Also inside — Tech trends: robo-forms | Supreme Court candidate Q&A

MONTANA LAWYER

State Bar of Montana

May 2012 | Vol. 37, No. 8

Lawyers and depression

Legal professionals face a vicious cycle of mental health issues

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

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

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

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

Printed in Billings at Artcraft Printers

INDEX
May 2012

Corrections

Self-study CLE credits listed incorrectly: Credits listed for the Rules Update - 2011 CLE materials are incorrect as listed on page 19 of the April Montana Lawyer. The credits for Water Law Adjudication, Workers Compensation Court Rules Update, and Federal Pleading Standards Changes are worth 0.5 credits each. The rest are worth 1 credit each.

Wrong reprint citation printed: The reprint citation on page 19 of the March Montana Lawyer should have read as follows:

Reproduced with permission from ABA/BNA Lawyers' Manual on Professional Conduct, http://www.bna.com/failure-end-quiescent-n12884907890 (Feb. 15, 2012). Copyright 2012 by the American Bar Association/The Bureau of National Affairs, Inc. (800-372-1033) by The Bureau of National Affairs, Inc. (800-372-1033) http://www.bna.com

The Measure of Success

"To laugh often and much; to win the respect of intelligent people and the affection of children; . . . to appreciate beauty, to find the best in others; . . . to know even one life has breathed easier because you have lived. This is to have succeeded."

~Bessie Stanley (var.)

"Wow! You are President of the State Bar? You must be at the pinnacle of your career," the new acquaintance says. "You must be very successful!"

I hesitated in my response, pondering the comment with a mixture of curiosity and awkwardness. I simply smiled and nodded.

I imagine the remark was intended as a compliment; unfortunately, it made me feel like I would soon be put out to pasture. After all, if I had reached the pinnacle of my career, it was all downhill from here, right?!?

Have you ever thought about success – what it means to you personally? Is it a win-loss record, the satisfaction of your clients, the acquisition of wealth and things, your children, or your relationships? Do you define success solely in the context of your legal practice?

I recall a senior litigator once commenting on a recent win that "the wins seem to fade all too quickly, but the losses remain." It's a common refrain I've heard among litigators, and a sad one. You rarely hear about the joy of a loss.

Success depends on how we define it. Too often we look to others for that definition. Who hasn't observed another professional and wondered: "I should be making as much money as her", or "I wish I had his client-base", or "I want her beautiful home." In my case, it's also, "I wish I had his hairline." As a species, we may be hard-wired for envy.

I suggest in defining and measuring our own success we should keep the end in mind – literally the end of life. In an intriguing article entitled "Top Five Regrets of the Dying" (The Guardian), a palliative nurse who counsels the dying revealed the most common regrets people have at the end of life. Not surprisingly, spending more time at the office didn't make the list. In fact, the opposite ("I wish I hadn't worked so hard") is true.

The top regret of the dying was: "I wish I'd had the courage to live a life true to myself, not the life others expected of me." What a simple and powerful statement. According to the nurse, it arose "[w]hen people realize that their life is almost over and look back clearly on it; it is easy to see how many dreams have gone unfulfilled. Most people had not honored even half of their dreams and had to die knowing that it was due to choices they had made, or not made. Health brings a freedom very few realize, until they no longer have it."

The regret is an admonition to spend time wisely on the things that really matter. It's a reminder that we should listen to ourselves, and not those around us to define success and find happiness.

I appreciate the Stanley quote at the beginning of this article; it emphasizes relationships as the real measure of success. Many attorneys forget to build relationships in their practice. Seemingly they adopt the mantra (and mixed metaphor), "may the bridges we burn, light our way." In the zeal to obtain a particular outcome, some alienate everyone else.

Montana has a small community of lawyers. We have the unique experience of knowing a majority of the attorneys we work with or against. We should take the opportunity to preserve bridges and build new ones. The practice of law is about relationships.

I hope you have given some thought to how you define success and have developed a plan on how to achieve it. If you don't know where you are going, you are bound to never arrive. I wish you success however you define it!

Ruminations on the ABA Bar Leadership Institute

State Bar secretary treasurer reports on recent conference in Chicago

By Mark Parker

Those who had attended before told me with dead seriousness that The American Bar Association's Bar Leadership Institute was a "must do." It is two intense days of leadership training in a Midtown hotel two blocks from Harry Caray's, across the street from Michael Jordan's and a few quick steps from the Chicago River - a river which would be dyed green on my last day there.

Being a leader of the Montana Bar? What did this mean? I figured I could return, and within a year, Gary Zadick, would be in the front yard, a chamois in each hand, polishing my Bentley. In the back yard, Carey Matovich would be zesting limes for a pitcher of margaritas. In the meantime Bob Savage would be scurrying around my 45,000 square foot lake side mansion chasing down cobwebs and dust bunnies. I was going to be their leader. It does not look as if it is going to turn out that way.

I did resolve, as the State Bar of Montana was paying for my trip, to report back to its membership, you. Thus, I do.

What you first see, is what you would expect. A registration desk, a bag of paper and trinkets, badges, badges with ribbons, a few snacks, a bit of the grape, a phalanx of sponsors and smiling suits. Time to mingle. Then, I began what proved to be a two-day ritual. "Hello, I am from Montana." This provoked a mind numbingly consistent reflex response. "Oh, you must know Bob Carlson." Most just smiled when they said it, but one fellow insisted I ask Bob about the "Rat Bar." I did and Bob has not yet provided an

adequate response; I will issue a subpoena. Bob Carlson has been coming to these things for decades and is on a path to be the President of the ABA. Having made it through one percent of what he must have endured in his climb through the ranks gives me a deep appreciation of his pain tolerance.

The rooms were packed with executive directors. For some reason I figured when I got there that (1) there must only be 50 executive directors as there are only 50 states and (2) our executive director, Chris Manos, must be one of the longest serving directors in the world. I was wrong on both counts. There are 100s of executive directors because there are many local bar associations big enough to have a professional staff. Many of these local associations are several times bigger than the Montana Bar. I also learned that executive directors in other bar associations have lengthy, cradle-to-grave-like tenures. As the officers come and go annually, executive directors supply the bulk of institutional continuity. Manos is well respected and well known by his peers.

What else did I learn? As for current events, here is what I learned: There are no "current events" only recurrent events. The bar association on Long Island is losing its funding for a Lawyer's Assistance Program. The "Missouri Plan," which 34 states use to select judges, is on the verge of being abandoned by Missouri, and the bar is fighting it all the way. The Nevada Bar is campaigning for an intermediate appellate court. I was at a table where the Nevada Bar delegation was working on a headline for the bar's campaign for this new court. They floated "Bar Association Fights Against Delayed Justice." I offered the headline "Death Row Inmates Lobby Against an Intermediate Court of Appeal." I thought it would get a laugh — it didn't. Actually a scowl.

Social media was a big topic, as was technology in general. Former Illinois Gov. Rod Blagojevich was reporting to jail. Chicago TV was airing commercials for judges running as Democrats and Republicans. I am still not comfortable with sheriffs running as partisans, judges being partisan is even more disorienting.

All the attendees were campaigning for more diversity, more pro bono, more civility among attorneys and MORE FUNDING. I still have a book called "Lawyer in the Modern Society." It was published in 1981. Regrettably, there are no new issues facing the bar. Just the same recurrent issues — which need recurrent attention. (Some say those who forget history are doomed to repeat it.

CONFERENCE, Page 7

Sulzbacher joins Billings firm


Sulzbacher

David Sulzbacher has joined the law firm of Christensen Fulton & Filz, PLLC as an associate attorney. David is a Seattle native who earned a B.A. in English from Willamette University and a J.D., with honors, from American University's Washington College of Law. David was on the moot court team representing his school at the Willem C. Vis International Commercial Arbitration Moot in Hong Kong. David completed his M.A. in international politics, studying in China and Malaysia. David clerked for the Honorable Daniel A. Boucher in Montana's Twelfth Judicial District Court. David's practice areas will include personal injury, commercial litigation, and oil and gas litigation. David is admitted to practice law in Montana and has completed all substantive requirements to practice law in North Dakota. David can be reached at sulzbacher@cfflawfirm.net or 406-248-3100.

Holm joins Billings firm


Holm

Eric Holm has joined the law firm of Christensen Fulton & Filz, PLLC as an associate attorney. Eric was born in Lovell, Wyoming, and attended Georgetown College, earning a B.S., with honors, in environmental science and a minor in political science. Eric earned his law degree in 2007 from the University of Montana School of Law. During law school, Eric was an active member of Phi Delta Phi, the American Association of Justice, and the Environmental Law Group. Following graduation, Eric practiced with Matovich, Keller & Murphy, PC, in Billings, where he emphasized insurance defense litigation. Eric's areas of practice will include plaintiff's personal injury, workers' compensation, medical malpractice, commercial litigation, employment law, and general litigation. Eric can be reached at holm@cfflawfirm.net or 406-248-3100.

ABA Days and Montana Coffee Open House

Sens. Max Baucus and Jon Tester bookend State Bar President Shane Vannatta (middle right) and Montana ABA Delegate Bob Carlson (middle left) while posing for a photo at the weekly Montana Coffee Open House in Washington, DC. The Montana lawmakers host the open house every Wednesday while the Senate is in session for any Montanans who happen to be in DC.

Vannatta met with the full delegation while in DC for ABA days (April 17-19)

"I had a great time meeting with our Congressional delegation (Max Baucus, Jon Tester and Dennis Rehberg) today. We discussed three different ABA priorities intended to help fund state courts (tax refund intercept act), reduce violence against women (VAWA), and improve funding for the Legal Services Corporation (including Montana Legal Services Association, a grantee)," Vannatta wrote.

"I'm impressed with our delegation, and enjoyed personally meeting with each of them."

Conley joins ACLU of Montana Foundation


Conley

Anna Conley recently joined the American Civil Liberties Union of Montana Foundation. Conley is a Staff Attorney and Director of the Montana Jail and Prison Project. She will be working to forward the ACLU of Montana's aims of ensuring Montanans' state and federal constitutional rights are protected. Her focus will include ensuring that inmates in Montana's jails and prisons are receiving the protections guaranteed to them by the Montana and U.S. constitutions.

Conley has a wide variety of experience she brings to this position, including several years in private practice, and several years of teaching international and comparative law, including international human rights law at the University of Montana School of Law. She is a graduate of George Washington Law School.

Gallagher named 2012 Peacemaker

The Jeannette Rankin Peace Center and the Missoula Peace Quilters have selected Dan Gallagher as the recipient for

MONTANA NEWS, Page 7

Conference

from page 5

This is true. But those remembering history are also doomed to repeat it.)

But back to funding for a minute. Although some in attendance were from the legislative branch, and some from the executive branch, the attendees were largely involved with the judiciary. The judiciary faces, now and always, a dilemma. It must be independent, and it must also sing for its supper. It has no taxing power — except for bar dues.

Many lament this is a democratic defect, a glitch in the constitutional framework. Others may argue that a branch of government that can declare the acts of the other two unconstitutional certainly does not need the power of the purse also. A bit of humility in begging for its allowance would be a fine check on power. But that is not the debate I am wading into today.

By any objective measure, the judiciary is hopelessly underfunded. As a result, it needs to sustain on volunteer help. The ABA and its numerous efforts on behalf of regional and local bar associations nationwide helps keep this volunteer army marching. The judiciary is charged with deciding who will become and who will not become an attorney. Largely, the effort is performed by volunteers like Randy Cox, who has been a steady leader of the local Commission of Bar Examiners; and Greg Murphy, who remains a dedicated national power on law school accrediting and bar admission testing (his retirement from Moulton Bellingham, notwithstanding).

Members keep educated under the watchful eye of the volunteer CLE commission and its members like Paul Stahl and Casey Heitz. If there is a time when they have to go, the Commission on Practice has to step in — again, largely a volunteer effort thanks to John Warren and many others.

But keeping a volunteer army going, especially when it works for free, is not easy. Blessedly, I was in a room full of people who were dedicated to the task. I have no idea how many millions of dollars in billable fees, hours of fishing trips forgone, and family events were sacrificed by these people to come to this convention.

But keeping a volunteer army going, especially when it works for free, is not easy. Blessedly, I was in a room full of people who were dedicated to the task. I have no idea how many millions of dollars in billable fees, hours of fishing trips forgone, and family events were sacrificed by these people to come to this convention. To what end? To be trained to make even a bigger commitment in the future. To think it translates into money down the line may be a fiction they entertain, but I cannot see how. Ah, they do it for the fun! Yeah, they do it for the fine banquet buffet line , the chance to paw through a pile of room-temperature food, those exciting hours at 11 p.m. in the Salt Lake City E Concourse. I understand that many, especially guys like Carlson, do enjoy it. In the same odd way I enjoy dressing out a deer and antelope, and thus got stuck with the task for friends and family for years.

People are different, and that's what makes it all work. But, bless them for enjoying it, or finding a way to make in enjoyable. I had a good time, but will never have the commitment to stay with it for decades, as many of these folks have. This is not to say I shy away from the commitment because I believe it not worthy. I will back-fill the void of shying away from Carlsonlike dedication with far less noble endeavors — too mundane or embarrassing to even set forth here.

Thus, as trustee and secretary treasurer, I report that the money spent on travel is money well spent. Periodically, spasms of discontent against lawyers, lawyering or the judiciary can pose a threat to the judiciary and lawyers. Court packing for example. We will be regulated, believe me. We self regulate or someone will regulate us. I don't buy everything the ABA is selling. I smiled politely when my mind was saying "You have got to be kidding me." I clapped with fake vigor at the end of seminars that bored me to death. At least I could applaud that it came to a merciful end. Montanans are a diverse bunch, but do have a sufficient uniformity in thinking that to not have a voice in the national process of lawyering creates a risk I don't want to take. That's why we have to keep this up. That's why we have to support Carlson, if he tells us the "Rat Bar" story.

Montana News

from page 6

this year's Peacemaker award. This is an award given each year to individuals and groups who demonstrate a long-term commitment to the process of peacemaking, who "walk the walk" to make the world better and who give leadership and inspiration to the rest of us.

Growing up on a farm near Charlo, Dan was inspired by John F. Kennedy's call to "ask not what your country can do for you, but what you can do for your country." Dan Gallagher served in Army in Vietnam and has since been a tireless


Gallagher

advocate for veterans in the community. He is the Adjutant of the American Legion Post 101 and organizes events to honor and celebrate the sacrifices of veterans and their families throughout the year, most notably the annual Veterans Day ceremony at the Missoula County Courthouse. He was chosen for the honor of peacemaker because of his work over the last several years to build a bridge between the peace community and veterans, helping both to better understand the other perspective and lessen the animosity that divides the two groups.

MONTANA NEWS, Page 8

CLE deadline is May 15

Annual CLE affidavits were sent out on April 15. Affidavits need to be **postmarked by May 15.** You can attend and report CLE up until May 15 without penalty. If you have questions about CLE credits or reporting call Kathy Powers at (406) 447-2207 or email kpowers@montanabar.org.

Bar elections deadline is May 22

Ballots will be mailed on May 2. Ballots need to be **postmarked or hand delivered by May 22.** Ballots will be counted on June 1.

Limited selection of on-demand self-study CLE now available

In addition to mail and online orders, the State Bar is now offering on-demand purchases of recorded CLE. This means you can immediately listen to or watch recorded CLE sessions to fulfill your 5 self-study CLE credits before the May 15 deadline.

Although the service is integrated into the Bar's website, you'll still need a separate log-in to use. A small selection is currently available ahead of the deadline, which may help you earn a final credit or two. To get to the on-demand store, follow the link to "Self Study CLE" under the "Store" heading at the top of the Bar's homepage at www.montanabar.org. You also can follow the link in the CLE section that points to the "On-demand CLE catalog."

Bar seeks award nominations

The deadline for all State Bar awards is now **May 15.** Print nomination forms for the William J. Jameson Award and George L. Bousliman Professionalism Award were in the February edition of Montana Lawyer. Print forms for the Karla M. Gray Equal Justice Award and the Neil Haight Pro Bono Award were in the March edition of Montana Lawyer. Copies of the nomination forms for all awards are available in the Montana Lawyer section online at *www.montanabar.org.*

Calendar/upcoming events

- **May 9:** CLE -- All Things Google for Lawyers-Wednesday Webinar Series
- **May 11:** CLE -- DUI Cases: From Stop to Appeal "What Every Lawyer Needs to Know"
- **May 22:** State Bar Election Ballots Due (must be postmarked or hand-delivered)
- **May 25:** Technology Committee In-Person Meeting
- May 30: Access to Justice Committee Meeting
- **May 31**: Executive Committee Meeting
- **June 1:** Board of Trustees Strategic Planning Meeting
- **June 1:** State Bar Election Ballots Counted
- **June 2:** Board of Trustees Strategic Planning Meeting
- **June 4:** Paralegal Section Renewals Mailed
- **June 7:** Executive Committee Meeting
- **June 7-9:** Jackrabbit Bar Conference

Montana News

from page 7

Changes to dates for update of child support guidelines

The Montana Child Support Enforcement Division (CSED) normally provides an annual update to the child support guideline tables on April 1 of each year. Changes to the administrative rules that make up the guidelines will be effective July 1, 2012 and the CSED has decided it would be most cost-effective to reschedule the April mailing to be combined with the July 1 mailing. In addition, the 2011 guideline rules and table amounts will remain in effect until July 1, 2012. CSED plans to return to April 1st updates beginning in 2013. If you have questions, please call CSED at 406-329-7933 or write to guidelines@mt.gov.

Each year, a complete guidelines packet is sent to District Court judges, clerks of court, self-help law centers and to people on the CSED interested parties list. If you received an updated guidelines packet last year, you will receive one this year as well when the are sent on July 1. If you have never received a packet and would like one, please contact Ann Steffens at 329-7933 or asteffens@mt.gov or Kayla Stringer at 444-2848 or kstringer@mt.gov to be placed on the interested parties list. To read Administrative Rules of Montana, visit http://www.mtrules.org. For more information on CSED, visit www.childsupport.mt.gov.

US District Clerk of Court announces retirement

Patrick Duffy, the Clerk of Court of the United States District Court in Montana, has announced his retirement, effective October 7, 2012. Duffy has been Clerk of Court since September 1, 2001. Prior to his service as Clerk, he served as a law clerk to two federal judges, an assistant professor of Economics, and state field director of a Congressional office. The Court is accepting applications from qualified individuals - details are available at the Court's website, www.mtd.uscourts.gov.

Free CLE Credits

>> Road Show

- June 29, from 2-5 p.m.
- Bozeman Holiday Inn
- 3 free ethics credits, including 1 SAMI
- RSVP required. Call Robert Padmos at 447-2202 or email rpadmos@montanabar.org

>> New Lawyers Workshop

- June 29 from 8 a.m. - 1:30 p.m.
- 4.5 free CLE credits
- By invitation only
- For more information call or email Robert Padmos (406) 447-2202, rpadmos@montanabar.org

AUTOMATION!
PREDICTIVE CODING!
NEXT... THEY TAKE YOUR JOB!

RISE OF THE ROBO-FORM

IS THIS DOOM FOR THE LEGAL PROFESSION?

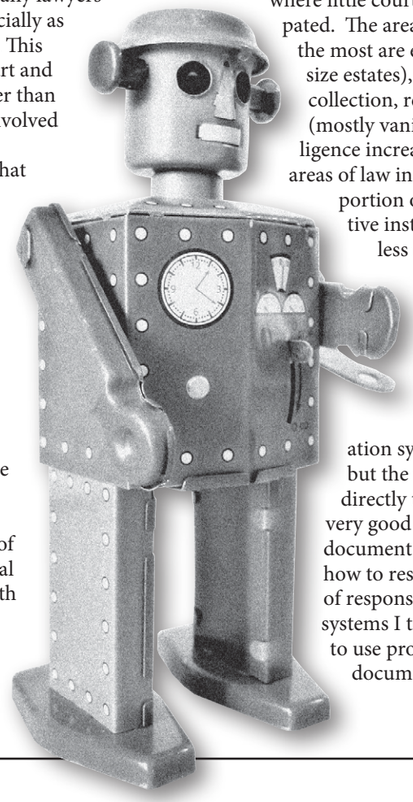
By Cort Jensen

The ABA Tech Conference in Chicago this year was a strange mix of vendors touting their digital wares, law tech geeks sharing insights, and a strange near religious chant of doom about the future of the legal profession. The doom chant was from two fronts. First, a belief that too many lawyers did not know enough about technology (especially as it relates to discovery) to continue to practice. This is in an illusionary problem. Lawyers are smart and can learn. This is more a problem of willpower than brainpower. The second apocalyptic vision involved robo-forms and predictive coding.

Robo-forms are document creation tools that ask questions and use primitive artificial intelligence to guide a user to a completed document. Predictive coding applies the same sort of basic artificial intelligence to presort or prioritize e-discovery documents. These two things combined spelled the "end of the legal profession" as we know it, or at least that was the message of some speakers with terms like "extinction level event" and "cataclysmic change".

Having played around with the programs, watched the demos, and read what some of the best thinkers on the topic have to say; it looks like we are on a verge of change in how law is done but not the end of lawyers. At the heart of both technologies is the ability to do some legal "grunt" work faster, with fewer errors, and with less user knowledge of the law.

Robo-froms will have the greatest impact on people who were not going to hire an attorney anyway, after all these macro-enabled document generators are just a glorified version of the self-help books that have been available for decades. It will decrease the amount of time a law practice needs to spend dealing with forms which likely will decrease the amount of lawyers needed to perform those functions. Robo-forms are primarily civil practice based (no criminal law ones were demonstrated) and work best in situations where little court room based litigation is anticipated. The areas of law that are being impacted the most are estate planning(small and medium size estates), family law (with little assets), debt collection, real estate, and intellectual property (mostly vanity filings). As the artificial intelligence increases it will likely branch into other areas of law including the non-document creation portion of law (giving advice and preventative instruction). The silver lining may be less need for pro-bono help from attorneys on routine matters.



Many of these programs already come very near to the "practice" of law. The guidance system is clearly attempting to give personalized legal advice to those using the system. These easy document creation systems are ideally used by attorneys, but the reality is that some are marketed directly to consumers. Many of them allow very good guidance on the creation of the document itself, but fail to warn what to do or how to respond if the other side offers any sort of response or discovery request. Many of the systems I tried out would require a law degree to use properly for any sort of real litigation document preparation and did a much

ROBO, Page 10

Robo

from page 9

better job pretending to be a "plaintiff" than a "defendant". For example, affirmative defense guidance was woeful. The reading level of these systems is currently college level or higher, meaning many of the people who might want to use them may have trouble using them without at least a paralegal or a smart friend. They are great if you want to make sure who will get your kids if you die or handing a non-contested divorce, but fall far short on giving advice on the rule against perpetuities or rather you should raise estoppel. These systems will get better, but likely in the early days the amount of work generated "fixing" people's problems caused by the forms will equal the amount of lost revenue caused by their existence. But if your law practice is primarily filling in forms that people could have done themselves, then your practice days are numbered.

Predictive coding will likely not change the number of attorneys needed in any significant way. It allows an artificial intelligence (AI) to predict which electronic documents are most relevant to your search terms and organize documents together that are merely versions of the same document or email thread. If used properly (and when it doesn't glitch) it can massively simplify responding to and dealing with e-discovery.

To the extent that law firms have added attorneys to deal with large scale culling and sorting of e-discovery documents, this technology may allow them to scale back on those hires. I think the more likely outcome for this technology when it fully matures is to allow more traditional timelines and document review schedules for e-discovery cases (which let's be honest here folks will be nearly every case to some extent).

This is far more a boon and tool of the future than a death sentence for the practice of law. The reality is that a human has a hard time looking at the documents produced in a large case without boredom and mental fatigue setting in. Computers never get tired and are capable of reviewing the same document over and over again looking for differences. Most of these systems still require someone trained in the law to "prime" the AI by pre-classifying a sample batch of documents for the case and then monitoring the system to make sure it is doing its job correctly. This technology means you may need less attorneys to handle a large discovery case, but the attorneys that you do still need will have to be well versed in both discovery and the particular software tool you are using to complete the predictive coding.

We are in the early stages of both these software technologies. The problems they create may harm many consumers who were looking for a cheaper alternative than hiring an attorney.

State legislatures and bar regulators should consider whether providers of robo-froms should be licensed as attorneys or whether they should have to be bonded or insured.

No tech is perfect, even the Jeopardy-winning super computer Watson was prone to seemingly randomly answers like "Tommy Lee Jones" in the early days. Users of these technologies just need vetted results that contain no unusual or funny responses — attorneys will adapt.

Cort Jensen *is chief attorney for the Montana Department of Agriculture and a member of the State Bar's Technology Committee.*

Supreme Court candidate Q&A

Editor's note: *Candidates for Montana's Supreme Court answered these questions at the Bench/Bar CLE on April 20. Here are answers from the three candidates running in the contested race. Their responses are also in the Montana Lawyer section of the Bar's website at www.montanabar.org.*

Elizabeth Best

What is your judicial philosophy? (With judicial restraint at one end of the spectrum and judicial activism at the other end.)

I think it is a mistake to use labels like these, which have been used to induce emotional responses during this campaign. It is irresponsible, and contributes disrespect for our judicial system.

My philosophy is that all questions should be resolved by first looking to the Montana Constitution. Judges follow the rule of law and are not above the law.

Following the rule of law requires following legal precedent and rules of statutory or constitutional construction. A few cases will be challenging because precedent will not be on point. The challenge is to balance competing rights. I will as carefully protect the powerless and the weak as the powerful and the strong.

This campaign is about all Montana citizens and enforcement of a Constitution that belongs to all of us. Our citizens expect a judge to behave, genuinely, in a non-partisan way, beginning with the campaign. Our citizens expect a judge to follow the law, beginning with the campaign. I am doing both.

When I set out to run for the Supreme Court, I made a conscious decision to run a positive, truly non-partisan campaign, and that is what I am doing. I understand that to protect our Constitutional rights, we need a truly independent judiciary.

What do you see are the biggest challenges for the judiciary in the next 10 years?

We have some district courts whose budgets are fraying, and others which could handle a lot more cases. The Court must show leadership, must lead the way in encouraging organization of our courts

BEST, Next Page

Laurie McKinnon

What is your judicial philosophy? (With judicial restraint at one end of the spectrum and judicial activism at the other end.)

It is crucial that a Justice be able to determine and apply the rule of law to the relevant facts in any proceeding before them without bias or agenda. Decisions based upon the Constitution promote stability, achieve judicial restraint, preserve independence and maintain the principle of separation of powers. Respect for past decisions increases the legitimacy of the judiciary in the public's eyes by establishing a justice system that we can all rely upon. The failure to follow the rule by imposing personal agendas endangers us all. It means that the importance of our Constitution and statutes is determined by nothing more than the direction of the wind in any particular Supreme Court's majority. The law is more than a set of rules, it serves as a link that stabilizes our society through continuity.

The Court should strive for unsplintered opinions which are concisely written and address only those issues needing resolution. Drifting outside the issues at hand is indeed entering dangerous waters. Adherence to these principles decreases the probability of future attacks on the opinion and increases the direction and guidance to the trial courts.

The quality of our judiciary in Montana depends on the impartiality of its Justices. A Justice must be willing to render decisions uninfluenced by politics, personal beliefs, or popular opinion. Quality in the judiciary can only be achieved when a Justice is honest in thought and maintains integrity in their analysis. A Justice must respect decisions previously made but be willing to consider all arguments.

There are times in our history,

McKINNON, Next Page

Ed Sheehy

What is your judicial philosophy? (With judicial restraint at one end of the spectrum Judicial-activism at the other end.)

My judicial philosophy is one of judicial restraint. Our Court needs to understand its role in our system of government. They need to quit legislating in opinions they issue. Their only job is to determine whether statutes passed by the legislature are constitutional if and when the issue is raised. If the legislature has passed a statute that is clear and unambiguous, the same is the law unless it is declared unconstitutional. I would work tirelessly to convince the other members of the Montana Supreme Court that its duty is not to legislate from the bench, as that is the duty of the Montana Legislature.

What do you see are the biggest challenges for the judiciary in the next 10 years?

I see two major challenges for the judiciary. One of the biggest challenges is how the judiciary will be able to effectively operate with the ever increasing caseloads that are occurring in every level of our courts, without depriving each and every individual of the right to pursue legal remedies. The other challenge is to ensure that speedy remedies are available to legal issues. Resolving these challenges will require all levels of the courts to be able to work together.

How do you think that the bar and the courts should address access to justice issues?

The bar needs to address access to justice by providing legal advice and representation free of charge to individuals who can't afford a lawyer. This is done in court with legal representation through pro bono programs. However, these programs

SHEEHY, Next Page

Best
from page 11

to deliver the fundamental rights, which afford protection of all other rights: access to our courts, jury trials, and full legal redress.

The Supreme Court must balance swift justice with thoughtful justice. I have repeatedly heard across the state concern about non-cite opinions and opinions which offer little understandable rationale.

The Supreme Court faces challenges with respect to Montana's first people. Disparate numbers of Native people are imprisoned, and face unique problems upon release. Parolees who need a job and a place to live when released often have neither. On a reservation, jobs are often non-existent, and a home is a pipe dream.

The Supreme Court administers a lawyer discipline system which deserves serious and genuine evaluation in terms of basic due process.

The Supreme Court faces a challenge with respect to transparency. We have a constitutional right to know in Montana. How do we justify secret conferences and deliberations?

How do you think that the bar and the courts should address access to justice issues?

I support continuing the Court's proactive work on Equal Access to Justice, including working to increase funding for Montana Legal Services, continued coordination of the work of various Access to Justice entities, and continuing to improve the Court Help program.

Poverty and race have a substantial impact on access to justice. Gender disparities further hinder access. Most of the people Montana Legal Services serve are minorities and female. Consistent quality of representation is core to equal access to justice. The Court must lead and press for adequate funding. Reviews of criminal convictions and sentences must be taken with an awareness that access to justice problems may have impacted the

BEST, Next Page

McKinnon
from page 11

however, when we are compelled to re-examine precedent and prior legal doctrine. Examples would include desegregation and prison reform. If a Justice honestly examines all arguments advanced and remains fair and impartial, the need to revisit prior established doctrine will become apparent.

What do you see are the biggest challenges for the judiciary in the next 10 years?

a. The establishment of clear and consistent precedent which provides stability to business, the trial courts, and litigants.

b. Managing the increased demands of pro se litigants while maintaining quality outcomes. We must develop innovative measures to encourage attorneys to accept pro bono clients.

c. The access jurors have to learn and publish information outside the scope of evidence through the internet, blogs, and social networking.

d. Providing a minimum level and uniformity of court services throughout the state. This includes programs that secure access to justice for pro se litigants, consistency of operation between the county Clerks of Court, adequate judicial resources and management tools for judges.

e. Adequate resources and funding for the establishment and maintenance of treatment courts. Treatment courts effectively manage non-violent offenders and reduce incarceration costs while holding the offender accountable for any drug usage. They keep parents in the home and at work while providing the tools and support to combat their addictions.

How do you think the bar and the courts should address access to justice issues?

McKINNON, Next Page

Sheehy
from page 11

also need to include the providing of free legal advice outside of court representation. The courts should address access to justice by doing everything they can to not deny people access if the person has a legitimate legal issue. This can be partly accomplished by eliminating or waiving some or all of the fees which are now required to be paid.

Why do you want this position, and what qualifies you to hold this position?

Our justice system can be improved by electing an individual who understands all aspects of the law and is committed to achieving justice. I believe that I can best accomplish this goal. One of my qualifications that sets me apart from the other candidates is my extensive experience and comprehensive knowledge and understanding of the law. I have over 33 years of practicing law in Montana. I have been involved in all types of legal actions, court cases, both criminal and civil, and cases in almost every district court in our state.

My experience working in every county would benefit the decisions the Court must reach and would give the Court the unique perspective of our 56, very unique counties. I would understand and appreciate that where a case originates must have a consideration in applying those rules. I know the state and I know the people of this great state.

I seek this position because I believe in the law and that everyone should have the right to justice. I believe that justice, in the end, is what's fair, what's right, and what's just. Throughout my career I have always tried to obtain justice for everyone I represent. If I'm elected to the Court, I can do more for all the people of Montana in their obtaining justice rather than just my clients.

What is the technological innovation that has helped you most in your practice? What has harmed you most? What technology needs to be implemented in the judiciary?

The technological innovation that has helped me the most is the computer, which can allow an attorney to do everything possible and research in a very short time. The technological innovation that has harmed me the most is the Blackberry. It seems that you can never take a break from the work, even when on vacation.

Technology that should be implemented in the judiciary would include real time transcripts for the attorneys and the jurors during a trial. This would assist everyone in following along with the case. The courtrooms across the state also need better audio systems so witnesses can be heard during trials.

Best
from page 12

proceedings below.

In today's hyper-partisan world, it is more important than ever that our judiciary be truly non-partisan. Without an independent judiciary, we do not have access to real justice. Injecting partisan politics into the judicial system or a judicial campaign directly impedes access to justice. The Supreme Court should take an active role in enforcing the Code of Judicial Conduct.

Why do you want this position, and what qualifies you to hold this position?

I have reached a point in my career where I can contribute in a positive way to the administration of justice. Judges and my peers respect my tenacity and hard work. I understand many of the rigors faced by district court judges. I understand the practical difficulties of finding time to rule on complicated motions in civil cases when criminal and domestic cases are stacked to the ceiling. I understand the frustration of facing judicial substitutions.

I also understand the challenges faced by real people and their lawyers. I understand the hardships caused by delayed justice, and the hardships resulting when decisions are not based on the facts of record, or the relevant law.

I have a long history of public service. I have served as a school board trustee, as Chair of the Board of Labor Appeals, and as Chair of the State Fund. I started public service in the U.S. Army JAGC.

I have broad legal experience, having prosecuted, defended, taught the Law of War, done family law, contract, property, wills, probate, and civil law. I have spent over 30 years in the courtroom. I have the respect of the judiciary. I have long served on the Supreme Court Civil Procedure and Evidence Commissions and the Federal Court Local Rules Committee. Former Chief Justice Jean Turnage, and many district court judges endorse me.

I have an AV+ Martindale rating, was invited to join ABOTA, and have been named a Super Lawyer for several years. I was President of MTLA in 2001, was Trial Lawyer of the Year, and served on its Board from 1995 to 2011.

I work hard, and take the law—for everyone—seriously. I am committed to protecting all of our rights under the Constitution. I am not just saying so. I have walked the walk.

What is the technological innovation that has helped you most in your practice? What has harmed you most? What technology needs to be implemented in the judiciary?

I love trial presentation software, email, smart phones, and online research.

It would be wonderful to have a system whereby lawyers and the public could access active and old pleadings in every court in the State through an electronic system. A statewide e-filing system would be very useful.

McKinnon
from page 12

The bar should develop an overall state plan which includes an adequately funded Montana Legal Services. By examining how other states are dealing with reduced funding for legal services and increased pro se litigants, we can learn from their mistakes. I suggest we collect data on pro se case filings and identify where limited resources should be concentrated, what programs are effective, and how the overall state plan will save Montana money through achieving better outcomes. Well advised pro se litigants in early stages of proceedings will reduce multiple pleadings and appearances in court. If we collect data to track these patterns, a better system will be the end result.

I would also like us to examine innovative measures which provide incentives for attorneys to accept pro bono cases. Success is dependent on continued cooperation between the Commission on Self-Represented Litigants, Access to Justice Committee, and Equal Justice Task Force. Only a collaborative effort that includes attorneys, judges, and local community resources will result in real change to increase support for low income litigants.

Why do you want this position, and what qualifies you to hold this position.

I have dedicated 25 years to law – as an advocate and a judge. I love the analysis and decision-making process that ensures the rule of law will be followed and the integrity of the judiciary maintained. Correct examination and adherence to the law is the only means by which every person is treated fairly and impartially, regardless of popular opinion to the contrary. An independent judiciary is a pillar of our society that is worthy of enthusiastic protection to maintain the separation of powers. My goal would be to serve the people of Montana by providing a well-reasoned viewpoint in collaboration with my fellow Supreme Court Justices.

I am the only candidate who has been a judge and has had to make decisions based upon the rule of law. In fact, if elected, I would be the only member of the Supreme Court with experience serving as a judge on a lower court. Sitting as a judge on cases of all types and levels has provided me with a background that cannot be duplicated by acting as an advocate. This is an invaluable perspective which I would bring to the Supreme Court.

What is the technological innovation that has helped you most in your practice? What has harmed you the most? What technology needs to be implemented in the judiciary?

When I took the bench, I had no teleconferencing capabilities in two of my four counties and a computer in only one county. With 10,000 square miles in my district, I quickly saw the need for teleconferencing in all of my counties to increase efficiency. There is now telephone and computer access at the bench in each county courtroom for scheduling and conference calls. As a result, costs to the state have been reduced and law enforcement transport has been minimized. This is an example of how even the simplest innovations can help manage dockets more effectively. In Montana, utilizing technology to increase access is a vital goal.

Additionally, better document display of exhibits to the jury is a valuable aid. It should be implemented across the state with oversight and management by the Office of Court Administration and the Clerks of Court.

I would be remiss in any discussion of technology to not also mention a growing problem with jurors and the internet. While the web has brought forth amazing innovations, it has also raised significant problems. The news regularly notes inappropriate jury conduct that has included "Googling" case facts, posting inappropriate comments on blogs, and even Facebook friending defendants. Today's modern court system is facing questions of juror conduct that have never existed in years past. As a result, the judiciary must focus on how to resolve this problem and ensure fair trials without outside influence.

Court Orders

Summarized from an April 3 order -- RE: In the matter of the appointment of a member to the Commission on Practice of the Supreme Court of the State of Montana

Rule 2(A) of the Rules for Lawyer Disciplinary Enforcement provides that appointments to the Commission on Practice shall be made by the Supreme Court from a list of three licensed and practicing attorneys submitted to this Court as having received the highest number of votes in an election by the Area resident members of the State Bar. Rule 2 further provides that this Court shall, by order, designate the time, place and method for the election of members for appointment to the Commission on Practice.

The 4-year term of the attorney member from Area C, Jean Faure, is due to expire on June 9, 2012. Area C is comprised of the Eighth and Ninth Judicial Districts (Cascade, Glacier, Toole, Pondera and Teton Counties).

THEREFORE, IT IS NOW ORDERED:

1. Elections shall be had in the Area C, for nomination of three resident bar members whose names shall be submitted to this Court, and this Court shall then appoint one of the three to membership on the Commission on Practice.

2. The election in Area C shall be the responsibility of District Judge Thomas M. McKittrick.

3. The elections shall be conducted in the following manner:

(a) At the discretion of Judge McKittrick the election may be conducted either by email or regular mail. Whether bye-mail or regular mail, the ballots shall be substantially in the following form:

AREA C
Eighth and Ninth Judicial Districts
(Cascade, Glacier, Toole, Pondera and Teton Counties)

BALLOT FOR MEMBERS OF COMMISSION ON PRACTICE
(Vote for Three)

1. _____

2. _____

3. _____

(b) If the election is by e-mail, an e-mail shall be sent to each licensed and practicing attorney in Area C with an ascertainable e-mail address, informing the attorney of the election, and a ballot (in the form of an attachment) included.

(c) The attorney shall vote and return the ballot to the address listed below:

Hon. Thomas M. McKittrick
Att: Ballot
415 2nd Avenue North, Rm. 307
Great Falls, MT 59401

(d) Judge McKittrick shall prepare and distribute the ballots on or before May 1, 2012

(e) Voted ballots must be returned to Judge McKittrick on or before May 21,2012.

(t) After May 21, 2012, the ballots are to be opened and counted. Judge McKittrick shall then certify to this Court the names of the three attorneys in Area C receiving the highest number of votes.

The Clerk is directed to mail a true copy of this order to the Honorable Thomas M. McKittrick, to each member of the Commission on Practice, and to the Administrative Secretary of the Commission on Practice.

Summarized from an April 4 order (Montana Cannabis Association, et al. v. State)

On March, 2, 2012, we issued an Order classifying this case for oral argument in Bozeman, Montana, on April 30, 2012. Based on calendaring considerations, we have determined to change the date and venue for the oral argument. Accordingly,

IT IS THEREFORE ORDERED that our March 2, 2012 Order is VACATED. This cause is set for oral argument on May 30, 2012, at 9:30 a.m., in the Courtroom of the Montana Supreme Court, Justice Building, Helena, Montana.

IT IS FURTHER ORDERED that Chief Justice McGrath will sit on this cause and the Honorable Ingrid Gustafson, District Judge, will continue to sit for Justice Patricia Cotter.

IT IS FURTHER ORDERED that oral argument shall be limited to the following issues:

1. Did the District Court err in

ORDERS, Next Page

Orders

from page 14

granting a preliminary injunction against the enforcement of § 50-46-308(3), (4), (6)(a) and (b), MCA?

2. Did the District Court err in denying a preliminary injunction against enforcement of the entire Montana Medical Marijuana Act, 2011 Mont. Laws, Ch. 419, on the ground that its preliminarily-enjoined provisions are severable from the remaining provisions of the Act?

IT IS FURTHER ORDERED that, pursuant to M. R. App. P. 17(3), oral argument times shall be thirty (30) minutes for the Appellant and twenty-five (25) minutes for the Appellees.

Counsel should be mindful of the provisions of M. R. App. P. 17(6).

Summarized from an April 5 order (petition to adopt Uniform Bar Exam, comment period set)

On November 29, 2011, we conditionally granted petitions filed by the Montana Board of Bar Examiners (the Board) and the Commission on Character and Fitness to adopt the Uniform Bar Examination, raise the passing bar examination score to its original level, adopt an on-line educational and testing component devoted to Montana law, and adopt the NCBE on-line application and character investigation. We ordered the Board to prepare an implementation plan for adoption of these changes. The Board has now submitted its plan, a copy of which is attached to this Order.

IT IS ORDERED that the Court will accept comments on the Board's implementation plan for a period of 45 days following the date of this Order. All comments shall be made in writing and filed with the Clerk of this Court.

Disciplinary actions

Summarized from an April 17 order: A formal disciplinary complaint was filed against Montana attorney Erik M. Moore on October 14, 2011. The complaint is based on Moore's Yellowstone County convictions of DUI per se and two counts of criminal endangerment, which the complaint alleges constitute violation of Rule 8A(b) of the Montana Rules of Professional Conduct.

Moore has tendered his conditional admission in exchange for discipline. The Commission on Practice recommended that the Court accept Moore's conditional admission and affidavit of consent. The Court adopted the recommendation.

Summary of discipline is as follows:

1. Erik M. Moore shall appear before this Court in Helena, Montana, for the administration of a public censure on Tuesday, May 15, 2012, at 1:15 p.m.

2. Erik M. Moore is placed on probation for a period of two years, commencing on the date of this order and subject to the conditions that he comply with all requirements of his statement to be provided by the Office of Disciplinary Counsel.

3. Erik M. Moore shall pay the costs of these proceedings in accordance with the statement to be provided by the Office of Disciplinary Counsel.

RAW NERVES

LAWYERS AND DEPRESSION

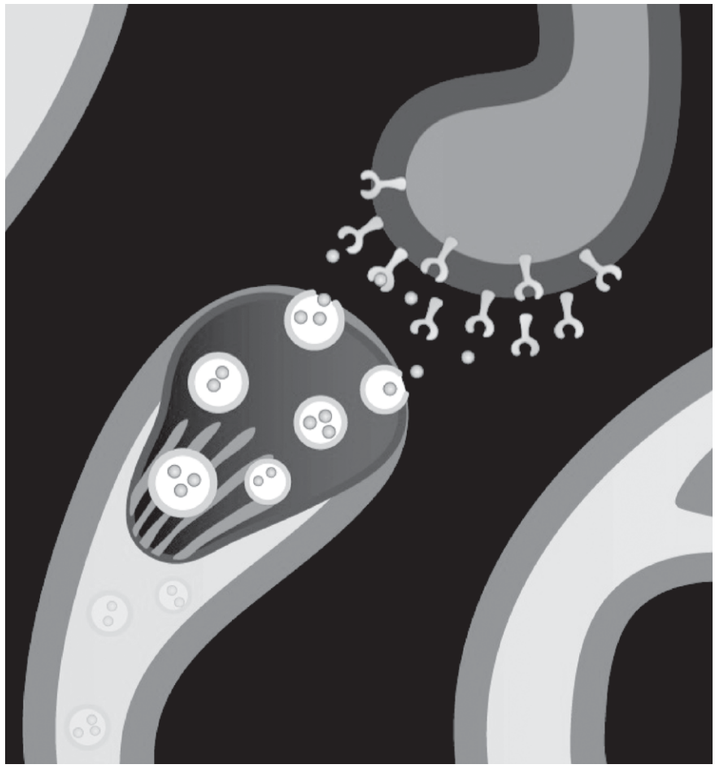


Illustration of neural synapse. Photo courtesy of National Institute of Mental Health — http://infocenter.nimh.nih.gov/il/public_il)

By Virginia Bryan

In the March Montana Lawyer, attorney Joe Hardgrave shared his journey with alcoholism. Lawyers, Joe said, have twice the risk for substance abuse and other compulsive behaviors. Unfortunately, mental health concerns also compromise lawyer well-being.

A few decades ago, dentists were the professionals most susceptible to depression. According to a Johns Hopkins University study in 1990, lawyers knocked dentists off that pedestal[1], placing themselves at the top of the category. It gets worse. Lawyers have four times the risk of the general population for clinical depression.[2]

In a 1991 North Carolina Bar Association survey, 26% of its membership exhibited symptoms of clinical depression. Similar research in Washington revealed that 19% of responding lawyers were depressed. [3] Next time you're sitting at a table of eight lawyers, look around. Two of you are likely depressed. Maybe you?

A Vicious Cycle

Have you had a sudden change in weight or appetite? Sleep too little or too much? Feel lethargic, worthless or excessively guilty? Do you have trouble concentrating or making decisions? Are you disinterested in activities that once brought you joy? Do you have recurring thoughts of death or suicide? Are you increasingly irritable or short-tempered? Any of these symptoms, even just for a few weeks, may indicate an illness that alters your brain's chemistry and impedes your brain's ability to generate and/or process "feel good" chemicals. It's called clinical depression. [4]

Colleagues, friends, spouses and families pay dearly when depressed lawyers go without proper treatment. A recent Rand Corporation study cites depression as the leading cause of work absenteeism. Untreated depression can lead to divorce and other health issues, including heart disease.[5] Partnerships unravel; professional malpractice and disbarment may ensue.

Some lawyers self-medicate depression with alcohol, drugs or other mood-altering activities such as sex, pornography and gambling, which result in guilt, shame, isolation and deeper depression, followed by more booze, more cocaine, more affairs, more whatever. It is a vicious cycle which, at its worst, can kill us. 15% of people with untreated clinical depression die by suicide.[6]

Odds Aren't Good

It starts in law school. Florida State University law professor Larry Krieger studies the effect of law school on mental health; he contends that between 20 and 40% of students are clinically depressed by graduation. [7]

Tennessee lawyer Dave Shearon has examined law school pedagogy. He believes our training sets us up for significant internal conflict. Law school is where we learn to disconnect from our feelings and value systems. After we graduate, we perfect our cool logic, keen analytical skills and emotional detachment – often at our own peril.[8]

At the hooding ceremony for my 1979 law school class, then Montana Supreme Court Chief Justice Frank Haswell warned us about greed and alcoholism. He never mentioned depression; his was the only reference to lawyer well-being I heard during 20 years of practice. The messages I got were "never let them see you sweat," "keep a stiff upper lip," "your clients always come first," and "don't feel so much."

"There just weren't words to talk about depression back then," said one lawyer who experienced his first depressive episode in law school. "I'm now proactive in managing my health. When my sense of balance is askew, I exercise less, eat more and work more. I can't work all day under florescent lighting; I've learned the warning signs."

Raw Nerves

Many of us entered law school as idealists believing in justice for all. In the real world of practice, though, we encountered high expectations for financial performance and a system hamstrung by procedure and expense. Day in and day out, we juggle crisis situations, difficult clients and incivility from opposing counsel. Solo practitioners, as many Montana lawyers are, can add collection pressures, isolation, and administrative hassles to the mix.

Martin E.P. Seligman, Ph.D. identifies three factors contributing to lawyer unhappiness. First, we are trained pessimists. We look for the worst as we try to anticipate every contingency. We are suspicious of motives. Pessimism is not a good trait in any endeavor except the law suggests Seligman.

Lawyer disenchantment increases with low decision making latitude, or the number of one's actual or perceived choices in stressful situations. New associates are particularly vulnerable as they work long hours on assignments directed by superiors with little or no decision making ability. At a fundamental level, Seligman believes our profession has lost its bearings. We don't act like nor are we looked up to as the ones who advocate for justice and fairness in our communities. Our work is dominated by billable hours, intense competition and win/loss scenarios. [9]

Several practicing attorneys shared their experiences with anxiety and depression, but only on the condition of anonymity. Who can blame them? No one wants to be a "weak link" in a profession that prides itself on "survival of the fittest." Opposing counsel may take advantage. Co-counsel opportunities and referrals are jeopardized.

One lawyer has watched colleagues and friends "get chewed up emotionally" by law practice. "It's never pretty or pleasant when it happens," he said.

Some days I feel like "a frog in boiling

NERVES, Page 18

Frequently asked questions on depression

What Is Depression?

Everyone occasionally feels blue or sad. But these feelings are usually short-lived and pass within a couple of days. When you have depression, it interferes with daily life and causes pain for both you and those who care about you. Depression is a common but serious illness.

Many people with a depressive illness never seek treatment. But the majority, even those with the most severe depression, can get better with treatment. Medications, psychotherapies, and other methods can effectively treat people with depression.

What are the signs and symptoms of depression?

People with depressive illnesses do not all experience the same symptoms. The severity, frequency, and duration of symptoms vary depending on the individual and his or her particular illness.

Signs and symptoms include:

- Persistent sad, anxious, or "empty" feelings
- Feelings of hopelessness or pessimism
- Feelings of guilt, worthlessness, or helplessness
- Irritability, restlessness
- Loss of interest in activities or hobbies once pleasurable, including sex
- Fatigue and decreased energy
- Difficulty concentrating, remembering details, and making decisions
- Insomnia, early-morning wakefulness, or excessive sleeping
- Overeating, or appetite loss
- Thoughts of suicide, suicide attempts
- Aches or pains, headaches, cramps, or digestive problems that do not ease even with treatment.

FAQ, Page 19

Nerves

from page 17

water," said one lawyer. "We're on the tight wire all the time," said another.

Mike Larson, director of Montana's Lawyer Assistance Program (LAP), contends we don't criticize lawyers with asthma and we're concerned about lawyers with cancer or other physical illness. But we've been very judgmental about lawyers with mental illness. When New York trial lawyer Dan Lukasik went public about his struggle with depression and created a blog, a colleague complained loudly, "What is he, nuts?"[10] Hard to say if he was irritated with Lukasik for staining the legal profession's image or voicing the stereotype that mental illness is a moral, personal failing sufficient to disqualify one from practice.

Betsy Brandborg, State Bar legal counsel, remembers the "take no prisoners" attitude and limited tolerance of impaired colleagues before Montana's LAP in 2005. "It's light years better than it used to be," she said.

What Now?

Larson crisscrosses Montana weekly delivering SAMI (substance abuse and mental illness) seminars. He meets in small groups or one-on-one with lawyers confronting addiction, depression and other impairments personally, within families or firms. Montana's effort to improve lawyer well-being has caught the attention of nearby rural states.

Alan Ostby, Ph.D., a licensed clinical psychologist in Billings, addressed the Yellowstone County Bar Association on lawyers and depression. Like me, he was surprised by the statistics. From his perspective, perfectionism, high expectations, and the harsh, adversarial work environment contribute to our lack of well-being.

Dr. Ostby urges a work-life balance starting with a healthy diet and regular exercise. He challenges us to ask, "What gives my life meaning?" If we focus primarily on wealth accumulation at the expense of inner fulfillment, we're set up for disappointment. Keeping a stiff upper lip isn't the answer. We need to express feelings in healthier ways, set better boundaries in our professional lives and find activities to renew our spirits.

Long hours at a desk don't lead to increased efficiency, Dr. Ostby said. "Get out of your office. Take a walk. Call a friend. Volunteer." He encourages scheduled time for family and fun, just like we schedule time for clients. We can learn to be mindful of our thoughts and relax more. But it takes effort.

"We need to positively engage with those aspects of law practice that make it difficult," said one attorney. "We need to talk about this."

Clinical depression is a lawyer's occupational hazard, but it is manageable. If it comes your way, be kind to yourself. Counseling and medication may be necessary. If it strikes a colleague, be compassionate. Remember that it is sign of strength, not weakness, to seek help.

Seeking help? Call Lawyers Assistance Program Hotline at 1-888-385-9119

This is the second story in a series on mental health issues in the legal profession. Coming next: Lawyer Suicides Sound an Alarm

Endnotes

1. Raymond P. Ward, *Depression, The Lawyers' Epidemic: How You Can Recognize the Signs,* http://www.legalunderground.com/2005/03/lawyer_depressi.html

2. http://www.lawyerswithdepression.com/depressionstatistics.asp

3. Brent Hale, *Why Are So Many Lawyers Depressed?* http://webster.utahbar.org/barjournal/2008/01/why_are_so_many_lawyers_depres.html

4. *Breaking the Silence: Lawyer Suicide,* http://www.nclap.org

5. Larry Bodine, *Top 5 Factors that Lead to Divorce,* http://blogs.lawyers.com/2012/02/top-5-factors-that-lead-to-divorce; http://www.lawyerswithdepression.com/depressionstatistics.asp

6. Ward, *Depression, The Lawyers' Epidemic*

7. Hollee Schwartz Temple, *Speaking Up: Helping Law Students Break Through the Silence of Depression*, http://www.abajournal.com/magazine/article/speaking_up_helping_law_students_break_through_the_silence_of_depression

8. Jennifer Alvey, *How Did I Get to be an Unhappy Lawyer, Part 2*, http://leavinglaw.wordpress.com/2012/02/04

9. Martin E. P. Seligman, Ph.D., *Why Are Lawyers so Unhappy?* http://lawyerswithdepression.com/lawyersunhappy.asp

10. Sue Shellenbarger, *Even Lawyers Get the Blues: Opening Up About Depression*, http://online.wsj.com/public/article/SB11975124510852563.html

FAQ

from page 17

What causes depression?

Most likely, depression is caused by a combination of genetic, biological, environmental, and psychological factors.

Depressive illnesses are disorders of the brain. Longstanding theories about depression suggest that important neurotransmitters—chemicals that brain cells use to communicate—are out of balance in depression. But it has been difficult to prove this.

Brain-imaging technologies, such as magnetic resonance imaging (MRI), have shown that the brains of people who have depression look different than those of people without depression. The parts of the brain involved in mood, thinking, sleep, appetite, and behavior appear different. But these images do not reveal why the depression has occurred. They also cannot be used to diagnose depression.

Some types of depression tend to run in families. However, depression can occur in people without family histories of depression too.Scientists are studying certain genes that may make some people more prone to depression. Some genetics research indicates that risk for depression results from the influence of several genes acting together with environmental or other factors.In addition, trauma, loss of a loved one, a difficult relationship, or any stressful situation may trigger a depressive episode. Other depressive episodes may occur with or without an obvious trigger.

Research indicates that depressive illnesses are disorders of the brain.

How do women experience depression?

Depression is more common among women than among men. Biological, life cycle, hormonal, and psychosocial factors that women experience may be linked to women's higher depression rate. Researchers have shown that hormones directly affect the brain chemistry that controls emotions and mood. For example, women are especially vulnerable to developing postpartum depression after giving birth, when hormonal and physical changes and the new responsibility of caring for a newborn can be overwhelming.

Some women may also have a severe form of premenstrual syndrome (PMS) called premenstrual dysphoric disorder (PMDD). PMDD is associated with the hormonal changes that typically occur around ovulation and before menstruation begins.

During the transition into menopause, some women experience an increased risk for depression. In addition, osteoporosis—bone thinning or loss—may be associated with depression. Scientists are exploring all of these potential connections and how the cyclical rise and fall of estrogen and other hormones may affect a woman's brain chemistry.

Finally, many women face the additional stresses of work and home responsibilities, caring for children and aging parents, abuse, poverty, and relationship strains. It is still unclear, though, why some women faced with enormous challenges develop depression, while others with similar challenges do not.

How do men experience depression?

Men often experience depression differently than women. While women with depression are more likely to have feelings of sadness, worthlessness, and excessive guilt, men are more likely to be very tired, irritable, lose interest in once-pleasurable activities, and have difficulty sleeping.

Men may be more likely than women to turn to alcohol or drugs when they are depressed. They also may become frustrated, discouraged, irritable, angry, and sometimes abusive. Some men throw themselves into their work to avoid talking about their depression with family or friends, or behave recklessly. And although more women attempt suicide, many more men die by suicide in the United States.

How do older adults experience depression?

Depression is not a normal part of aging. Studies show that most seniors feel satisfied with their lives, despite having more illnesses or physical problems. However, when older adults do have depression, it may be overlooked because seniors may show different, less obvious symptoms. They may be less likely to experience or admit to feelings of sadness or grief.

Sometimes it can be difficult to distinguish grief from major depression. Grief after loss of a loved one is a normal reaction to the loss and generally does not require professional mental health treatment. However, grief that is complicated and lasts for a very long time following a loss may require treatment. Researchers continue to study the relationship between complicated grief and major depression.

Older adults also may have more medical conditions such as heart disease, stroke, or cancer, which may cause depressive symptoms. Or they may be taking medications with side effects that contribute to depression. Some older adults may experience what doctors call vascular depression, also called arteriosclerotic depression or subcortical ischemic depression. Vascular depression may result when blood vessels become less flexible and harden over time, becoming constricted. Such hardening of vessels prevents normal blood flow to the body's organs, including the brain. Those with vascular depression may have, or be at risk for, co-existing heart disease or stroke.18

Although many people assume that the highest rates of suicide are among young people, older white males age 85 and older actually have the highest suicide rate in the United States. Many have a depressive illness that their doctors are not aware of, even though many of these suicide victims visit their doctors within 1 month of their deaths.

Most older adults with depression improve when they receive treatment with an antidepressant, psychotherapy, or a combination of both. Research has shown that medication alone and combination treatment are both effective in reducing depression in older adults.21 Psychotherapy alone also can be effective in helping older adults stay free of depression, especially among those with minor depression. Psychotherapy is particularly useful for those who are unable or unwilling to take antidepressant medication.

Information compiled from www.nimh.nih.gov/index.shtml

State Bar sponsored/related live CLE

For the latest information and to register go to *montanabar.org* -> For Our Members - > Continuing Legal Education.
NOTE: *5.0 ethics credits required every 3 years – 1 of them must be a Substance Abuse/Mental Impairment (SAMI) credit.*

- **May 9 - Wednesday Webinar Series: All Things Google for Lawyers.** 1.00 CLE credit. Attend from the comfort of your home or office. Presented by the State Bar Technology Committee. Pre-Registration online required before May 8.

- **May 11 - DUI Cases: From Stop to Appeal**. GranTree Inn, Bozeman. 6.50 CLE credits, including 1.00 SAMI. What every Montana attorney needs to know about DUI cases. What we do, how we do it and training, resources and current law.

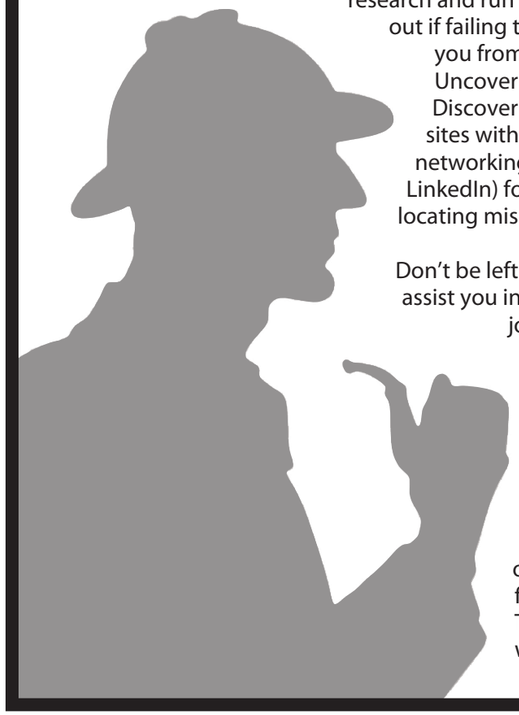
COMING UP: *The Bankruptcy Section's annual CLE seminar will be earlier than normal this year — August 2-3 at Big Sky. Check here and www.montanabar.org for details as the event nears.*

Hi-Line and Eastern Roadshow hits the pavement July 11-13

It's free. The Roadshow stops in Havre on July 11, Glasgow on July 12, and Miles City on July 13. Good for 3 CLE (ethics). Topics include Guardianship Capacity Decisions and Conflicts, Technology Tips for Solo and Small Firms, State Bar Updates. Call Robert Padmos at 406-447-2202 or email rpadmos@montanabar.org.

Cybersleuth's Guide to the Internet

Learn from experts Carole Levitt and Mark Rosch | June 20, Bozeman | 6 CLE



Learn how the Internet is changing the way legal professionals need to research and run their practice to competently represent their clients. Find out if failing to "Google" as part of the due diligence process could keep you from winning a case or successfully completing a transaction. Uncover the best **research strategies and learn to master Google.** Discover how attorneys are using **free public record sites** and sites with **free "publicly available" information,** including social networking sites (Twitter, Facebook, MySpace, Google Plus, and LinkedIn) for discovery, trial preparation, background checks, and locating missing persons.

Don't be left behind in exploiting this gold mine of information that will assist you in meeting your investigative research obligations. Come join Carole Levitt and Mark Rosch, internationally recognized Internet trainers and American Bar Association authors of five American Bar Association books, who will show you how to be a cybersleuth to unearth information free (or at low cost!) on the Net.

Each attendee will receive the latest copy of the 500-page book, **The Cybersleuth's Guide to the Internet**, 12th edition.

Early registration (May 30) is $300 for attorneys with five or more years of practice; $275 for attorneys with less than five years and for members of the Bar Paralegal Section or Tech Committee. Add $25 after May 30. Register at www.montanabar.org or watch for the flier in the mail.

- **May 5** — Notary Law for Legal Professionals; 1.00 credit; Billings; Secretary of State (406) 444-5379
- **May 5** — Billings, MT Notary Ethics for Legal Professionals 1.00 credit/1.00 ethics; Billings; Secretary of State (406) 444-5379
- **May 9** — Clearing The Weeds: Artful Expert Witness Depositions; 1.50 credits; webcast; DRI (312) 795-1101
- **May 9** — Fundamentals of Mediation 32.00 credits/1.50 ethics; Bozeman; Center for Collaborative Solutions (406) 587-2356
- **May 16** — Ben Franklin on Ethics; 1.25 credits/1.25 ethics; webcast; Periaktos Productions, LLC (605) 787-7099
- **May 16** — Immigration 101: Family & Employment; 3.00 credits; webcast; www.lawreviewcle.com (941) 426-2111
- **May 16** — Immigration 101: Asylum & Inadmissibility; 3.00 credits; webcast; www.lawreviewcle.com (941) 426-2111
- **May 16** — InformationRule/Social Media Impact on Records Management; 12.50 credits; ARMA/MT Dept of Transportation Offices Helena(406) 495-7013
- **May 16** — VTC "Retirement-The Final Frontier"; 2.00 credits; webcast; Society of FSP 610-359-8115
- **May 17** — Employment From Hire to Fire; 6.50 credits; Associated Employers/ Wingate Inn Bozeman(406) 248-6178
- **May 20** — Intro to Electronic Health Care; 3.00 credits; webcast; www.lawreviewcle.com (941) 426-2111
- **May 20** — Social Security Disability Basics; 3.00 credits; webcast; www.lawreviewcle.com (941) 426-2111
- **May 21** — Advanced Trial Advocacy; 29.75 credits/1.00 ethics; Missoula, UM Law School/Law School (406) 243-6509
- **May 22** — Is Your Ethical House in Order?; 1.50 credits/1.50 ethics; teleconference; Cannon (800) 775-7654
- **May 23** — Impeach Justice Douglas; 3.00 credits/3.00 ethics; webcast; Periaktos Productions (605) 787-7099
- **May 24** — Issues in Condemnation; 6.25 credits/1.00 ethics; The Seminar Group/Great Northern Hotel Helena(800) 574-4852
- **May 30** — Lincoln on Professionalism; 1.00 credits/1.00 ethics; webcast; Periaktos Productions, LLC (605) 787-7099
- **June 5** — Documentation Dos & Don'ts; 1.00 credits/1.00 ethics; webcast; Attorney Protective 260-486-0443

CLE materials available from the State Bar Bookstore

Materials in the Bookstore are considered self-study or "other" credits. Montana attorneys are limited to 5.0 credits per year by this method. Order online at *montanabar.org*, or use the form on page 22

RULES UPDATE - 2011

Credits vary for each topic. 7 Audio CDs, including written material, for $250 as a set. Individual presentations/materials for $50 each.

- Montana Rules of Civil Procedure Revisions and Practicing under those Revisions (1 cr.)
- Bankruptcy Court's Local Rules (1 cr.)
- Fed. Rules of Civil Procedure Revisions (1 cr.)
- Federal Pleading Standards Changes (0.5 cr.)
- Workers Compensation Court Rules (0.5 cr.)
- Water Law Adjudication (0.5 cr.)
- Changes to Rules on Lawyer Disciplinary Enforcement (1cr.)

EMINENT DOMAIN – 2010

1 "other" CLE credit for each topic. 5 DVDs, including written material, for $200 as a set. Individual presentations/materials for $50 each.

- Legal Foundation
- 1972 Constitutional Convention and Representing Landowners
- Negotiating with the DOT – Ed Beaudette, Esq.
- Interaction of Land-Use Planning and Eminent Domain
- Game Farm Cases and Implications for Public Use in MT

CRIMINAL LAW ETHICS - 2009

CLE credits vary for each topic. 6 DVDs, including written materials for $200 as a set. Separately for $50 each.

- Do Not Reveal Your Client's Perjury (1 ethics credit)
- Fairness & Due Process in Disciplinary Proceeding (1 ethics credit)
- In Praise of the Guilty Project (0.75 ethics credit)
- Loyalty Apocalypse (1.25 ethics credits)
- Accountability for Prosecutorial & Defense Attorney Misconduct (0.75 ethics credits)
- Common Dilemmas in Criminal Ethics (1 ethics credit)

MALPRACTICE PREVENTION ETHICS SERIES

CLE credits vary. 6 DVDs, including written materials, as a set for $200. Individual presentations/ materials for $50 each

- Malpractice Traps (1 ethics credit)
- Dancing in the Minefield: Ethics in the Electronic Era (2 ethics credits)
- The Ten C's to Malpractice Prevention (1 ethics credit)
- Malpractice and the Impaired Lawyer (1 ethics/SAMI credit)
- Risk Evaluation from an Insurer's Perspective (1.0 ethics credit)
- The Impossible Happens: Your Client Turns on You (1 other credit)

PHONE CLES - VARIOUS TOPICS

1 CLE credit for each topic.
$50 each for audio and written materials.

- Probate Update - Dec. 14, 2011
- Appellate Practice Tips: Ground Zero, presented by Justice Jim Nelson. - Feb. 2, 2012.
- Phys & Mental Exams under Rule 35, M.R.Civ.P. – Feb. 8, 2012
- Appellate Practice Tips: Brief Writing and Oral Argument - March, 2012
- New M.R.Civ.P - Electronically Stored Information - March 21, 2012.
- Recurring Issues in the Defense of Cities and Towns - March 2012.
- Contested Case Procedures Before the Dept. of Labor and Industry – April 2012

FAMILY LAW PHONE CLES

1 "other" CLE credit for each topic. Audio recordings and written materials for $50 each.

- Statutory Pitfalls in Child Support Calculations – Aug. 2011
- Drafting Family Law Briefs to the Montana Supreme Court – Sept. 2011
- Landlord-Tenant Law from a Family Law Perspective – Oct. 2011
- Summary of Proposed Modifications to the MT Child Support Guidelines – Dec. 2011
- Valuing the Family Business in Property Settlements – Nov. 2011
- Children and Divorce – Jan.,2012
- Representing Military in Divorce – March 2012.
- Age Appropriate Continuity and Care Factors – April 2012.

SAMI PHONE CLES

1 Ethics/SAMI credit each for each topic. Audio recording and written materials for $50 each.

- Basic SAMI - Ethical Duties and the Problem of Attorney Impairment – Sept., 2011
- Dependency Warning Signs – Nov., 2011
- Is It Time to Retire? – Dec., 2011
- SAMI Smorgasbord – Jan., 2012

TECH WEBINARS

1.00 "other" CLE credit for each topic. 1-hr audio recording and written materials for $50 each.

- Social Media – April 2011
- E-Mail for Lawyers – Nov. 2011
- Collaborative Tools – Dec. 2011
- Online Resources for Attorneys – Jan. 2012
- Security Steps for Unsecured Networks – April

Montana State Bar Legal Publications

Montana Real Estate Transactions
- 2010, 360 pages, book plus 2011 supplement CD $205.
- 2011 Supplement, 82 pages, $25 for CD.

Supplement includes discussion of the law of Ownership of the Beds of Navigable Streams, discussion of Fraud, Constructive Fraud, and Negligent Misrepresentation under Montana Law, and elements of Adverse Possession, Prescriptive Easements, and Reverse Adverse Possession.

Montana Civil Pleading & Practice Formbook.
2012, 489 pages, book plus all forms in editable format on CD, $225

2012 Lawyers' Deskbook & Directory
Book, $50; Mid-year update CD for 2012, $20; Both for $60

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

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

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

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

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

Public Discipline Under MT Rules of Professional Conduct
2010, 192 pages annotated
CD $35

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

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

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

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

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

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

UM student publications:
- University of Montana Law Review
  Subscribe at www.umt.edu/mlr
- Public Resources and Lands Law Review
  Subscribe at www.publiclandlawreview.com

For our members

Did you know you get an ABA discount?

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

Order Form

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

Publications or CLE materials wanted _____

_____

Name _____

Mailing address _____

E-mail address or phone_____ Amount enclosed _____

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

To order and pay by credit card, please see the online Bookstore at *www.montanabar.org*. For more information, call the State Bar at (406) 442-7660.

1-888-385-9119

Montana's Lawyers Assistance Program Hotline

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

Written materials from previous CLEs

(**These are considered publications only,** and except for a few noted exceptions for SAMI, are not eligible for CLE credit)

FAMILY LAW I – 3/4/11, Great Falls ($35)
- Military Retirement in Dissolution and Family Law Matters
- "Guard" vs. "Active Duty"
- Do's and Don'ts of Appearing Before Standing Masters
- Third Party Parental Rights and Limiting the Scope of Representation
- Mediation with Property and Parenting Issues
- Interview Techniques
- Client Control and Ethical Considerations
- Interest-Based Bargaining

MEDICAL MARIJUANA UPDATE – 3/18/11, Butte ($35)
- Employment Issues
- Legislative Update
- Business Transactions
- View from Montana Department of Justice
- Panel: Ethical Issues Facing Montana Attorneys
- View of the Federal Government and State's View on Employment and other Issues
- Caregiver Issues

NATURAL RESOURCE PERMITTING – 4/8/11, Helena ($35)
- 310 Permits – Stream Bed Protection
- Alberta's Ordinance on Viewshed
- Corps of Engineers 404 Permits (Wetlands)
- Floodplain Regulations
- Subdivision Review and Natural Resources;
- Gravel Permitting
- Wind Energy Market Dynamics: Translating Resources into Viable Wind Energy

PRACTICAL PRACTICE TIPS – 4/29/11, Missoula ($35)
- Basic Law Office Management
- Top 10 Malpractice Traps and How to Avoid Them
- Trust Account Maintenance
- Records Retention and Closing Your Practice
- Basic Tech Needs of the Solo or Small Firm

CONSTRUCTION LAW INSTITUTE – 9/30/11, Bozeman ($35)
- To Arbitrate or Not to Arbitrate: A Case Study of Arbitrator's Role in Disputes Involving Non-Parties;
- Developing Arbitration Law
- Care and Feeding of Expert Witnesses
- Overview of Montana Supreme Court Cases
- Construction Lien Priority Issues;
- *Markovich Construction v. Chippewa Cree Comm Development and Gram Sage Graves:*
- Discussion of Issues Raised
- Practical and Procedural Considerations: Getting the Right People to the Party

MEDIATION: CURRENT ETHICAL AND OTHER CHALLENGES – 10/7/11, Bozeman ($35)
- *Hendershott v. Westphal:* Review of Decision
- Four Competencies for Ethical Mediation
- Mediator Ethics Panel
- Types of Mediation
- Appellate Mediation Report to MT Supreme Court and Report on April, 2011 MT Mediation Association Conference
- Standards of Conduct and Ethics

CLE & SKI – 1/13-15/12 – Big Sky ($35)
- Business on the Docket: Review of Important State and Federal Business Cases
- Working with Revised M.R.Civ.P.
- Planning for Conflict of Interest Transactions Under the MT Business Corporation Act: Analysis and Application of the Safe Harbor Rules
- Status of Medical Marijuana in Montana
- Overview of Current Law Firm Management Problems and Solutions
- Supreme Court Case Update

COMMERCIAL REAL ESTATE -- 2/17/12, Fairmont Hot Springs ($35)
- Tying up Property — Letters of Intent, Options, Rights of First Refusal, and Lease Options
- 1031 Exchanges, Entity Selection and Tax Consequences— Joint Ventures, LLCs and Other Entities
- Buy-Sell Agreements— Due Dilligence to Closing
- Title Insurance and Endorsements
- Closing Issues—Escrow Instructions, Holdbacks and Deed
- Financing the Purchase—Negotiating Loan Terms and Documents, Seller Financing

REAL ESTATE UPDATE – 2/18/12, Fairmont Hot Springs ($35)
- Easement Law: Options and Rights of First Refusal and Community Property Update;
- Best Practices for Drafting Easements
- Successfully Litigating Easement Cases;
- Trustee's Duties in Nonjudicial Foreclosures: *Pomeranky v.Peterson*
- Structuring Effective Loan Workouts
- Receivers and Rents: Issues to Consider

INSURANCE UPDATE (Annual St. Patrick's Day CLE) 3/16/12, Butte ($35)
- Medicare, Medicaid, Federal Liens, and Other Settlement Pitfalls
- Settlement, Contribution, and Indemnity in the Context of Insurance Defense Litigation
- Insurance Law Update
- A Wrigged Game: Are Non-Compete, Non-Solicitation, and Confidentiality Agreements Ever Enforceable?
- Working with the 2011 Montana Rules of Civil Procedure
- Oops, I Should Have Retired 5 Years Ago (1.00 SAMI Ethics credit)

LITIGATION TOOLS — 3/30/12, Great Falls ($35)
- Mock Voir Dire with Mock Jury
- Independent Medical Examination Issues
- Medicare and Federal Liens

Ethical Obligations and Issues inDiscovery of Electronic Documents

FAMILY LAW UPDATE — 4/13/12, Helena ($35)
- Military Retirement Benefits and Divorce
- Montana Supreme Court Pro Bono Limited Scope
- Child Support Regulation Changes
- The Future of the Legal Profession
- Military Benefits for Families of Service Members
- Working with Revised Rules of Civil Procedure

BENCH-BAR CONFERENCE — 4/20/12, Missoula ($35)
- Use What You Know But Forgot
- Unacceptable Approaches to the Court, Unacceptable Communication with Counsel and How We Handle It
- Ethical Misconduct in Discovery
- Electronic Filing, Document Service and Notice Issues in Western Montana and with the Montana Supreme Court- What Lawyers Need to Know and What's on the Horizon
- Election of Supreme Court Justices by District Debate
- Speaking in Code: Everything You Never Thought You'd Need to Know About Bankruptcy But Found Out Otherwise
- Social Media in Litigation

BASIC BANKRUPTCY TIPS, FEDERAL COURT FILING TIPS, AND CIVIL AND APPELLATE RULE CHANGES — 04/27/12, Billings ($35)
- Collection Issues and Current Rules; Drafting Pleadings for Attorney Review, Ethical and Legal Issues
- Creditor Strategies
- Clerk's Perspective: Origins and Current Impact
- Logging into Federal Court: New Rules & Filing Tips
- Keeping Things Civil: Changes to Rules of Civil Procedure and Appellate Rules
- Technology Tips
-

Whose Hold Is It Anyway?

Potential New Roles for Law Firms in Litigation Holds

By Joshua P. Rosenberg | LexisNexis

The revision of the Federal Rules of Civil Procedure (FRCP) in December 2006 focused on the rapidly evolving practice of electronic discovery and attempted to deal head-on with the complex issues arising from the production of electronically stored information (ESI) for cases being litigated in the federal courts. While the rules should present an opportunity for real partnership between law firms and their clients, they are potentially creating more tension in this delicate relationship—corporate legal departments are looking to make the minimal investments possible to minimize risk while law firms recognize any new partnership that translates into an emerging business opportunity.

Introduction

With recent precedents in case law related to holds management that includes severe penalties for non-compliance, many in-house legal executives face a dilemma. They are uncertain whether to outsource all or part of their holds management activities to their law firms or maintain ownership for what they view as a corporate responsibility. The benefits of outsourcing are clear—in addition to reducing their already burdened workloads, engaging outside counsel effectively transitions associated risk from their company to the firm. In other words, if the hold is not administered properly, the responsibility could fall on the law firm, thereby shielding in-house counsel from sanctions.

As a result, law firms increasingly recognize holds management as a critical opportunity. The current economic downturn has negatively impacted the legal industry causing law firms to seek additional markets and services to bolster declining revenues.

From the outside counsel perspective there are several short- and long-term business development reasons why proactive law firms are seizing the opportunity to implement litigation holds on behalf of their clients including deepening client relationships, lengthening their involvement in client's litigation, and establishing differentiation of products and services relative to other firms.

This white paper details current practices as they relate to the management and implementation of litigation holds, analyzes the forces driving the litigation holds tension between in-house counsel and their outside law firms, and suggests important lessons learned that foreshadow where we may be headed as an industry.

The Rise of Litigation Holds

By creating a "duty to preserve" ESI in the discovery phase of a legal matter, the new FRCP rules forced us to rethink how document retention policies are applied to electronic files such as e-mails and word-processing documents. At the heart of these suddenly ubiquitous discussions is the crucial execution of litigation holds. Much has been written about the burgeoning universe of case law impacting litigation holds, but far less attention has been given to the latest trends in how successful organizations are managing the litigation holds process.

For purposes of this discussion, a litigation hold is generally regarded as a suspension of an organization's document retention and destruction policies for documents that may be relevant to a lawsuit that has been filed or for litigation that may be reasonably anticipated. The purpose of a hold is to ensure that relevant data is not destroyed and to alert employees about the risk to both the company and the employee if they fail to honor the litigation hold request.

Companies have issued an increasing number of litigation holds in every year since 2006, due in part to the fact that the volume of electronically stored information continues to grow exponentially. Moreover, most organizations are issuing holds across a broader spectrum of litigation.

Further increasing the confusion around litigation holds has been a great deal of misunderstanding around the discrete elements of a hold. The reality is that a litigation hold comprises two separate areas of undertaking:

1. The Holds Notice—This refers to all of the activities that must be done to identify and notify custodians of their obligation to preserve data in conjunction with a litigation hold. It also includes the various requirements around reminding custodians of their continued obligation to comply during the life of the hold. Failure to comply with the notification requirements alone can lead down the slippery slope toward sanctions.

2. Perfecting the Hold—This process is very similar to the Electronic Discovery Reference Model (EDRM) requirements. Once notification is complete, the hard task of identifying, preserving and collecting potentially responsive documents

HOLD, Page 25

The landmark case for litigation holds *was the Zubulake v. UBS Warburg case that was tried in New York in 2003 and 2004. In Zubulake, the court imposed dramatic sanctions because of UBS's obvious failure to notify all employees of the hold and monitor their ongoing compliance. Judge Shira Scheindlin's rulings in Zubulake clearly outlined the responsibilities for the lawyers with respect to preserving electronic information, establishing a widely held standard.*

Hold

from page 24

must begin. From a task-based perspective, this is a different activity from the requirements to notify potential custodians, yet both must be done properly to meet the requirements set forth in a burgeoning body of law.

The impact for non-compliance with a hold is quite severe, both financially and, potentially, legally. A company's failure to properly and promptly impose a litigation hold can result in court-ordered sanctions, in the form of both monetary fines and perhaps even spoliation charges if information is found to be destroyed because a litigation hold was not effectively carried out. The landmark case for litigation holds was the Zubulake v. UBS Warburg case that was tried in New York in 2003 and 2004. In Zubulake, the court imposed dramatic sanctions because of UBS's obvious failure to notify all employees of the hold and monitor their ongoing compliance. Judge Shira Scheindlin's rulings in Zubulake clearly outlined the responsibilities for the lawyers with respect to preserving electronic information, establishing a widely held standard.

A recent important decision takes Zubulake even further. In Victor Stanley, Inc. v. Creative Pipe, Inc., No. MJG-06-2662

(D. Md. Sept. 9, 2010), the judge entered a 101-page decision sanctioning and jailing the president of the defendant company for not complying with litigation hold and discovery obligations.

Corporations now are not only at risk for sanctions for failure to issue and honor a litigation hold or ESI request, but they could even face a prison sentence (the president in this case faces up to two years).

There is an obvious legal trend emerging—the courts are placing an unprecedented level of scrutiny on litigation hold procedures and are not afraid to issue serious sanctions when litigation holds are not ordered, executed and managed properly. This also underscores the risk for the corporate legal executive—be compliant or face both monetary and criminal sanctions—and creates a dilemma about how to manage holds.

The Legal Executive Dilemma: In-Source or Out-Source?

In the past several years, corporate legal executives have learned that implementing litigation holds throughout an organization is a costly and error-prone process. Managers know that creating a "fail-safe" litigation holds process can be very burdensome, but the potential costs of inefficient holds can be far more serious to the company if they are not conducted as part of a well-organized, technologically robust program. A common question is, "What can our corporate legal department do to reduce risk by establishing a strong litigation hold management process without spending too much money or causing unnecessary disruption to the company's operations?"

In most companies, the e-mail system is the largest repository of records from which they will be called upon to "hold" electronic files because e-mail messages can include crucial evidence in corporate litigation—such as business instructions, legal contracts, financial data, presentations and various opinions about business ventures under consideration. Typically, paralegals or even specifically designated litigation holds coordinators draft the initial notice and follow a predetermined approval process prior to publishing the hold notice.

Given the significant increase in holds issued and the number of custodians involved, a growing number of companies are evaluating additional avenues for overseeing how the actual notices are served—beyond the obvious routine of sending out e-mail blasts to appropriate parties. For example, a notable management trend for issuing litigation hold notices includes making all current notices available to each employee on an intranet or other internal employee Web portal.

Other companies are now targeting notices to the recipient's role and his/her specific responsibilities for file

HOLD, Page 26

Hold

from page 25

preservation responsibilities, an idea based on the premise that notice language customized to an individual will result in improved compliance with the notice. With this in mind, another growing management trend with litigation holds is the movement toward the deployment of automated systems that improve the consistency of turnaround times with issuing notices.

Automated systems are increasingly helping companies manage the process—from the triggering event to the execution of the litigation holds notice to the monitoring of compliance with the notice—and providing a crucial record trail that may be needed down the road if the matter escalates to trial.

The administration of a single litigation hold is therefore time consuming, cumbersome and expensive. It can require the augmentation of staff and technology expenses that can quickly exceed hundreds of thousands of dollars. Even with these investments, corporate legal executives are learning that litigation holds management is a tyranny of the middle; they are not rewarded for overachievment, but severely penalized for underperformance.

The incentive is to execute the minimal level of compliance without incurring unnecessary expenses in the process. In-house legal counsel is therefore presented with the dilemma of maintaining the burden of the holds ownership or transferring the risk at some point in the hold lifecycle to an outside firm and incurring the cost. In the later case, many are learning this is not an all-or-nothing proposition and there are multiple ways to structure the relationship.

An Uneasy Collaboration

One of the unpleasant and unwelcome consequences of the post-Zubulake world with respect to litigation holds is the highlighting of the seemingly inherent tension between inside and outside counsel. Specifically, the scope and depth of a litigant's discovery compliance efforts have a tendency to challenge even the most committed, long-term relationship between client and law firm.

The debate is how to divide the responsibilities associated with the execution of litigation holds and the oversight of the litigation holds process in an organization. The simplest answer is that both sides have skin in the game, so each must be involved in the process at some point. The more complicated answer involves the assignment of specific roles in that relationship.

Increasingly, law firms are taking ownership of hold at the initiation of the litigation holds process. Many organizations are finding it prudent for client and law firm to structure a formal electronic discovery process at the very beginning of a case. The theory is that if in-house and outside counsel structure the relationship properly at that point, they will develop an efficient process with absolute clarity of who is responsible for performing each function along the way.

Another emerging structure is to assign an e-discovery team and identify key contact people in the group. These professionals agree on the methods that outside counsel will use to monitor and "approve" how the client maintains, stores and retrieves documents. The team also agrees on how to distribute litigation hold notices and how to conduct the necessary follow-up work that will ensure compliance.

The ultimate goal here is to put in place a defensible audit trail as it relates to litigation holds; one that will hold up in court if the matter goes to trial. There are several possible frameworks for how to accomplish that goal, but it seems certain that the common thread will be a dedication to collaboration between in-house and outside counsel.

A Moment of Opportunity

One would be hard-pressed to find a corporate legal executive or a law firm partner who welcomed litigation holds as a new frontier in electronic discovery management. But at this time, we're observing the early stages of what could be a real moment of opportunity for law firms: outside counsel has a unique chance right now to engage with their clients as real business partners and not just lawyers.

There are at least three fundamental ways in which we're seeing the most progressive outside counsel step into the spotlight and play this crucial role:

- Closely monitor developments with litigation holds affecting other companies in the client's industry and track what errors to avoid, best practices to put in place, etc.;
- Have the client's best interests in mind as if it were in fact the firm's own best interests—because often it is; and
- Explore the strategy of managing the overall litigation holds process for the client by creating infrastructure inside the law firm that would allow the management of litigation holds to be outsourced by the client to the firm.

This last option is clearly the one that will have the most profound impact in the legal services marketplace over the coming months and will strike more traditional firms as an overly ambitious undertaking. But with the assistance of leading-edge technology solutions and experienced discovery management professionals, outside counsel can expand the services they provide to their clients and assert more control over the increasingly serious process of managing litigation holds.

About the Author: Josh Rosenberg is the director of strategic planning for Litigation Tools & Professional Services, where he is responsible for developing and executing strategic plans for litigation software lines at LexisNexis. Prior to joining LexisNexis, he worked at the Corporate Executive Board in Washington, D.C. Additionally, he has held various roles as in-house counsel for JP Morgan Chase and Automobile Club Insurance Company. Rosenberg earned his MBA from The University of Chicago, JD from The Ohio State University College of Law, and his BA from Pomona College. He can be contacted at joshua.rosenberg@lexisnexis.com. All information provided in this document is general in nature and is provided for educational purposes only. It should not be construed as legal advice. For legal advice applicable to the facts of your particular situation, you should obtain the services of a qualified attorney licensed to practice in your state.

Smartphones for lawyers

Selecting, managing and securing them

Sharon D. Nelson, Esq. and John W. Simek

Unless you've been trying to emulate a hobbit and have been living under a rock these last few months, we're fairly certain that you have heard about the consumerization of smartphones across the country. Perhaps you've heard the term, but don't really know what it means. Essentially, it is the insistence by employees that they be allowed to bring their own (consumer) smartphones into the workplace environment and access the corporate data (e.g. e-mail, client files, billing system, etc.). The Bring Your Own Device (BYOD) or Bring Your Own Technology (BYOT) movement is putting severe pressure on all forms of business, including law firms. Before we get to the issue of dealing with the BYOD and BYOT movement, let's speak to the selection of smartphones.

The first decision point is whether you will allow employees to use their own devices or if you are going to distribute firm owned devices. Frankly, we are not fans of BYOD or BYOT and prefer that the firm provide the mobile devices directly to the employees. It makes it much easier to set the policies and controls when the firm owns the asset. There is little argument about what the firm wants to do with devices that they purchased, but you may be in for heated battles if you try to control an employee-owned device.

If you allow BYOD or BYOT, then your decision process is done as far as equipment goes. The employee has already made up their mind what device to purchase. If the firm will select the mobile device (smartphone, tablet, netbook, etc.) then the first place to start is with a wireless carrier. Define where you intend to use the devices and pick the carrier that has the most reliable service for those areas. Once you've picked the carrier, you can then move to the devices that they have available. Perhaps you're absolutely sold on touch screen technology. The carrier will have certain models that they support, thereby narrowing the field. You may be looking for a specific feature, such as memory (storage) expansion. That

PHONES, Page 28

Have attorneys read the iCloud terms and conditions?

By Sharon D. Nelson, Esq. and John W. Simek

There are some very interesting items in the T&C (Terms & Conditions) that most people never read. The tendency is to click, click, click just to get to the end quickly. The T&C for iCloud is around 12-13 pages long, depending on the device used to view it. So let's dive right into some of the "features" presented in the T&C and what they may mean.

First, you are required to have a compatible device, duh? It also states that "…certain software (fees may apply)…" whatever that means. There are a lot of words about the location-based services and what Apple and its partners can do with the collected data. Make sure you understand the cloud collects GPS location, crowd-sourced Wi-Fi information, cell tower location, device ID, Apple ID, etc. That sounds like enough information to be personally identifiable to us. There are no words on how long they store the data, if at all, but we're pretty sure they don't throw it away after processing. You can opt out of the collection by not using any location-based services, which we doubt many will do.

One interesting item is "The Find My iPhone and Find My Mac features are intended for your personal use only." Does that mean you cannot use the features in a commercial setting? Probably not, but it's not very clear.

Apple doesn't take any responsibility for the integrity of any content stored in iCloud. In other words, you are on your own so don't assume that you can actually use any of the data that you may transmit to iCloud. There's a whole sentence in capital letters that states "…Apple does not guarantee or warrant that any content you may store or access through the service will not be subject to inadvertent damage, corruption, loss, or removal in accordance…" Geez, you call that a backup

Terms, Page 29

Phones

from page 27

rules out the iPhone since it is a fixed memory device. No matter what you decide, choosing the carrier first will necessarily restrict the devices that are available for your selection.

When it comes to smartphones, security is a very important element, especially for attorneys since they have an obligation to protect their client's information. This is where things get a little muddy. Some say that the BlackBerry is the most secure smartphone because of the inherent encryption on the phone and in the communication. Partially true, but you can also encrypt an Android phone. In fact the DoD has recently approved a specific version of the Android OS for use with non-classified information. This is hardly surprising with the explosion of smartphones running the Android OS. Also, don't forget to encrypt the contents of the expansion card if available. You may need some third-party software to get certain functions so don't just look at the base phone.

Besides the features, there are some basic security measures that you should take with any smartphone no matter what OS you use.

- Encrypt the data on the phone and expansion card
- Maintain physical control of the phone – in other words don't lose it!
- Follow any security recommendations from the carrier and phone manufacturer
- Program a lock code (e.g. PIN, passphrase or password)
- Set the phone to automatically lock after a period of inactivity
- Limit the amount of confidential data stored on the phone
- Turn off any interfaces that are not used (e.g. Bluetooth, WiFi)
- Have some method to backup your data
- Only use secure (e.g. https) connection for web browsing
- Configure the ability to remotely wipe the phone if it is lost (may require third-party application)
- Install security applications such as antivirus, malware protection and encryption (may require third-party application)
- Do not "root" or "jailbreak" the phone
- Only install applications from trusted sources (iTunes is not immune to malware apps and be particularly cautious in the Android store)
- Avoid using unknown WiFi clouds

Securing the data on your smartphone should be your primary consideration. Yes, the iPhone is encrypted, but it is a fairly weak encryption scheme. The latest version of the Android OS (Ice Cream Sandwich) now includes encryption. The data on a BlackBerry is encrypted by default. It really doesn't matter which OS you use since some encryption is better than none. For gosh sakes, don't use a phone that is not encrypted and doesn't have any third-party applications to make it secure. In addition to the encryption, install a security application to the phone. This will help protect against such things as malware and those bad URLs. Companies such as Symantec, Trend Micro, Sophos, etc. have mobile security products for different operating systems. Some manufacturers claim to have security products for the iPhone. They perform such functions as malware scans (after you've already downloaded the malware), device location, remote wipe, identifying unsecure WiFi, data backup, etc. Unfortunately, there really aren't any adequate security products for the iPhone. Apple doesn't allow any third-party application access to the lower levels of the OS, where effective security applications must reside.

When it comes to smartphones, security is a very important element, especially for attorneys since they have an obligation to protect their client's information. This is where things get a little muddy.

So let's get back to the BYOT and BYOD concept. How do you manage the devices that you don't own whose owners want to access data on your network? For that matter, how do you manage devices that you do own? The simple solution is to use a Mobile Device Manager (MDM). If you have ever worked with a BlackBerry Enterprise Server (BES), then you've dealt with a MDM. The MDM sits between your infrastructure and the mobile device. It controls the mobile device (including things like the iPad) and provides additional security features. The MDM function can be installed within your network or can be provided as a hosted solution. The hosted option may be a good choice for a lot of smaller firms since they won't have to potentially invest in hardware or licensing costs. Be sure to check with your cellular carrier to see if they offer hosted MDM solutions, which may be bundled with your cellular service.

The MDM provides a lot of control for your mobile devices. A base level function is to identify what devices are connected to your network. You can't control it if you don't know it exists. Since the MDM operates as a "gateway" to the data, you have vision into each device trying to access the information. The MDM also enforces policies to the device. This could be such things as the requirement to have a password, PIN, etc. and the complexity (e.g. 12 or more characters) of the lock code. The policy can also enforce encryption of the device and any inserted expansion cards. You can also disable certain features of the device via the MDM. As an example, perhaps you don't want any Bluetooth devices to be used. Bluetooth can be disabled for all phones or perhaps just one. You have the ability to locate and remotely wipe the device. Some MDMs will create a "sandbox" area on the smartphone and the remote wipe will only impact that area. This feature may be useful if you are allowing BYOD. Wiping the "sandbox" would leave the entire user's personal information intact while clearing out the firm data. Another feature is to allow only the installation of approved applications and prevent all others. Be prepared to get some push back if you implement application control, especially if it's the employee's

PHONES, Page 29

Phones

from page 28

smartphone.

Two of the highly regarded MDM solutions are provided by Good Technology (www.good.com) and Mobil Iron (www.mobileiron.com). They can manage smartphones running a variety of operating systems all at the same time. This means you could have iPhone, Android, Windows Mobile and Symbian smartphones throughout your firm and still maintain control. Obviously, it would be better to standardize on one phone OS, but with many MDMs you have options.

Research in Motion's MDM (RIM) (www.rim.com) has been long considered to be the gold standard in mobile device management and security. However, its market share has been rapidly declining and some analysts have questioned its long term survival. In May of 2011, RIM purchased ubitexx, a German provider of MDM software.

After the acquisition, RIM announced that it would use the ubitexx technology to support management of iPhones and Android phones through BlackBerry Enterprise Server. The product is named BlackBerry Mobile Fusion and the scheduled release is March 2012. It will support BlackBerry, Android and iOS devices; however, it will only support the native abilities of the device for Android and iOS devices. We'll have to see if their new MDM will help keep RIM afloat, but we have our doubts. *(Mont. Lawyer Editor's note: BlackBerry Mobile Fusion officially launched on April 3. http://blogs.blackberry.com/2012/04/blackberry-mobile-fusion/)*

No matter which platform or smartphone you decide to support. A key consideration is to maintain the security of the information that is stored on those nifty little devices. Remember, besides playing games, smartphones do hold confidential client information.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and computer forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com

Another scary provision allows Apple to change your content "…to comply with technical requirements of connecting networks or devices or computers."

Terms

from page 27

solution? Apparently not, since a few pages later they say "You are responsible for backing up, to your own computer or other device, any important documents, images or other Content that you store or access via the Service." Also, if you enable the iCloud "backup" your device will no longer automatically get backed up to iTunes during a sync. Does that make sense? There is no guarantee that content in iCloud will be usable AND it won't be in iTunes any more unless you manually put it there. To us, that is pretty amazing.

You might reasonably think you'll be notified whenever the terms change or the service is terminated but we doubt it. "Apple may post on our website and/or will send an email to the primary address associated with your Account to provide notice of any material changes to the Service." That word "may" is a killer. Sure, Apple may protect your privacy too, just like Facebook. We're not exactly buying the "trust me" language in light of the historical evidence.

Be aware that Apple will automatically bill you for any storage upgrade fees in advance of the service being provided. This means your credit card will be charged on an annual basis until you cancel so make sure you cancel prior to the renewal time. At least Apple will give you 30 days notice via email so you can react accordingly. Good thing since any fees and charges paid by you are not refundable unless you contact Apple within 45 days of the yearly payment.

One of the more disturbing provisions states that Apple will give your data to any law enforcement authority, government official or third party if they feel it appropriate, necessary or legally required. That's pretty scary and there is nothing that says Apple will even give you notice that they are giving over your data. Apple specifically identifies the data that is encrypted in the iCloud storage. What they don't tell you is that Apple has the decryption keys (they have to in order to give the data to law enforcement, etc.), which still means unintended parties can see your data. This means that iCloud is NOT an acceptable service for attorneys that keep client information on their iDevices.

Another scary provision allows Apple to change your content "…to comply with technical requirements of connecting networks or devices or computers." We assume this means the changes are such things as image size, etc. and not the actual substance, but the words don't restrict even that.

Towards the end of the T&C, there is a section that says you can't sue Apple, its affiliates, officers, employees, etc. (they mention anyone that even remotely associates with Apple). You can say that all you want, but we're not sure that it will hold up in court. And it sure doesn't give any attorney a lot of comfort that he/she is dealing with a reputable vendor.

The message is to always READ the terms of service. After reading this one, we can't see why anyone, especially an attorney, would want to use the iCloud service – it looks like a per se ethics violation to us.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and computer forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com

CLASSIFIEDS POLICY

All ads (up to 50 words) have a minimum charge of $60. Over 50 words, the ads are charged at $1.20 per word. Ads that are published at the charges above in The Montana Lawyer magazine run free of charge on this web site. Ads running only on the website will be charged at the magazine rate. The ads will run through one issue of the Montana Lawyer, unless we are notified that the ad should run for more issues. A billing address must accompany all ads. Email Pete Nowakowski at pnowakowski@montanabar.org or call him at (406) 447-2200 for more information.

ATTORNEY POSITIONS

DEPUTY COUNTY ATTORNEY: The Ravalli County Attorney's Office has an opening for a criminal prosecutor, anticipated to primarily focus on felony cases, possibly some misdemeanors and juveniles. Other prosecutorial & civil assignments as needed. Applicants should have a minimum of 2 years experience in practice, preferably in criminal prosecution. Salary DOE, with good benefits. Posting open until filled. Details at: Ravalli County website (www.rc.mt.gov) or Bitterroot Job Service, 274 Old Corvallis Road, Hamilton, MT 59840, 406-363-1822.

ASSOCIATE ATTORNEY: Maus & Nordsven, P.C., seeks an Associate Attorney. We focus on oil and gas, real estate, probate, civil litigation, criminal defense and domestic law. Situated in Dickinson, North Dakota. Send application to Maus & Nordsven, P.C., Attn: Michael J. Maus, P.O. Box 570, Dickinson, ND 58602-0570.

DEPUTY COUNTY ATTORNEY: Applicants must be licensed to practice law in the State of Montana (or expect to be licensed October 2012), and have experience in criminal law and trials. Experience advising county or city governments also preferred. This position requires knowledge of criminal law and procedure, rules of evidence, civil procedure, and familiarity with computerized legal research and word processing. Successful applicant will prosecute misdemeanor and felony matters, youth court matters, child abuse and neglect cases, as well as mental health commitments. Salary depends on qualifications and experience. Applicable County benefits provided. Submit a letter of interest, resume, writing sample, transcript and two (2) letters of recommendation to: Carolyn Berkram, Glacier County Attorney, P.O. Box 428, Cut Bank, Montana 59427. Open until filled.

UNIQUE OPPORTUNITY FOR ESTATE PLANNING ATTORNEY: Solo-practitioner in Billings looking for smart, entrepreneurial & compassionate attorney to join our 30+ yr old practice with potential to assume a leadership role over the next few years. Some estate planning experience an advantage but not a requirement. This is also a great opportunity for an attorney tired of litigation or interested in expanding into a new practice area. For more information , contact me by email at james@thompsonlawfirm-mt.com or James W. Thompson, Thompson Law Firm, PLLC, 176 South 32nd Street West, Suite 4, Billings, MT 59102-6867. Please include details about your background and current and future goals.

ATTORNEY: Bulman Law Associates PLLC, a health and safety law firm, is seeking two disability lawyer trainees. The positions are based in Missoula. The associates will initially master social security disability and workers' compensation law. Prior background in science or medicine helpful, but all applicants will be given consideration. Contact: Thomas Bulman (406) 721-7744, P.O. Box 7804, Missoula MT 59807. Thomas@bulmanlaw.com

ATTORNEY: Southwestern Montana practitioner seeking to hire attorney for general practice. 2-5 years experience preferred. New graduates may apply. Please send letter of application, references, resume, transcript, and writing sample to W.G. Gilbert, III, P.O. Box 345, Dillon, MT 59725. All applications confidential. Open until filled.

ATTORNEY: Bozeman general practice firm seeks an attorney to complement their litigation and transaction practice. The perfect candidate has at least 3 years experience, and excellent analytical and communication skills. We offer competitive compensation, based on performance and qualifications. Please send resume and writing sample to menasco@law-advisor.com . All applications will be held in confidence.

ASSOCIATE ATTORNEY: Sullivan Tabaracci & Rhoades, P.C., seeks an associate attorney with no less than five years experience to primarily assist in its litigation practice. We focus upon commercial, real estate, and business law. We provide associates with excellent opportunities to expand their legal practice. In our effort to exceed our client's expectations, we hire only exceptional attorneys and staff. Situated in centrally-located Missoula, the firm's offices offer a spacious, technologically advanced and pleasant work environment. Successful applicants must be licensed to practice law in the State of Montana and demonstrate an exceptional academic background as well as superior research, analytical, verbal and writing capabilities. All applications will be held in confidence. Please submit your cover letter and resume to: Sullivan, Tabaracci & Rhoades, PC, Attn: Office Administrator, 1821 South Avenue West, Third Floor, Missoula, MT 59801. Email info@montanalawyer.com. Visit www.montanalawyer.com.

ASSOCIATE ATTORNEY: Great Falls firm seeking an associate attorney with 2-5 years litigation experience. We are seeking applicants with strong research and writing skills. Salary will be commensurate with experience. Benefits also offered. Please send resume, writing sample and references to mailbox@montanabar.org. Please put position #2012-03 in subject line. All inquiries will be kept confidential.

ATTORNEY POSITIONS SOUGHT

CONSERVE YOUR ENERGY for your clients and opposing counsel. I draft concise, convincing trial or appellate briefs, or edit your work. Well-versed in Montana tort law; two decades of experience in bankruptcy matters; a quick study in other disciplines. UM Journalism School (honors); Boston College Law School (high honors). Negotiable hourly or flat rates. Excellent local references. mdenevi@bresnan.net. (406) 541-0416

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

LEGAL RESEARCH & SUPPORT SERVICES

VIRTUAL BANKRUPTCY ASSISTANT: Virtual bankruptcy preparation can save you time and money. Your bankruptcy petitions will be processed in a skillful and timely manner. I have over 15 years bankruptcy petition preparation experience. Member of the National Association of Virtual Bankruptcy Assistants. Let me help you help your clients. AnnAdlerVBA@gmail.com

OFFICE SPACE/SHARE

MISSOULA: Missoula office space available. Across the street from the County Courthouse. 215 W. Broadway. Furnished or unfurnished. Parking, storage, conference room. Share rent and utilities. Call Morgan Modine 406 542-1111

MISSOULA: Professional office space in downtown Missoula. 1,369 total sq.ft.; three large offices with windows, conference room, built in reception area, built in work station and kitchenette. New carpet and fully handicap accessible. $19/sq. ft. with tenant paying electricity and janitorial. Please contact Kandy Jenkins at Boone Karlberg – (406) 543-6646.

CONSULTANTS & EXPERTS

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

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

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

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

INVESTIGATORS

INVESTIGATIONS, SURVEILLANCE & LOCATES: Professional and affordable, private investigations led by 29-year Great Falls Police Captain Bryan Lockerby. FBI National Academy graduate. Surveillance, statements, and more. Database for locating subjects. (No criminal defense work.) Cover entire state. Lighthouse Investigations LLC, PO Box 3443, Great Falls MT 59403; (406) 899-8782; www.lighthouseinvestigations.net.

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

EVICTIONS

EVICTIONS LAWYER: We do hundreds of evictions statewide. Send your landlord clients to us. We'll respect your "ownership" of their other business. Call for prices. Hess-Homeier Law Firm, (406) 549-9611, thesshomeier@msn.com. See website at www.montanaevictions.com. BILL TO: Hess Homeier Law Firm, 445 S. 5tth West, Missoula MT

MONTANA LAWYER
State Bar of Montana

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