Presidents Committee, which decides which nominee has earned this year's award. The nomination letter was submitted by Tammy K. Plubell of the state Attorney General's Office:



Most Montana lawyers know "the Duke" as the professor who taught them criminal law, civil procedure, evidence, and legal writing. He excelled at that task, and if his resume stopped at being a distinguished law professor, he still would have been one of the most prominent members of our bar.

However, not everyone is familiar with his truly remarkable career in public service, which includes:

- Nine years as an assistant attorney general for the State of Montana.
- Six years of private law practice in Helena, during which he also served as a deputy Lewis & Clark County attorney.
- Thirty-five years on the faculty at the University of Montana School of Law.
- Director of the State of Montana's Executive Reorganization Commission.
- Principal drafter of the 1972 Revised Montana Code of Criminal Procedure and 1974 Criminal Code.
- Member, Blue Ribbon Commission on Higher Education.

**IT WOULD BE DIFFICULT** to overstate the impact of Professor Crowley's career on the law and on the state. After joining the faculty, it seems that whenever the state faced a difficult or controversial issue, it called on Prof. Crowley. When Gov. Forrest Anderson decided to try to change state government from the chaos of dozens of decentralized executive boards – each operating independently from the others and

largely independently from the governor – into a modern working government, he chose Prof. Crowley to do the job. Prof. Crowley led the effort to move criminal law and procedure in Montana from the mid-19th Century into the 20th by

leading the re-codification of Montana's criminal laws and procedure. When Governor Judge created a Blue Ribbon Commission to study the Montana University System, he appointed Prof. Crowley.

His greatest legacy, however, is the thousands of Montana lawyers he helped train. He insisted that the theory of the law be integrated with the practice, an idea that was decidedly ahead of its time when he joined the faculty in 1966. He prepared his own casebooks to ensure that Montana law students studied Montana cases as well as cases from other jurisdictions. His teaching style could accurately be described as minimalist – as he described it, all that was

needed was the teacher, the students, a book, a pencil, and paper.

Prof. Crowley personifies the qualities that define the Jameson Award: distinction in law practice, public service, and dedication to the professionalism of young lawyers.

[Professor Crowley earned his JD from the University of Montana School of Law and his LL.M. from New York University School of Law. After serving as assistant attorney general of the State of Montana and deputy county attorney of Lewis & Clark County, he joined the UM School of Law faculty in 1966, specializing in evidence, criminal law, civil procedure, and local government. He was made professor emeritus upon his retirement in 2000.]

Other letters of endorsement included the following passages:

- E. Edwin Eck, former dean, UM School of Law:

*Professor Crowley served the legal profession, future members of the bar and bench, and the public as a scholar and teacher on our faculty for more than 30 years. His study of case law, particularly Montana case law in the areas of evidence and criminal law, included not only the analysis of legal principles, but the reported and unreported background facts that gave rise to legal disputes. Professor Crowley would share this extensive knowledge with his students who in turn*

became excited about the evolution of Montana case law, Montana government, and Montana history.

Professor Crowley's published research has been particularly extensive. In addition to law review articles, he wrote or edited handbooks, manuals, and form books for the practicing bar. He wrote reports for Montana prosecutors, the Montana Supreme Court, the Montana Legislature, and the Montana Constitutional Convention.

In my opinion, Professor Crowley is on any short list of Montana attorneys who have devoted themselves to the public good through governmental activities and service to the next generation. His personal conduct and professionalism exemplify the best of our profession.

■ Norman H. Grosfield, Helena attorney:

I was first introduced to Duke as a law student in 1968. At that time Duke was considered one of the premier college professors at the University. He was a splendid teacher and advisor, known for taking a special interest in the students he taught. My first job out of law school was with the Montana Governor's office. At that time, there was a major effort to reform state government by reorganizing the executive branch. State government had become a mishmash of unorganized agencies, boards, and commissions. Duke was appointed by

Governor Forrest Anderson to lead the reorganization effort. Through Duke's leadership and the respect others had for his knowledge and intellect, the task was accomplished. Agencies were consolidated into 20 departments with direct accountability to the governor and other elected officials. Montana's executive branch is now probably the finest structure and most efficient state executive branch organization in the United States.

.....

Duke was a member of the committee to update and completely rewrite Montana's criminal code and procedure. The effort took 10 years, but now Montana has a modern and workable criminal code, much of which can be attributed to Duke's tenacity to get the job done.

Duke came from rather humble beginnings, and never thought he could even attend college until the GI Bill allowed for the college opportunity.

■ John C. Sheehy, Helena attorney:

In the highest sense, [Prof. Crowley] has been an inspiration to others in upholding the fine tenets of the rule of law. In fact his selection would honor the Bar itself. ○

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## Frank Haswell Award

### ■ Anna Conley

The Frank I. Haswell Award for the best article submitted to the State Bar's monthly magazine, *The Montana Lawyer*, in the past year will be given to Anna Conley, an adjunct professor at the University of Montana teaching public international law. Ms. Connelly earned the award by authoring the article "The Montana Supreme Court's continued, not-so-subtle assault on arbitration," which appeared in the February 2010 magazine.

The award comes with a \$200 prize through an endowment set up by the late Montana Chief Justice Frank Haswell. The winner is chosen from a number of finalists by the State Bar's Past Presidents Committee.

Ms. Conley, an attorney, is in her second year as a student at the McGill University Institute of Comparative Law in Montreal. She obtained her law degree from George Washington Law School in Washington, D.C., and her LL.M. from the McGill Faculty of Law. She has practiced civil litigation for four years in California, Seattle, and Montana, and is a licensed attorney in those three states. Her areas of interest include international private law and comparative law,



specifically comparative approaches to international civil litigation.

Five other writers were finalists for the Haswell Award this year. They contributed three articles to the past year's *Montana Lawyer* magazine, articles that met the criteria of most interesting and useful to the magazine's readers. They are:

■ Great Falls attorney Dan Donovan and Missoula attorney John Rhodes on "The Prisoner's Dilemma becomes the Lawyer's Dilemma." (December 2009).

■ Nadia White, assistant professor of journalism at UM, on "UM's Grace Case Project: Experiment in live trial coverage keeps the faith in justice." (December 2008).

■ David House, a Bozeman attorney, and Thomas Weathers, an out-of-state attorney and past president of the Native American Bar Association, on "Indian Tribes & Casinos: 9th Circuit helps chip away at tribal sovereignty" (November 2009).

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# George L. Bousliman Professionalism Award

## ■ William T. Wagner



*William T. Wagner, a partner at Garlington, Lohn & Robinson in Missoula, and Steve Browning, a founder of the Helena law firm Browning, Kaleczyc, Berry & Hoven, are the two recipients of the State Bar's 2010 George L. Bousliman Professionalism Award. The award is dedicated to George Bousliman, former State Bar executive director. The following articles are from the nomination letters for each State Bar award.*

By **Larry F. Daley & Gary Chumrau**  
Missoula attorneys

**B**ill Wagner was born in Livingston and grew up there and in Missoula. He completed elementary and high school in Missoula before successfully pursuing an undergraduate degree in accounting from Gonzaga University. He received his juris doctor from the University of Montana School of Law as a member of the Class of 1974, where he distinguished himself as an associate editor of the *Montana Law Review*.

Bill worked in private practice in Billings and later in Missoula. He became an associate at Garlington, Lohn & Robinson in 1983 and a partner in 1990. He has worked in numerous administrative capacities at GL&R, and currently serves as a member of the firm's executive committee.

Bill practices law "in the grand manner." He has steadfastly refused to limit his practice and thus his career has embraced virtually every type of legal assignment – in business and in litigation – common to a true Montana lawyer. Over the years thousands of individual Montanans, and their small businesses, have come to proudly call Bill Wagner "my lawyer."

**MAYBE IT WAS** being one of the middle children in a large active family that provided the reassuring sense of balance, calm, and civility that has been the hallmark of Bill's professional life. He learned early and well that effective representation does not require a lawyer to be disagreeable or duplicitous. He possesses a remarkable blend of professionalism and compassion that has earned for him an enviable reputation among his clients, peers and members of the judiciary.

**More WAGNER, Page 25**

## ■ Steve Browning



By **Mark Etchart**, Helena attorney

**S**teve Browning was one of the founders of Browning, Kaleczyc, Berry & Hoven in Helena. While Mr. Browning formally retired from the law in 2005, he remains active in the firm as BKBH's marketing director. [He and his wife Judy split their time between Montana and Tucson, Ariz.]

Over the past 25 years, Mr. Browning played a vital role in the exponential growth of BKBH from four attorneys in Helena to more than 25 attorneys in four Montana cities. He has been instrumental in establishing the firm's reputation for hard work, integrity and competence. [When he was actively practicing law, Mr. Browning's principal areas of practice included lobbying, legislative services, banking and financial institutions, health care and hospital law, and federal and state government contracts.]

Mr. Browning earned degrees in Chemistry and Law from Indiana University and City Planning from Harvard University. For nearly eight years, he was chief of staff for Congressman and now Senator Max Baucus, charged with management of the Senator's office in Washington, D.C., and his field offices in Montana. In addition, Mr. Browning specialized in the legislative work of the U.S. Senate Budget Committee for Sen. Edmund Muskie and the House Appropriations & Senate Finance Committees on behalf of Sen. Baucus.

**WHILE MANY KNOW** Mr. Browning as a lawyer and a founding member of BKBH, many more know him for his public service. He is probably best known for his work in helping establish the Montana Community Foundation and for spearheading the effort to renovate the historic jail in Helena into the Myrna Loy Center. Both professionally and personally, Mr. Browning's extensive commitment to his community and Montana is exemplified in his public service activities. Few lawyers have demonstrated the high level of achievement both in the legal profession and in community service as has Mr. Browning.

Following is a list of Mr. Browning many accomplishments throughout his career:

**More BROWNING, Page 25**

## Neil Haight pro bono award

### ■ Charlotte Beatty

By **Amy S. Rubin**, Missoula attorney

Charlotte Beatty has, through her work in envisioning, developing, implementing, and working in the 4th Judicial District Family Law Self-Help Center, clearly increased access to justice for pro se litigants in this district. It is through her efforts, working tirelessly at every step of the way, that this Self-Help Family Law Center has become a reality. The Center



provides assistance and information to those who could not afford a private attorney.

Charlotte first started work revising forms and writing detailed instructions for family-law litigants to use to navigate through the court system. She did this from September-December 2007. She used the 21st Judicial District forms and instructions as a template, but enhanced the instructions so they were clear and accurate for the 4th Judicial District. The result was hundreds of pages of materials, organized into packets depending upon what forms and instructions were needed by each individual litigant (joint dissolution with children;

More **BEATTY**, Page 26

## Karla M. Gray Equal Justice Award

### ■ District Judge Katherine Curtis

By **Randall Snyder**, Bigfork attorney

I presently chair the Northwest Bar Access to Justice Commission. We are tasked with creating, promoting, and implementing a pro bono program here in Flathead County. I, and several other members of our commission, recently read the article in the May issue of *The Montana Lawyer* about this award, which we understand honors a judge who has demonstrated dedication to improving access to Montana courts. When we read the article, our committee collectively thought of Judge Katherine "Kitty" Curtis, who as you know is a district court judge for the Montana 11th Judicial District in Kalispell.

Although Judge Curtis's accomplishments are many and



More **CURTIS**, Page 27

### ■ City Judge Michele Snowberger

By **Russell Fagg**, district judge,  
& **Judy Meadows**, state law librarian



We, the co-chairs of the Commission on Self-Represented Litigants, nominate our Commission member, Belgrade City Judge Michele Snowberger, to be the recipient of the 2010 Karla M. Gray Equal Justice Award.

Judge Snowberger has proven herself time and time again to be a fervent and tireless supporter of access to justice. She has been an integral part of the Montana Supreme Court Commission on Self Represented Litigants since 2005. In addition, she chairs the Gallatin County Self Represented Committee, frequently presents on self-represented litigant issues to the Courts of Limited Jurisdiction, the Clerks of

More **SNOWBERGER**, Page 27

## 50-year pins

- Hon. Maurice Colberg, Billings
- William P. Conklin, Seattle, (formerly of Great Falls)
- Robert T. Cummins, Helena
- G. Richard Dzivi, Great Falls
- Donald A. Garrity, Helena
- E.F. Gianotti, Kailua-Kona, Hawaii
- Cordell Johnson, Helena
- Jack L. Lewis, Great Falls
- Francis G. McKenna, Alexandria, Va.
- William E. O'Leary, Helena (died Aug. 16, presented to Mrs. O'Leary on Aug. 20)
- John J. Quinn, Dana Point, Calif.
- Theodore Robinson, Chicago
- John Stephenson, Great Falls

## Distinguished Service Awards

- Chris Tweeten, Helena, outgoing immediate past president
- Laura Christoffersen, Culbertson, outgoing member of CLE Institute
- Patty Fain, Billings, outgoing co-chair and long-time member of Access to Justice Committee
- Gary Connelley, Billings, outgoing member and former chair of Access to Justice Committee
- Stacey Rowcliffe, Billings, outgoing member and former co-chair of Technology Committee



# Solving Montana's probate & civil hearing delays

By Charles W. Willey  
Missoula attorney

In meetings of the BETTR (Business, Estates, Tax, Trusts & Real Estate) section over the last two years, many members expressed concerns regarding obtaining hearing dates, trials, and decisions in probate and trust matters. As chair of the section, I was asked to communicate these concerns to the Supreme Court. Before doing so, I thought I should investigate how broadly based these concerns were among the Bar. I therefore interviewed 26 lawyers who practice around the state, and quickly learned the concerns expressed by the probate lawyers about obtaining hearings, trials, and decisions are shared by general civil litigators.

One Montana lawyer wrote me about a case in which a personal representative endeavored to squeeze out a sibling beneficiary by unreasonable delays, recalcitrance, and ignoring the court's orders. He failed to file anything in the estate for six years, ignored an order to show cause for another two years, and then fought a motion for supervised administration. The problem was finally partially concluded by mediation 10 years after the estate was opened. Part of the delay was attributable to the lack of judicial supervision.

## The two distinct problems

Two main problem areas exist: (1) litigants in many courts are waiting two to four years for motions and trials to be scheduled, heard, and decisions rendered. In one county, delays have been as long as five years; and (2) many district judges are not conversant with probate law and procedure, and, as a result, probate/trust issues may gravitate to the "back burner."

**The probate area problems.** There are two problems here. The Uniform Probate Code was adopted in Montana in 1974, replacing a much more detailed statute. Under the UPC, the great bulk of estates are now handled informally under MCA §72-3-221 et seq. Hence, over the last 36 years, most district judges have dealt with relatively few probate matters. Our Montana Trust Code was adopted in 1989, but trust cases are also rarely seen in district court.

Many district judges come from a prosecutorial background so they are expert in criminal law, but often have had no experience in probate or trust proceedings in their pre-judicial practice. Because of this lack of experience, some practitioners believe judges tend to relegate probate and trust matters to the

back burner. Some courts appear to provide inadequate supervision over probate disputes, and some judges refuse to hear disputed probate issues. (Some courts also refuse to hear discovery disputes.)

The second difficulty is that the UPC provides little guidance regarding the procedure to be used in probate disputes. Section 72-1-207 makes the rules of civil procedure applicable to probate in the absence of specific provisions to the contrary. Section 72-1-303 makes specific reference to probate and trust pleadings, but does not specify what pleadings are to be used. Thus, the UPC provides inadequate guidance for courts and lawyers concerning proper probate procedures, particularly in contested matters.

**Delays in obtaining hearings, trial dates, and judicial decisions.** The lawyers to whom I spoke generally agreed that in most areas our district judges do a good job – they are generally conscientious, thoughtful, and are often working with inadequate resources. With respect to obtaining hearings, trial dates, and judicial decisions, however, there is a serious problem which practicing lawyers are unwilling to discuss with the judges for fear of retribution. We need to get past that barrier and open these issues for discussion, because the problems are seriously affecting the administration of justice.

We all know the old saw that "justice delayed is justice denied," but that has become a serious truism in many of our district courts. The delays vary enormously from district to district. Very few districts are current in their hearings, trial dates, and decisions, but delays of two, three, or four years are unfortunately common. As noted above, one district has had delays as long as five years. Some of the problems may be attributable to the fact that most district judges set their own hearing dates on contested matters, though in a few districts, the clerk does so.

There are also great holes in our procedures which could be remedied by some proposed legislation and by amendments to the Uniform District Court Rules.

Some judges also strongly discourage oral argument on a civil motion or probate matter.

## Suggested solutions

Here are some of the BETTR Section's proposals regarding probate and trust pleadings:

■ We suggest adopting the California Probate Code model which allows the following pleadings in probate: petitions,

objections, responses, reports, and accounts. This would cover most probate/trust matters. In a heavily contested matter, the statute allowing use of the Rules of Civil Procedure (which would include discovery) could apply.

- Require all pleadings to be signed by the lawyer, but to be verified by the client, who would be affirming the truth of the matter, such as a petition or an accounting. Our present law would allow such a verification by an affidavit before a notary public. A good alternative, which would require legislation, is a statute like California's, which allows a verification to be made under penalty of perjury, without a notary.

- Provide that a petition verified by affidavit or under penalty of perjury "shall be received as evidence when offered in an uncontested proceeding," as in California Probate Code section 1022. This would allow a probate court to resolve factual issues in ordinary uncontested probate/trust matters without a full-blown evidentiary hearing.

- Adopt legislation which would presumptively allow any heir, devisee, or beneficiary of an estate to obtain an Order of Supervised Administration (MCA §72-3-401 et seq.) if a probate estate has not been closed within three years after the first appointment of a personal representative or administrator; and put the burden of proof on the personal representative to show cause why supervised administration should not be granted. More than two years are typically required if a federal estate tax return is required, but most estates should be closed before the expiration of three years.

- One probate attorney suggested adoption of a uniform district court rule authorizing any party to a contested probate or trust proceeding to require conversion to an adversary proceeding analogous to those authorized by the Federal Bankruptcy Rules. An adversary proceeding in bankruptcy is a separate mini-lawsuit that allows the filing and service of a formal complaint in a proceeding (here probate/trust) over which the court already has jurisdiction. See Collier on Bankruptcy (15 ed. R.ev. §7001.01.) (I have handled the trial of such an adversary proceeding in bankruptcy court in less than one day.)

- Provide annual CLEs for district court judges on probate, trusts, conservatorship, and guardianship matters. We have several highly qualified lawyers who would, if asked, be willing to be presenters at such CLEs.

- Adopt as a uniform district court rule, Rule 9 which now exists in District 13 (Billings). It provides, in substance, that the clerk is to notify the attorney handling an estate, 90 days before expiration of two years from the date the estate was opened, that the estate has not been completed, and that this fact will be brought to the attention of the court for appropriate action. This procedure would be a helpful "nudge," which would motivate a dilatory attorney to get the estate wrapped up in a timely manner. This procedure has worked well in Billings and it should work equally well statewide.

Another provision of this Billings Rule 9 provides that if no proceedings have been taken in any civil cause for one year, that the action will be dismissed on its merits and/or the file closed by the court on its own motion after 10 days notice of such intended dismissal, unless good cause to the contrary is shown.

## Proposals affecting both civil matters and probate/trusts

- Adopt Billings District 13 Rule 9 as discussed above.

- Require a regular law-and-motion calendar in each district and specify that the clerk set hearing dates for both contested and uncontested matters (the UPC allows such clerk actions in Informal Probate, in Formal Testacy, and under Supervised Administration.) The Montana Trust Code in §72-35-302(2) already provides that the clerk shall set each matter for hearing.

- Require the personal representative of an estate and any other court-appointed fiduciary to sign a formal statement, at the time of appointment, acknowledging such person's fiduciary duties and acknowledging the applicable legal restrictions. This concept has already been adopted by the Legislature for holders of powers of attorney. See §72-31-201.

- Require the availability of oral argument in all civil law and motion matters, and if requested in any probate/trust matter. A meaningful opportunity to be heard is already required by *Marriage of Weber*, 322 Mont. 324, 328 (2004) and by *Crismore v. Montana Board of Outfitters*, 327 Mont. 71, 74 (2005). Attorneys report that this requirement is sometimes disregarded by some district judges.

**PROCEDURAL DUE PROCESS**, as defined by the U.S. Supreme Court, also requires both notice and a meaningful opportunity to be heard. The clearest example, and the leading case on the subject, is *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950). It involved the due-process requirement for a hearing on a petition for approval of an ordinary trust accounting by the trustee. The case turned on the constitutional sufficiency of notice to beneficiaries on the judicial settlement of accounts by the trustee of a common trust fund established under New York law. That New York statute allowed small trust estates to pool their funds for purposes of administering the investment. The bank that had established the common trust fund petitioned the New York court for approval of its accountings of the common trust fund. But the only notice given to beneficiaries was by publication in the local newspaper, as allowed by New York statute. During the period involved, 113 trusts had participated in the common fund, and the bank did not know the addresses of some of the beneficiaries. As to the beneficiaries whose addresses were unknown, the court upheld the published notice as sufficient. However, as to the trust beneficiaries whose

# Major UM symposium to examine Montana Constitution & process

*October event precedes state election on whether to convene another constitutional convention*

By **Briana Schwandt**, symposium editor,  
and the **Editorial Board of the Montana Law Review**

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**O**n Oct. 7-8, the *Montana Law Review* will hold its biennial Hon. James R. Browning Symposium at the University of Montana in Missoula. Because, pursuant to our state constitution, Montana's voters will be asked to decide in November whether to convene another constitutional convention, the *Montana Law Review* will dedicate this year's Browning Symposium to an examination of the Montana Constitution and the process of a constitutional convention.

Why does this matter to you? According to Montana Supreme Court Justice James C. Nelson, "Montana's Constitution is personal to each of us. Through it we give others the power to govern us; and we protect ourselves from them. The Symposium is a way to learn why our Constitution's guarantees must be preserved against attacks from politics, religion, and greed."

**IN 1970, MONTANA VOTERS** called for the convening of a constitutional convention. That convention was held early in 1972 and produced a new Constitution that voters adopted in June 1972. Fritz Snyder – University of Montana law professor, director of the William J. Jameson Law Library, and co-author of "The Montana State Constitution: A Reference Guide" – noted: "The resulting Constitution is widely considered to be one of the most forward-looking state constitutions in the country." A few of the prominent provisions of the 1972 Constitution are:

- One of the strongest privacy rights in the nation.
- The right to a clean and healthful environment.
- The recognition that the dignity of the human being is inviolable.
- A guarantee of a free, quality public education.
- A specific educational goal of preserving the cultural integrity of Native Americans in Montana.
- The right of the people to propose constitutional amendments by initiative.

The proper interpretation and application of these and other

provisions of the 1972 Constitution have been the subject of considerable debate in recent years and substantial jurisprudence has developed regarding various aspects of the 1972 Constitution. In effect, the November ballot issue affords the Montana electorate the opportunity to set in motion a process that could significantly change the state's Constitution. Thus, the Browning Symposium with its focus on the Montana Constitution and the potential of a constitutional convention should be of particular interest to the bench and bar of Montana.

**THE FREE SYMPOSIUM** will be held in the University Center Theater (not the University Theater, a different place) in the University Center on the UM campus. It will address the development of the 1972 Constitution in light of contemporary constitutional issues. For example: Do technological developments endanger your right to privacy? Can you sue to enforce your right to a clean and healthful environment? Is an elected judiciary the best model? To what extent does or should the constitution recognize and protect same-sex rights?

These and other constitutional issues are critical to Montana practitioners. Lawyers were instrumental in the development of the Montana Constitution and would likely play an important role if voters called for another convention. Professor Snyder suggested, "After Mike Mansfield, the one-hundred 1972 Montana Constitutional Convention delegates were the most influential Montanans of the 20th Century." Attorney Mae Nan Ellingson emphasized, "The 24 lawyer delegates were particularly influential because of their knowledge of the law, their familiarity with jurisprudence, their ability to debate and persuade, and for their eloquence."

The Symposium will feature highly regarded national, regional, and local speakers and panelists, including several of the attorney and non-attorney delegates to the 1972 Constitutional Convention.

**THE SYMPOSIUM BEGINS** on Thursday morning, Oct. 7, with a panel discussion on the historical and cultural climate that set the stage for the 1972 Constitutional Convention, followed by a discussion on the referendum and initiative process and the process of calling a constitutional convention.

Thursday afternoon, panelists will address individual rights

afforded to Montana citizens under our state Constitution.

Friday morning includes breakout sessions on tax issues, the judiciary, the right to know versus the right to privacy, and the educational provision regarding preservation of Native American Culture. Afternoon discussions will focus on constitutional interpretation and design, a comparison of state constitutions, and reflections of the delegates to the 1972 Constitutional Convention.

The Symposium will conclude with a reception in the new Law School facility honoring the delegates and staff of the 1972 Constitutional Convention.

**J. MARTIN BURKE**, UM law professor and faculty advisor to the *Montana Law Review*, expressed his enthusiasm for this Symposium: “The *Law Review*’s Symposium editors, in collaboration with the *Law Review* Advisory Board and State Bar leadership, have done a remarkable job of selecting the topics for the Symposium and inviting outstanding speakers and panelists to address those topics. The Symposium will provide Montana attorneys and the Montana public an unparalleled opportunity to assess Montana’s unique constitution in advance of the November election.”

While the Montana Law Review anticipates a large audience of lawyers, judges, legislators, students, and other citizens, it will also stream the Symposium online to ensure access for all. Attorneys attending the Symposium can receive 17.0 free CLE credits.

The Symposium’s agenda:

## THURSDAY, OCTOBER 7

### MORNING SESSION – Background and Context of the 1972 Constitution

- 8:30 a.m.      **Opening Remarks**  
*Prof. J. Martin Burke, UM School of Law*
- 8:35 a.m.      **The Montana Constitution: Transition to the 21st Century**  
*Prof. Fritz Snyder, UM School of Law*
- 9:05 a.m.      **Cultural Climate and Context of the 1972 Montana Constitutional Convention**  
*Chuck Johnson, Lee Newspapers*  
*Diana Dowling, Constitutional Convention staff member*  
*Mae Nan Ellingson, moderator*
- 9:50 a.m.      **An Examination of the Various Means of Changing the Montana Constitution: Initiative, Referendum & Convention**  
*James Lopach, UM Political Science*  
*Anthony Johnstone, solicitor, Montana Attorney General’s Office*  
*G. Alan Tarr, director, Center for State Constitutional Studies, Rutgers University*  
*Craig Wilson, MSU-Billings Political Science, moderator*

10:50 a.m.

### The Montana Constitution’s Clean & Healthful Environment Provisions

*Roger Sullivan, board member of Montana Environment Information Center*  
*Richard Oppen, director of state Dept. of Environmental Quality*  
*Reed Watson, attorney, Property & Environment Research Center*  
*Jack Tuholske, Missoula attorney*  
*Irma Russell, dean of UM School of Law, moderator*

### AFTERNOON SESSION – Privacy Rights under the Montana Constitution

1 p.m.

#### Dignity & Physicians’ Assistance in Dying

*Mark Connell, attorney*  
*Beth Brenneman, attorney, Disability Rights Montana*  
*Anthony Johnstone, solicitor, Montana Attorney General’s Office*  
*Thomas Roberts, MD, St. Patrick’s Hospital*  
*Rep. Dick Barrett, Montana legislator*  
*Prof. Thomas Huff, UM School of Law, moderator*

2:30 p.m.

#### Privacy: Overview of the Right to Privacy and a Comparison of Montana’s Privacy Provision with Constitutional Provisions from Other States

*Larry Elison, UM professor emeritus of constitutional law*  
*Dennis Netticksimmons, attorney and professor of MSU-Billings Political Science*  
*John Dinan, Political Science professor at Wake Forest University*  
*Holly Franz, attorney, moderator*

3:30 p.m.

#### Privacy: Same Sex Rights & Implications, if any, of Kulstad v. Maniaci

*District Judge Edward McLean*  
*Kim Abbott, director of Equality Project, Montana Human Rights Network*  
*Susan Ridgeway, Kulstad’s attorney*  
*Niki Zupanec, public policy director, ACLU Montana*  
*Austin R. Nimocks, Alliance Defense Fund (argued for Maniaci)*  
*Beth Brennan, UM Law professor, moderator*

4:30 p.m.

#### Privacy: Technology & Privacy in the Criminal Context

*Mark Mattioli, Attorney General’s Office*  
*Brian Gallik, attorney*  
*Scott Crichton, ACLU Montana*  
*Justice James Nelson, Montana Supreme Court*  
*Mike Batista, administrator, Dept. of Justice*

*Division of Criminal Investigation  
Andrew King-Ries, UM Law professor,  
moderator*

5:30 p.m. Break for Dinner

#### **EVENING SESSION – Keynote and Q & A**

7:30 p.m. **Keynote Address**  
*Larry Elison, professor emeritus of  
constitutional law, UM School of Law*

8 p.m. **Panel of interested parties for changing or  
against changing the Constitution**

8:45 p.m. **Q & A**

### **FRIDAY, OCTOBER 8**

#### **MORNING SESSION – Break-out Sessions**

8:30 a.m. **Applying the Montana Constitution and a  
Discussion of Citizens United**  
*Attorney General Steve Bullock*

9:30 a.m. Break-out Session I

**Property Tax: Does the Montana Constitution  
Impose any Impediments to Change?**

*Michele Crepeau, Dept. of Revenue  
Greg Petesch, retired director of Legislative Legal  
Services  
Michael Green, attorney  
Rep. Jeff Essman, Montana legislator  
Rep. Dick Barrett, Montana legislator  
Mae Nan Ellingson, moderator*

OR

**Interplay between the Right to Know & the Right  
to Privacy**

*Shirley Faust, clerk of Missoula District Court  
Ed Higgins, Montana Legal Services Association  
Judith A. Meadows, state law librarian  
Mike Meloy, attorney  
Larry Howell, UM Law professor, moderator*

10:30 a.m. Break-out Session II

**Judicial Reform**

*Jean Bowman, Con Con delegate  
Mike McGrath, chief justice, Montana Supreme Court  
U.S. District Court Judge Charles Lovell  
Andrew Morriss, University of Illinois School of Law  
Chris Tweeten, Attorney General's Office, moderator*

OR

#### **Indian Education**

*Danna Jackson, attorney  
James Molloy, attorney  
Mike Jetty, Office of Public Instruction  
Julie Cajune, director of development at Nkwusm  
Salish language school  
David Aronofsky, UM Law professor, moderator*

11:30 a.m. **Constitutional Torts: Does Such a Cause  
of Action Exist?**

*Terry Trieweiler, former Montana Supreme  
Court Justice  
Karl Englund, attorney  
Stanley Kaleczyc, attorney  
Bill Gianoulis, attorney*

12:30-1:30 Break for Lunch

#### **AFTERNOON SESSION – State Constitutional Design & Interpretation, Reflection of 1972 Delegates, & Mock Ballot**

1:30 p.m. **State Constitutional Comparison & Design**  
*G. Alan Tarr, director, Center for State  
Constitutional Studies, Rutgers University  
John Dinan, professor of Political Science,  
Wake Forest University  
Jeffrey Greene, professor of Political  
Science, University of Montana  
James Lopach, UM professor of Political  
Science, moderator*

2:30 p.m. **State Constitutional Interpretation**  
*Justice James Nelson, Montana Supreme  
Court  
Justice James Rice, Montana Supreme Court  
Elizabeth (Betsy) Griffing, ACLU Montana,  
moderator*

3:30 p.m. **Reflections of the 1972 Constitutional  
Convention delegates and staff**

4:30 p.m. **What's Next & Mock Ballot – Various  
speakers**

5:30 p.m. **Reception honoring the 1972  
Constitutional Convention delegates &  
staff.** At the University of Montana  
School of Law. Remarks by Shane Vannatta,  
chair, State Bar of Montana Board of  
Trustees.

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**FOR MORE INFORMATION, contact the Montana Law  
Review at (406) 243-2023.**

## You can still register for Annual Meeting

An hour-long, panel discussion CLE about Montana's confusing medical marijuana law appears to be one of the big draws for the State Bar's 36th Annual Meeting in Great Falls Sept. 16-17.

As of Sept. 1, when early, discount-

ed registration closed, more than 150 Bar members had signed up to attend the Annual Meeting, at the Great Falls Holiday Inn. Many more registrations and sign-ups at the door were expected.

The event is offering 9.5 hours of

"Hot Topics" CLEs, which include 3.0 hours of Ethics credits.

Another Annual Meeting highlight will be the presentation of this year's State Bar awards (see award winners on Pages 5-8), including the Jameson Award to UM Professor Emertius "Duke" Crowley at the Thursday night banquet.

## Only one Bar resolution proposed this year

The State Bar of Montana has received only one proposed Bar resolution that will be accepted or rejected by the Bar membership during the State Bar's Annual Meeting at the Great Falls Holiday Inn.

The resolution, submitted by the Montana Legal Services Association before the early-August deadline, calls for increased federal funding of legal services for the poor and urges all State Bar members to participated in pro bono activities. The proposed resolution will be reviewed by the State Bar Resolutions Committee at 4:30 p.m. on Thursday, Sept. 16, at the Great Falls Holiday Inn, and if approved by the Committee will be brought to a vote by all State Bar members who attend the Bar's Annual Business Meeting after 1 p.m. on Friday Sept. 17, following the Annual Meeting Awards Luncheon.

The text of the resolution:

WHEREAS, the State Bar of Montana and its predecessor, the Montana Bar Association, has supported the operations of Montana Legal Services Association since its inception in 1966; and,

WHEREAS, nearly 20 percent of all Montanans are eligible for assistance by Montana Legal Services Association; and

WHEREAS, the State Bar's Equal Justice Coordinator works with Montana Legal Services Association, the Montana Supreme Court's Equal Justice Task Force and

many other access-to-justice stakeholders in Montana; and

WHEREAS, Montana's Judges have been responsive and supportive in creating new and effective pro bono and pro se programs throughout the state; and

WHEREAS, the private bar has been supportive and responsive to the need for legal representation of low-income persons; and

WHEREAS, such private attorney involvement, together with the strong delivery system of the Montana Legal Services Association, is still unable to serve all the legal needs of those unable to pay for legal services; and

NOW THEREFORE BE IT RESOLVED, that the State Bar of Montana, in its annual meeting, assembled at Billings, this 17th day of September 2010, does hereby

STRONGLY URGE Congress to maintain a firm national commitment to providing equal access to the system of justice for the nation's poor, as called for under the Legal Services Corporation Act of 1974; and

STRONGLY URGE the United States Congress to increase federal funding for the legal services programs nationwide; and

STRONGLY URGE all members of the State Bar of Montana to participate in pro bono programs established through the collaboration and cooperation between the State Bar of Montana, local bar associations, MLSA, and various other entities, to assist in providing legal services for those unable to pay.

## Havre's district judge announces retirement

District Judge David Rice of Havre has announced his retirement, effective Nov. 30, the Associated Press reported in August.

Judge Rice said on Aug. 24 that he

and his wife, Linda, have decided it is a good time to end his 37-year legal career. He says he's been considering it for a few months.

Judge Rice, who is 64, began practicing law in Havre in 1973, both as a part-time deputy Hill County attorney and in private practice.

The state Judicial Nomination

Commission will now seek applicants for the post and will forward recommendations to Gov. Brian Schweitzer, who will appoint a new judge for the 12th Judicial District covering Chouteau, Hill and Liberty Counties. Judge Rice is the only district judge in that district.



# Volunteers Needed!

## Request for committee assignment State Bar of Montana

Member participation in the organization and management of the State Bar of Montana is essential to its success as a professional association. The most effective way lawyers and legal assistants can participate is through volunteer service on the many committees that compose the Bar.

Committees meet two to six times per year, usually in Helena, although many meetings are via conference call. Expenses associated with attending meetings are reimbursed by the State Bar.

Every effort is made to assign volunteers according to their choices. Please note not all committees have available openings.

Your name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

For each committee assignment you request, note whether it is your first, second or third choice.

- |   |  |
|---|--|
| <input type="checkbox"/> Access to Justice                                      | <input type="checkbox"/> Lawyer Referral & Information Service               |
| <input type="checkbox"/> CLE Institute  | <input type="checkbox"/> Lawyers' Fund for Client Protection                 |
| <input type="checkbox"/> Dispute Resolution                                     | <input type="checkbox"/> Lawyers Helping Lawyers                             |
| <input type="checkbox"/> Elderly Assistance                                     | <input type="checkbox"/> <del>Past Presidents</del> (for Bar officers only)  |
| <input type="checkbox"/> <del>Ethics</del> (no available openings*)             | <input type="checkbox"/> <del>Professionalism</del> (no available openings*) |
| <input type="checkbox"/> <del>Executive Committee</del> (for Bar officers only) | <input type="checkbox"/> Resolutions   |
| <input type="checkbox"/> Fee Arbitration  | <input type="checkbox"/> Judicial Relations                                  |
| <input type="checkbox"/> Law-Related Education                                  | <input type="checkbox"/> Technology  |

\*Some committees' members do not have any expiration dates this year or the committee has an adequate number of members at present time. Openings occur when a term expires and the member does not wish to renew, a member resigns before their term is up or there is a need to add additional members. If you would like to be added to a waiting list for openings as they become available please mark the desired committee above.

Please return this form no later than **September 15th** to:

State Bar of Montana  
P.O. Box 577, Helena MT 59624  
Fax (406) 442-7763 or e-mail to [jdiveley@montanabar.org](mailto:jdiveley@montanabar.org)



# 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](http://www.montanabar.org) for SAMI updates.

September 16-17 Great Falls – Holiday Inn

**State Bar Annual Meeting** 9.50 CLE credits, including 3.0 Ethics credits. Presented by the State Bar of Montana. See registration brochure at [www.montanabar.org](http://www.montanabar.org) or call (406) 447-2206

September 17 Billings – Hilton Garden Inn

**Child Abuse & Neglect** 8.0 CLE credits, including 1.0 Ethics (SAMI) credit. Presented by the 18th Judicial District, Judge Holly Brown, (406) 582-2091

September 23-24 Helena – Great Northern Hotel

**Montana Water Law Conference** 10.0 CLE credits, including 1.0 Ethics credit. Presented by Seminar Group, (206) 463-4400

September 24 Helena – Holiday Inn Downtown

**Child Abuse & Neglect** 8.0 CLE credits, including 1.0 Ethics (SAMI) credit. Presented by the 18th Judicial District, Judge Holly Brown, (406) 582-2091

October 24 (and 90-minute sessions for next 5 weeks)

**Jewish Medical & Legal Ethics** 9.0 CLE credits, including 4.50 Ethics credits. Presented at the Jewish Learning Institute, 8755 Huffman Lane, Bozeman, (406) 585-8770

## All other CLEs

September 10 Missoula – University Center Theatre

**Child Development Principles for Court Partners in Dependent/Neglect Cases** 3.0 CLE credits. Present by Child & Family Services, (406) 329-1575

September 10 Missoula – DoubleTree Hotel

**School Law CLE: Collective Bargaining & Negotiations** 5.50 CLE credits. Presented by the School Law Section of State Bar of Montana, (406) 447-2206

September 15-17 Big Sky – Big Sky Resort

**Governor's Conference on Work Comp** 13.0 CLE credits. Presented by the state Department of Labor & Industry, (406) 444-6649

September 16 Great Falls – Hampton Inn

**Charitable Estate Planning Conference** 5.0 CLE credits. Presented by Benefis Healthcare Foundation, (406) 455-5836

September 16 Great Falls – FWP Regional Headquarters

**Privacy & the Right to Know** 6.50 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](http://www.montanabar.org) and click CLE / Online CLE Courses

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

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

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

September 21 Teleconference

**The World of Irrevocable Life Insurance** 1.50 CLE credits. Presented by Cannon, (800) 775-7654

September 22 Billings – Country Inns & Suites

**Investigating Personnel Issues** 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

September 23 Billings – Country Inn & Suites

**Documenting Disciplinary Action** 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

September 25 – Missoula, UM School of Law

**UM Football CLE: Animal Law Issues** 2.0 CLE credits. Presented by the University of Montana School of Law, (406) 243-4311.

October 7-8 Missoula – UM University Center

**Browning Symposium on the Montana Constitution** 17.0 CLE credits. Presented by the Montana Law Review, (402) 243-4311 (see article on Page 11)

October 8

**Annual Construction Law Institute: Government Contracting** 6.75 CLE credits. Presented by the State Bar's Construction Law Section and CLE Institute, (406) 447-2206. See registration brochure at [www.montanabar.org](http://www.montanabar.org).

October 19 Teleconference

**Retirement Benefit Planning** 1.50 CLE credits. Presented by Cannon, (800) 775-7654



October 21-22

**Annual Bankruptcy CLE** Presented by the State Bar's Bankruptcy Section and CLE Institute. Details will be mailed to Bar member and appear at [www.montanabar.org](http://www.montanabar.org).

October 26 Missoula – Missoula County Courthouse

**Conducting a Pro Bono Family Law Settlement Conference** 1.0 CLE credit. Presented by the 4th Judicial District Court, (406) 258-3461

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.

## AG presenting October conference on financial regulatory reform

The Montana Attorney General's Office and the Office of Consumer Protection will hold a conference titled "What Does Wall Street Reform Mean for Main Street Montana?" in Missoula Oct. 13.

The conference will focus on financial regulatory reform and consumer protection, both at the state and national levels.

"I am very pleased to announce that Commissioner Julie Brill, appointed to the Federal Trade Commission just last spring, will be one of our keynote speakers," said Attorney General Steve Bullock. He also said that Gary Rivlin, former *New York Times* business reporter and author of "Broke, USA," will speak about some of the practices that led to the economic crisis, particularly with respect to consumers.

The conference – on Wednesday, Oct. 13, at Missoula's DoubleTree Hotel – will begin with registration at 8 a.m. (pre-registration preferred) with the program from 8:45 a.m. to 5 p.m. The cost to attend the conference is only \$15, which covers the cost of an included lunch.

Register for the conference at [www.consumerprotection.mt.gov](http://www.consumerprotection.mt.gov). For a complete agenda and list of speakers and panelists, go to [www.consumerprotection.mt.gov](http://www.consumerprotection.mt.gov) or call (406) 444-2026.

## CHILD ABUSE AND NEGLECT CLE

A multidisciplinary training for attorneys representing all parties involved in abuse and neglect cases. The goals are increased communication, cooperation, and efficiency to provide for the best interests of the child

### Two dates & locations!

- Friday, Sept. 17 – Billings, Hilton Garden Inn,  
2465 Grant Road
- Friday, September 24 – Helena, Holiday Inn Downtown  
22 North Last Chance Gulch

Presented by the 18th Judicial District, Judge Holly Brown (406) 582-2091

### 8.0 CLE credits, including 1.0 Ethics (SAMI) credit

FREE CLE, including ethics, with presentations from Judges, the Department of Health and Human Services, Offices of the Public Defender and Attorney General and private counsel.

Made possible by a Montana Supreme Court, Court Assessment Program Mini-Grant.

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

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See order form on Page 15

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6 DVDs may be rented as a set (\$150 plus

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# Three possible conflicts in a small Montana town

The State Bar of Montana Ethics Committee rendered the following opinion, following a request by a Bar member, on June 23:

## ETHICS OPINION 100623

### FACTS:

1. A small city's prosecutor is married to one of the city's police officers. The prosecutor handles the cases charged by the officer.
2. A county attorney is married to the jurisdiction's detention center administrator and prosecutes cases brought by the county sheriff, which employs the administrator.
3. A small city's local law firm handles the city's civil issues. The firm also provides criminal defense representation in criminal matters prosecuted by the city. The prosecuting city attorney and the city civil attorney are in two separate law firms, in two separate buildings and nothing is shared between them.

### QUESTION PRESENTED:

Are there conflicts present in these scenarios and if so, can the conflicts be waived under Rule 1.7 of the Montana Rules of Professional Conduct?

### SHORT ANSWERS:

In both fact scenarios 1 and 2 the potential for cross examining one's spouse creates a personal interest conflict, but presumably the governmental entity is aware of the potential conflict and it can give informed consent, confirmed in writing, to waive the conflict.

In fact scenario 3 there is enough of a separation to prevent a conflict.

### DISCUSSION:

There are no special rules for lawyers in small jurisdictions with family in law-related fields. However, Montana's Rules of Professional Conduct suffice to address the challenges and constraints presented by these questions. Rule 1.7 of Montana's Rules provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal

interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

Factual scenarios 1 and 2 are similar enough to warrant the same analysis: both create the inquiry as to whether a "significant risk" exists that the representation of the clients will be "materially limited" by the lawyers' "personal interests." The representation is forbidden unless the lawyers "reasonably believe" that they are able to provide "competent and diligent" representation and the clients give informed consent, confirmed in writing.

In our Opinion 950721, the State Bar Ethics Committee agreed that a law firm can provide criminal defense representation when a spouse of an attorney in the firm is employed as a deputy sheriff in the same jurisdiction if the lawyer reasonably believes that the client would not be adversely affected and the client consents after full disclosure. We reach the same conclusion with the facts presented in scenarios 1 and 2. If a lawyer who has conflicting personal interests reasonably concludes that she will nonetheless be able to provide effective representation, the lawyer may serve as counsel after obtaining the client's informed consent. However, if the lawyer's personal interests are likely to prevent her from providing adequate representation, client consent will not cure the conflict.

Presumably in scenarios 1 and 2 the entities represented by the attorneys are aware that the attorneys are married to the jurisdiction's deputy and detention center administrator. In both situations the entities may provide informed consent confirmed in writing and are probably very aware, as many in small jurisdictions are, of the potential for conflicts. While we discuss them together here, the analysis there must be an evaluation of all the particular circumstances on a case-by-case basis. MRPC 1.7(b)(1).

Lawyers are required to evaluate the existence of conflicts of interest throughout the representation, not just at the outset. If the spouse becomes a witness in the matter, for example, requiring cross-examination by the lawyer, the threshold in MRPC 1.7(b)(1) could not be met and the lawyer would be required to withdraw. If the lawyer is disqualified under MRPC 1.7(b), all members of the lawyer's firm would be imputedly disqualified under MRPC 1.10(a). The lawyer must

remain alert for developing conflicts. What constitutes adequate disclosure is fact specific and could only be evaluated on a case-by-case basis, so any effort to satisfy the disclosure obligations imposed by ethics rules by use of a form is almost certain to prove unsatisfactory. It is the counseling and discussion with the client underlying the execution of any such form that would serve as the touchstone for determining whether the necessary disclosure has been adequately made. While a form should certainly reflect that both advantages and disadvantages have been covered, assuming one is used, it cannot serve as a panacea to obviate the necessity for compliance with the Rules in fact.

Scenario 3 is a step away in the analysis: A small city's local law firm handles the city's civil issues. The firm also provides criminal defense representation in criminal matters

prosecuted by the city. The prosecuting city attorney and the city civil attorney are in two separate law firms, in two separate buildings and nothing is shared between them. There is no imputation of conflict necessary under Rule 1.10. As presented, the facts suggest that there is no overlap between the functions of the two firms and responsibilities for the city. The civil and criminal responsibilities are entirely separate.

The key to conflict analysis is the misuse/abuse of confidential information. In the event a scenario developed where confidential information could be misused, the analysis employed for scenarios 1 and 2 should be applied. But in the facts presented, there is sufficient distance between the sets of responsibilities and offices to suggest no general conflict looms.

**THIS OPINION IS ADVISORY ONLY**

## STATE BAR CALENDAR

### September 10

**School Law Section CLE:** Collective Bargaining & Negotiations, 10 a.m., DoubleTree Hotel, Missoula

### September 15

**Joint meeting** of Equal Justice Task Force, Access to Justice Committee, and Commission on Self-Represented Litigants, 1 p.m., Holiday Inn, Great Falls.

### September 16-17

**State Bar's 36th Annual Meeting**, Holiday Inn Hotel, 400 10th Ave. South, Great Falls

### September 16

**State Bar Board of Trustees** meeting, 8:30 a.m., Holiday Inn, Great Falls

**New Lawyers Section** luncheon meeting, noon, Holiday Inn, Great Falls

**Montana Justice Foundation** meeting, 2:30 p.m., Holiday Inn, Great Falls

**State Bar Resolutions Committee** meeting, 4:30 p.m., Holiday Inn, Great Falls

### September 17

**Paralegal Section** dinner meeting, 5:30 p.m., Holiday Inn, Great Falls

### September 24

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

### October 1

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

### October 8

**Construction Law Institute**, Hilton Garden Inn, Bozeman

### October 21-22

**Bankruptcy Section CLE**, Hilton Garden Inn, Missoula

### January 14-16

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# Justices won't adopt ABOTA's civility program

*The Montana Supreme Court issued the following order on Aug. 3:*

Case Nol. AF 06-0632

## **In Re the Application of the American Board of Trial Advocates (ABOTA), Montana Chapter, Seeking Adoption and Implementation of ABOTA's "Civility Matters" Programs**

On July 2, 2010, Donald C. Robinson, individually and on behalf of the Montana Chapter of the American Board of Trial Advocates (ABOTA), filed an application invoking the original jurisdiction of this Court to regulate the Bar of Montana. The application requests that this Court adopt and implement a series of initiatives offered by ABOTA, known as the "Civility Matters" program. ABOTA is a national organization of peers-elected, experienced trial attorneys. The organization's purposes include "foster[ing] improvement in the ethical and technical standards of practice in the field of advocacy."

The application generally references the problem of

increased incivility in the legal system, and explains the three components of the "Civility Matters" program designed to address this issue. They include: 1) adoption of ABOTA's Principles of Professionalism and Civility as the Montana standards of civility; 2) revising the oath of admission to the Bar to add a commitment to faithfully observe the standards of civility; and 3) initiation of a mentoring and refereeing program whereby members of the Montana Chapter of ABOTA would make civility presentations, provide confidential advice or mentoring to lawyers, and, upon request of a judge or lawyer, mediate or referee disputes arising between lawyers during litigation. The program is designed to be self-executing and would not involve judicial financial resources.

While the application's purposes are clearly laudable, our review of the proposed program has raised several concerns about potential conflicts with current rules and practices. For example, #18 of ABOTA's Principles provides that a lawyer should never cause the entry of a default without first notifying opposing counsel, yet M. R. Civ. P. 55 does not require this. Another ABOTA principle states that a lawyer may never criticize a judge or jury for a ruling or decision.

Temperance is commendable, but we question whether a blanket prohibition on such comments would comport with free speech guarantees. We note that, although the referee program is described as voluntary, once a referral is made by either a court or attorney, then "the other attorney will be expected to cooperate with the referee and opposing counsel to facilitate a resolution of the civility or professionalism problem," essentially obligating the lawyers to undergo a mediation process. Paragraph 8, Civility Program, Appendix D.

Further, this Court's adoption of ABOTA's civility standards, which are more detailed and specific than the Rules of Professional Conduct, could conceivably form the basis for disciplinary action if violated, and the judiciary has no resources for alternative enforcement of the standards.

For these reasons, we decline to grant the application at this time. However, there are parts of the proposed program which could be very helpful and be implemented without an order from this Court. ABOTA members should make civility presentations at Bar meetings and continuing educational seminars. Lawyers may want to take advantage of the mentoring program. Trial judges may find it helpful to refer a litigation dispute to an ABOTA member to attempt a resolution. We encourage ABOTA to provide information about its resources and the opportunities for participation to Montana's lawyers and judges. Accordingly,

IT IS HEREBY ORDERED that the application is DENIED. ○

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## HEARING DELAYS, from P. 10

names and addresses were known to the bank, the Supreme Court held that notice had to be given “at least by ordinary mail to the record addresses. 339 U.S. at 318, 70 S. Ct. at 659-660. In reaching this decision, the Court commented on the reason for requiring notice as follows:

*“The fundamental requisite of due process of law is the opportunity to be heard. [Citing Grannis v. Ordean, 234 U.S. 385, 394]. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.”*

*Mullane* has recently been cited as supplying “the appropriate analytical framework” for determining the adequacy of notice given by the FBI of the administrative forfeiture of cash seized during a drug bust, noting that *Mullane* had held that the notice given there to known beneficiaries was inadequate because it was not reasonably calculated “to apprise interested parties of the pendency of the action and **afford them an opportunity to present their objections.**” (Emphasis added.) 122 S. Ct. at 696.

See also *Fuentes v. Shevin*, 407 U.S. 79, 92 S. Ct. 1983 (1972). That case dealt with the requirements for notice to buyers under conditional sales contracts for the purchase of household goods, before the chattels could be repossessed by the seller. The Court noted that the replevin (repossession) “was not cast as a final judgment” but rather dealt only with a possessory interest in the chattels. 407 U.S. at 84, 92 S. Ct. at 1996.) The Court struck down as a violation of due process the Florida and Pennsylvania prejudgment replevin statutes because “they deny the right to **a prior opportunity to be heard** before chattels are taken from their possessor.” (Emphasis added) (407 U.S. at 96, 92 S. Ct. at 202.)

In reaching this decision, the Court stated:

*“For more than a century, the central meaning of procedural due process has been clear: ‘Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified.’ [citations.] It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.’ [citation].” (Emphasis added). 407 U.S. at 79, 92 S. Ct. at 1994. See also *Dusenbery v. U.S.*, 534 U.S. 161, 167-170.*

**WE RECOGNIZE** the issues presented here are difficult and sensitive ones. Their resolution will require joint action by the courts, the Legislature, and Bar.

At the same time, we recognize the district courts already labor under many disadvantages, especially with respect to staffing and having an appropriate number of judges authorized in each district. Nonetheless, we hope that the district courts will be willing to work with the Bar in achieving a collaborative resolution of these difficult and sensitive issues. ○

## ORAL ARGUMENTS

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

### September

■ Case No. DA 10-0109 – RENEE GRIFFITH, Plaintiff and Appellant, v. BUTTE SCHOOL DISTRICT NO. 1, CHARLES UGGETTI and JOHN METZ, Defendants and Appellees. Oral argument is set for Tuesday, Sept. 14, at 9:30 a.m. in the courtroom of the Montana Supreme Court in Helena.

■ Case No. DA 10-0029 – PEGGY L. STEVENS, Plaintiff, Cross-Appellant and Appellee, v. NOVARTIS PHARMACEUTICALS CORPORATION, Defendant and Appellant. Oral argument is set for Thursday, Sept. 23, at 9:30 a.m. in the courtroom of the Montana Supreme Court in 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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ary. It perhaps was inevitable that his ability to bring reason and vision to disputes led him to becoming a much sought-after mediator across the entire state of Montana.

Over the years Bill has been active in service to various professional organizations and the UM Law School. Beyond the legal profession, Bill also has given generously to his community. A sample of his civic activities includes being state director of the Northern Rocky Mountain Easter Seal Society and Goodwill; director and president of United Way of Missoula County; a director of Missoula Children's Theater; chairman of the local Republican Central Committee; and extensive service on a host of boards for civic and community organizations.

Bill's wife, Sherri, is a native of Missoula. He has a son and daughter.

[Mr. Wagner is a third generation Missoulian. Following graduation from Loyola High School in 1967, he received a bachelor's degree in accounting from Gonzaga University. While at the UM School of Law, he served as business manager of the *Montana Law Review* and was a member of the School's regional moot court team.

Mr. Wagner entered private practice as an associate with the Billings firm of Hibbs, Sweeney & Colberg in 1974. He returned to his hometown and practiced as a partner with Green, MacDonald, Wagner & Kirscher until joining Garlington, Lohn & Robinson in 1983. His practice is primarily in the areas of real estate, business, probate, limited domestic relations, and related areas of litigation and mediation.]

### Civic affairs

- American Indian Institute, chair, board of directors, 1993-present.
- Committee on Legislation & Regulations, Council on Foundations, 1998-present.
- Legal Advisory Subcommittee for Committee on Community Foundations, Council on Foundations, 1997-present
- Montana Discovery Foundation (formerly The Helena Forest Foundation), board member, chair of the board, 1999 - 2005.
- Keep Montana Clean & Beautiful, treasurer, board of directors, 1998-2000.
- Development Corporation of Montana, vice president, board of directors, executive committee, 1987-2000.
- Northwest Policy Center's Leadership Council, University of Washington, 1988-1992.
- Regional Issues Forum, advisory board, Hubert H. Humphrey Institute, 1988-1990.
- Friends of Max Baucus, treasurer of campaign, 1983-1993.
- Center for Interfacial Microbial Process, Montana State University, Board of Policy Advisors, 1989-1990.

- Montana Committee on U.S. Constitution, founding member, 1983-1991.
- Montana Constitutional Connections Committee, 1986-1991.
- Montana Democratic Party Rules Committee, 1984-1992.

### Governmental appointments

- Montana Historical Society board, 1997-2005.
- Montana Power Authority board, 2001-2003.
- Montana Science & Technology Alliance board chair, 1985-1989.

### Montana community service

- Greater Montana Foundation board, 2003 to present. Chair of GMF's Trust & Investment Committee.
- Montana Community Foundation, president, 1994-1997.
- Montana Community Foundation board, 1988-1999
- Carroll College Foundation board, 1985-1993.
- St. Peter's Hospital, past board chair, board member, 1988-1994.
- Deaconess Research Institute board, Billings, 1989-1997.
- Helena Kiwanis Club board, 1983-1985.
- Helena YMCA board, 1984-1986.
- Greens Committee, Green Meadow Golf Club, 1994-2005.
- Greens Committee and Golf

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Committee, Oro Valley Country Club, 2004-present.

- U.S. Golf Association Senior Amateur Committee.

- Helena Presents Inc., Myrna Loy Center for the Performing Arts, past chair, board, 1984-1994.

### Business experience

- Board of Advisors, Wells Fargo Bank, Helena, 1990-2004.

- President, Montana Exporters Inc., Helena, 1987-1990.

- President, New West Trading Co., Helena, 1982-1985.

- Chair, Montana Livestock Exporters Inc., Helena, 1985-1990.

- Montana Renewable Resources Inc. board, Helena, 1984-1995

- Partner, New Community Planning Associates, Cambridge, Mass., 1968-1970.

- Manager, Marketing Systems, E.R. Squibb & Sons Inc., New York, 1966-1968

○

### BEATTY, from Page 8

joint dissolution without children; parenting plan; response; motion in family law case, etc.)

Even after the packets were complete, she updated them with the new privacy regulations, and then continues to add and update packets as the need arises. She recently completed a packet of instructions and forms for enforcing a foreign judgment, and is at work on name change and also step-parent adoptions.

Charlotte has added this to her normal workload as a law clerk. She does this work on her own time, and without any lessening of her other responsibilities. She has enlisted the help and advice of other attorneys in this project, but she has spear-headed the entire project, from start to finish.

Charlotte is like "The Little Red Hen."

She first completed the packets of instructions and forms.

She then wrote the grant to the Montana Supreme Court for the \$13,000 needed to operate for the first 18 months.

She then got a private non-profit to administer the grant when the county refused to handle it.

She then arranged to have all these packets on the county website for easy access.

She then arranged a room in the courthouse for this purpose.

She then formed a hiring committee, interviewed, and hired a coordinator and a supervising attorney for the Center;

She then trained the coordinator with the assistance of the supervising attorney.

She then staffed the Center to help the

Coordinator and supervising attorney as they launched the program.

She then recruited additional pro bono attorneys, including work on a letter from the judges to go out to all attorneys to increase pro bono participation, including the option of volunteering in this Center.

She then organized a CLE for attorneys and others volunteering at the Center on child-support issues.

She then recruited and trained law student volunteers, overseeing the students on Friday mornings, a day that the Center was not previously scheduled to be open but which was the day the students were available.

She then found people to provide information to the Legislature on the services provided by the Center to ensure continued funding.

She coordinates the administration of the grant through the private, non-profit, by attending meetings and ensuring smooth coordination of the program.

She continues to expand the scope of the services provided by the Center, based on information from the clerk of court and requests from individuals at the Center.

The Center provides a service to pro se litigants, as well as to the judges. Now, when a self-represented litigant arrives at the courthouse, they receive instructions, child-support calculations, and review of their forms before filing. Moreover, the judges have somewhere to send pro se litigants to obtain the assistance needed for the case to proceed smoothly.

Charlotte Beatty has truly provided "Access to Justice."

○



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## CURTIS, from Page 8

varied, I would like to summarize some of those that directly relate to this award. Judge Curtis led the effort to develop a CASA (Court Appointed Special Advocates) program in Flathead County in the late 1990s. The program provides volunteer services for abused and neglected children. Judge Curtis was named CASA judge of the year, has received the Light of Hope Award from CASA, and continues to serve on the CASA advisory council.

In 2000, the Pro Bono Project Committee of the Northwest Montana Bar Association developed a pro bono program to serve Flathead County. Judge Curtis served on that Committee and was instrumental in leading the effort to encourage the local judiciary and local bar association to get behind that program.

Although this pro bono program served Flathead County residents well for many years, it eventually stopped functioning due to lack of funding and other factors beyond our control. The current NW Bar Access to Justice Commission is working to restart that

program. During the past year, our commission has been working diligently to create a new and revitalized pro bono program here in Flathead County and once again, Judge Curtis has stepped up to the plate to offer her assistance and counsel. She is the only judge in our district to have championed this cause and has worked to persuade the other district judges to be supportive.

On Nov. 20, 2008, the Access to Justice Forum Series held a forum in Kalispell, and Judge Curtis served as a panel member for that forum. As usual, Judge Curtis gladly gave her time and assistance to educate the public as to their access to justice here in Flathead County.

I also know that Judge Curtis is known and well respected as a leader among the state judiciary and I trust that many of the committees she serves on either directly or indirectly relate to access-to-justice issues. Our entire committee has voted unanimously to support her nomination for the Karla Gray Award.

Judge Katherine "Kitty" Curtis serves as a District Judge for the Montana 11th Judicial District. She was first elected

as district judge in November 1994 and took office in January 1995. She was re-elected to her third six-year term in 2006.

She graduated from the University of Mississippi with a BA degree in 1972 and from the University of Memphis School of Law in 1981. She served as a trial attorney with the U.S. Department of Justice Antitrust Division from 1981 to 1985. She earned the Special Achievement Award for her work at the Department of Justice. Judge Curtis was also appointed and served during this time as a special assistant U.S. Attorney for the Northern District of Virginia.

Judge Curtis moved to Columbia Falls, Mont., in June 1985 and was in private practice serving the Flathead valley until 1995. She also was the city attorney for Columbia Falls from 1985 to 1994.

Judge Curtis has also served on the Big Brothers/Big Sisters board, the United Way citizens' review panel, the Columbia Falls High School Booster Club, the planning committee for the new Columbia Falls Junior High School, and the Columbia Falls First Best Place Task Force. ○

## SNOWBERGER, from Page 8

District Court, and domestic-violence roundtables

Her work on our Commission is exemplary. She reviews and edits the forms that are prepared by Montana Legal Services for Commission approval. She represents us at the Department of Aging clinics to explain to seniors what their rights are, and how to appropriately make end-of-life decisions. She helped edit the State Bar/Commission guidebook, "Montana Citizens' Guide to the Courts," and she has taught classes for pro bono attorneys about discreet task representation.

The judge graduated from Pepperdine School of Law, and worked as a public defender in Cook County, Ill. After being appointed in 2002 to her position as a city judge in Belgrade, Mont., she took another bar exam in 2004 so that she could hold the Montana credentials she felt her position warranted. Judge

Snowberger is endlessly patient with those who appear in her court. She takes the time to explain legal matters to them, without jargon or legalese. She makes the experience of coming before her one that is educational; she gives people options and allows them to maintain their dignity. As an aside, Judge Snowberger has been an Eagle Mount volunteer since 2002, where she provides therapeutic recreation for people with disabilities and children with cancer. She also is a Special Olympics coordinator.

We believe that by presenting a judge of a court of limited jurisdiction the Karla Gray Award we will send a message to all of our courts that at every level our judges have the opportunity to stand up for the best service that can be offered to our citizens, and also be recognized for it.

[Judge Snowberger received her BS in Business Administration from Geneva College, Beaver Falls, Penn. In 1988,

she received her juris doctor from Pepperdine University School of Law, Malibu, Calif. She was a Cook County, Ill., public defender and then was in private practice in Chicago. Her practice included criminal defense, civil rights litigation, contract, domestic, personal injury, and medical malpractice. Her criminal defense work has ranged from representing clients from parking tickets to capital murder cases. She has been a licensed attorney in the State of Illinois since 1988.

In 1996, she went to work for a marketing firm in Chicago, where she managed a business unit for the firm's largest client, and then worked in the Management of Information Systems department.

She moved to Montana in 2000, and was appointed Belgrade City Court judge in September of 2002.] ○

## NEWS ABOUT MEMBERS

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**Mark Lancaster** recently joined the law firm of Luxan & Murfitt in Helena. A Helena native, Mr. Lancaster is a graduate of Montana State University and the University of Montana School of Law. Before coming to Luxan & Murfitt, he was an associate attorney in Great Falls with Davis, Hatley, Haffeman & Tighe. At Luxan & Murfitt, Mr. Lancaster's areas of practice include general civil litigation, insurance, personal injury, employment, and property law.



**Brenda C. Desmond**, 4th Judicial District standing master who presides over the Missoula Co-Occurring Treatment Court, has co-authored an article entitled "Mental Health Courts: An Effective Way for Treating Offenders with Serious Mental Illness" for the upcoming *ABA Mental & Physical Disability Law Reporter*, Volume 34, Number 4, July/August 2010. Her co-author is Judge Paul J. Lenz who presides over the Eau Claire, Wisc., mental health court.

**Antoinette (Toni) Tease** has been elected publications officer of the American Bar Association Section of Intellectual

Property Law (ABA-IPL). In this position, Ms. Tease will be responsible for all of the Section's publications, including the *Landslide* magazine, the *Annual Review*, and all of the books published by the ABA-IPL Section. Ms. Tease will also chair the Section's Content Advisory Board, which oversees the magazine, *Annual Review*, and book editorial boards.

Kaufman, Vidal & Hileman law firm of Kalispell announced the addition of attorney **Valori E. Vidulich** to the firm.

Ms. Vidulich received her law degree in 2003 from Case Western Reserve University School of Law in Cleveland, Ohio, and has been practicing law in the Flathead Valley since 2007. She has extensive experience in family law including divorce, legal separation, child custody, parenting plans, child support and modifications, paternity and adoptions. Contact her at Kaufman, Vidal & Hileman, 22 Second Ave. West or P.O. Box 728, Kalispell MT 59903-0728; (406) 755-5700; [vev@kvhlaw.com](mailto:vev@kvhlaw.com).



## DEATHS

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### William O'Leary, Helena attorney

Long-time attorney for the State of Montana William E. O'Leary, 78, of Helena, died on Aug. 16 at St. Peter's Hospital.

Mr. O'Leary was born in Anaconda, and raised in Butte. He graduated from Butte Central High School with the Class of 1949. A 1953 graduate of Carroll College in Helena, he went on to receive a law degree from the University of Montana in 1960.

Mr. O'Leary, a member of the Montana and federal bars, began his career as a trial attorney for the Montana Highway Department for four years before becoming the administrator of the legal division of the Railroad & Public Service Commission in Helena. He resigned as chief counsel of the

Montana Public Service Commission in April of 1973 to enter private law practice, specializing in transportation law.

In 1986, Mr. O'Leary left private practice to join the Montana Department of Public Health & Human Services. He later transferred to the Montana Department of Labor before retiring in 1993. He was to have received his 50-year pin at the State Bar of Montana Annual Meeting in September, commemorating his 50 years as a State Bar member.

Survivors include his wife, Lucille of Helena; two sons and three daughters.

### Other deaths

● **Brian Lee Olson**, a Hamilton, Mont., native and graduate of the University of Montana School of Law, died of cancer at age 41 in St. George, Utah.

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**ATTORNEY:** Established law firm in Billings seeks attorney with two or more years of experience. Please send letter of application, references, resume, transcript and writing sample to *The Montana Lawyer*, #8-26, PO Box 577, Helena MT 59624.

**LAW CLERK** needed for 12-month appointment: The Montana Water Court is accepting applications for a law clerk. Successful applicant must have a JD and will assist the Court in the adjudication of water rights. Duties include legal research and writing; case management; conducting status, scheduling, settlement conferences; and other assigned tasks. The ability to work well with a variety of individuals including attorneys, water users, and natural resources staff is essential. Closing date is Sept. 24, 2010. For complete job descriptions, job announcements, and application procedure, see the Court website at <http://courts.mt.gov/employment/default.mcp> or contact the Human Resources Office of the Supreme Court Administrator's Office.

**DEPUTY COUNTY ATTORNEY:** The Hill County Attorney's Office has one full-time deputy county attorney position open for hire. Number of hours per work week will vary upon caseload and pays an annual salary of \$44,000-52,000, depending on qualifications and experience, plus all applicable Hill County benefits. The deputy county attorney primarily prosecutes criminal matters in justice court, district court and youth court, and represents the Department of Public Health & Human

Services in abuse and neglect cases. This position performs all duties of the county attorney in the county attorney's and chief deputy's absence, or at the direction of the county attorney or chief deputy including representing the county or state in civil matters in various courts of law, and advising county officials and the public on legal matters of concern to the county or the various county departments. A full job description is available at the Havre Job Service or from the Hill County Personnel Office at (406) 265-5481, ext 239, or e-mail [personnel@co.hill.mt.us](mailto:personnel@co.hill.mt.us). Please provide a resume, transcript, and writing sample and mail the information to Hill County Personnel Office, 315 Fourth Street, Havre MT 59501. This position is open until filled. For more information, please contact the Personnel Office or Gina Dahl, Hill County Attorney at (406) 265-5481 extension 211.

**ASSOCIATE ATTORNEY:** Bohyer, Simpson & Tranel PC seeks associate attorney with 3-plus years experience for work in busy litigation practice. Submit cover letter, resume and writing sample to John Bohyer, PO Box 7729, Missoula MT 59807.

**ATTORNEY:** Dawson County Domestic Violence Program seeks civil attorney for victims of domestic violence, sexual assault and stalking. Must be licensed to practice law in Montana. Salary range \$38,000-48,000 depending on experience. Please send a resume/writing sample along with law school transcripts to: DCDV, PO Box 505, Glendive MT 59330.

**ASSISTANT GENERAL COUNSEL:** Continental Resources Inc. (NYSE, CLR) is a publicly traded mid-cap oil and gas exploration Company ranked among the top oil producers in the United States. We offer a unique job opportunity for a qualified candidate interested in participating in our continuing corporate growth effort. Continental has an immediate need for an assistant general counsel to work in

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**DEPUTY COUNTY ATTORNEY:** The Cascade County Attorney's Office is hiring a full-time, permanent deputy county attorney. Applicant must be licensed to practice law in Montana. Experience in criminal law and trial experience is preferred. Salary \$47,104 to \$59,604 per year, depending on experience. Position closes Sept. 15, 2010. Submit a letter of introduction, resume, County job application and writing sample to: Cascade County Human Resources, 325 Second Ave. N., Room 108, Great Falls MT 59401. County application form can be obtained at this address or at [www.co.cascade.mt.us](http://www.co.cascade.mt.us).

**LITIGATION ATTORNEY:** Established Billings firm seeking a litigation attorney. Experience with insurance coverage and defense background preferred. Strong research and writing skills necessary. All applications kept confidential. Competitive salary and benefits package. Send application, writing sample, transcripts, and resume to Halverson & Gilbert PLLC, Hiring Partner, PO Box 80470, Billings MT 59108-0470.

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**FORMER GENERAL COUNSEL** of Semitool Inc., a \$250 million, Nasdaq-listed company, with 30 years corporate experience is available to provide contracted support in the following areas: securities transactions, SEC compliance, mergers and acquisitions, international trade and export compliance, insurance portfolios, corporate governance, licensing and structured finance. Contact Richard Hegger at (406) 225-5100 or [richardhegger@heggerlaw.com](mailto:richardhegger@heggerlaw.com). Member of the bars of Montana, New York, and Missouri.

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