

# MONTANA LAWYER

State Bar  
— of —  
Montana

June/July 2015 | Vol. 40, No. 8

## Legislative Update

How bills from the 2015  
Montana Legislative  
Session will impact  
civil law practice  
**Plus:** Wrap-up of  
State Bar's lobbying  
efforts at session



### Also in this edition:

- > Embracing Technology: State Bar discusses competency issue at long-range planning meeting
- > Leslie Halligan selected to replace Hon. Ed McLean as state District Court Judge in Missoula
- > New Veterans' Law Section approved by State Bar Board of Trustees
- > Gaps and Barriers: American Indians, Native Americans face unique obstacles to justice
- > Domestic Violence: Immigrant spouses often face new threat, fear of deportation
- > Attorney, former PSC chair Bill Gallagher dies of pancreatic cancer at age 55
- > Alcohol laws in Montana: Distilleries industry has had a resurgence in recent years

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

# INDEX

## June/July 2015

### Feature Stories

Civil Law: Legislative Session update.....	8
Gaps and Barriers: Indians and Alaska Natives .....	12
Embracing Technology: Bar Weighs Competence Issue .....	16
Internet of Everything Raises Privacy Concerns.....	18
Lessons You Didn't Learn in Law School .....	20
Domestic Violence: Immigrant Spouses .....	24
Alcohol Laws in Montana: Distilleries .....	26

### Regular Features

Member News .....	4-5
Court orders .....	4
State Bar News.....	6-7
CLE .....	23
Obituaries.....	28
Job Postings/Classifieds.....	29-31

# Suggestions for summer reading (if you must read this summer)

**T**ime for the “Summer Reading Suggestions.” That is what publications do this time of year. I thought I would take a stab at it. Montana’s premier attorney and raconteur Bruce Lee would urge a volume of W. Somerset Maugham stories, thus I make that note here.

My advice, don’t read a thing. Reading is a winter sport. If you need to read, read the mayfly hatch, the clouds in the West, the mood of your dog, or the facial suggestions of intimacy from a spouse or — not necessarily significant — other.

Growing up, some summers I read everything I got my hands on. It wasn’t much. One summer, I read three tattered USGS maps; the instructions on the back of a Krusteaz pancake mix (only add water); and a Playboy I smuggled into a center pack so it would not have any chance of being found when Dad worked to balance the panniers. When I say “smuggled,” I mean all the stealth of an eighth-grader who for some reason convinced himself that his dad had not been 13 years old at any time. I spent the summer in the Beartooths wrangling fish, dudes, donkeys, relatives, mosquitoes and arm loads of firewood. There was one choice of booze in camp – Early Times. My dad had fashioned a way to pack a small wooden keg, filled with the Demon drink, on a center back into the Beartooths. During one week, we entertained a group of executives from the East Coast. When the fish were caught, cleaned and consumed, the dishes done, the sun set, it was “Times” time. I sat outside the flame’s light, anonymous, and listened. Occasionally a gracious guest would summon a fresh one from the keg, and I would season my fruit cocktail cup with a bit of brew. But, mostly I listened. I learned more about psychology, business and the human condition by listening to these fellows discuss life than I could have from any book. About day two or three in any hunting or fishing camp, the pretenses erode, and the truth bubbles up. The silly veneers vanish and the humanity which these men were so eager to mask, once exposed, revealed them as far deeper, more thoughtful, textured and humane than they ever would have revealed anywhere else. If I would have had a reading list, I would have missed all this.

I spent my summer before law school near Winifred on Whiskey Ridge near Dog Creek. My dad and I lived

in a camper and I was a faux ranch hand. Again, I read everything I could get my hands on, which consisted of the menu at the Winifred Bar; the blinking Great Falls Select beer neon at the Down Below Bar; and a copy of Hemingway’s The Nick Adams Stories. Not much. But, I suffered through this spat of illiteracy, not much the worse for wear.

Sometimes, I have been hostile to summer reading. Driving up the Beartooth Highway; up Highway One in California; or over the Going to the Sun Highway with the whole family reading, usually Harry Potter. LOOK KIDS!!! Yeah, dad, we saw it.

But, you’ve paid your dues, you deserve a reading list. I cannot craft much of a fiction reading list. I don’t read much fiction. My neighbor, fellow Montana lawyer, Carrie LaSeur, just published “The Home Place” set in Billings, Hardin and Nye, Montana. I need to give it a plug. I tried to keep up with John Grisham and his lawyer- and law-themed novels, but they sort of fizzled out for me. I am about 1,300 volumes behind. Anything by Ivan Doig will fit in just fine, especially now that we mourn his April 9 death. Mark Twain I have trouble with because he is such a good writer I find his skills a bit intimidating.

Melville, Tolstoy, Shakespeare and Joyce are not summer stuff, and also too hard for me even in the winter.

If you are a lawyer, especially in your first 10 years, given that I promised a reading list, here is what I recommend. Numerous great lawyers have written great first books on lawyers. I say “first books” because universally their first books are their best. They go downhill fast.

Here is my list of a few.

1. “Gunning for Justice” – Gerry Spence
2. “My Life in Court” – Louis Nizer
3. “The Defense Never Rests” – F. Lee Bailey and Harvey Aronson
4. “Black’s Law” – Roy Black
5. “The Best Defense” – Alan M. Dershowitz
6. Our friend Robert Bennett’s book – “In the Ring: The Trials of a Washington Lawyer”
7. “The Lazy B: Growing up on a Cattle Ranch in the American Southwest” – Justice Sandra Day O’Connor
8. “Thurgood Marshall: American Revolutionary” – Juan Williams

— Mark D. Parker

### Retired Helena attorney publishes memoir

Attorney Lyle Manley, of Helena, has written a memoir, "Adventures of a Misfit."

The book, published by Sweetgrass Books, is 477 pages and retails for \$24. It is available at local bookstores, amazon.com

and barnesandnoble.com and also by contacting Manley at lyleanna@bresnan.net.



Manley was born in Bozeman, when his parents were living on a farm near Pony. Shortly thereafter, the family moved to Long Beach, Calif., where the memoir begins. The early portion of the book describes some hard lessons learned due to the author's experimentation with graffiti and other performance arts. In June of 1959, the family returned to its roots in Pony, where they spent a largely idyllic summer amid the mountains and

streams and countless relatives.

That fall the family moved to Bozeman where the author began fourth grade. The book details the struggles of finding one's way in a strange, new town. While the story is personal, it brings back experiences common to most baby-boomers, such as playing Little League baseball, joining the Cub Scouts, learning to ice skate and receiving a bloody nose, all while experiencing the complications of individuality and acceptance.

Manley graduated from the University of Montana Law

School in 1979. He has lived in Helena since that time, where he worked as an attorney for the state for over 30 years. He has retired from the active practice of law and spends his time writing, serving on a number of volunteer boards, home brewing and caring for an elderly mother. His wife, Anna Miller, works for the state in Helena.

### Keogh joins Worden Thane as associate

Worden Thane P.C. has announced that Ross Keogh has joined the firm as a new associate. Ross graduated with honors from the University of Montana School of Law in 2014.



Keogh

While in law school, Keogh was a member and editor of the Public Lands and Resources Law Review and Jessup Moot Court Team. He was also selected as the recipient of the Margery Hunter Brown Assistantship to analyze structures to facilitate tribal ownership of renewable energy.

Keogh has a master's in economics from the University of Montana, and a Bachelor of Arts from Vassar College. His practice focuses on issues of corporate formation, natural resources, business planning and succession, and tax law.

### Missoula Municipal Court seeks judge pro tem

Missoula Municipal Court is looking for attorneys who are interested in serving as a judge pro tem.

To qualify you must be a member of the bar in good standing and must not appear regularly in Missoula Municipal Court. Experience in Criminal Law is preferred.

Please send letters of interest to Judge Kathleen Jenks, 435 Ryman, Missoula, MT 59802.

## Court Orders

### Connors ordered to be censured, put on probation for ineffective counsel charge

**Summarized from an order in case No. PR 14-0682**

The Montana Supreme Court ordered attorney Joseph C. Connors to receive a public censure, pay restitution of \$2,500 to former clients and serve a two-year probation.

Connors admitted he did not make an appearance on a client's behalf in a probate case and did little to pursue her interests before terminating. He also failed to communicate in writing the scope of the representation and the basis or rate of the fee and expenses. In a separate criminal case, Connors admitted failing to provide competent representation to a client. He did not respond to inquiries from the defendant and failed to communicate a plea offer from the prosecutor or discuss it with the defendant. Connors also failed to promptly and fully respond to inquiries from Disciplinary Counsel in both cases.

Part of the conditions of his probation includes coordinating with a mentor appointed to monitor his practice and review the

status of any of his litigation cases. He is also required to make contact with the Montana Lawyers Assistance Program coordinator at least once every two weeks during his probation.

### Sutton suspended for misrepresenting status

**Summarized from an order in case No. PR 15-0031**

The Montana Supreme Court issued an order on May 5 that attorney Jeffrey L. Sutton to be suspended from the practice of law in Montana for 45 days.

Sutton admitted that he failed to disclose his status as an alleged victim and witness while visiting his girlfriend at the Cascade County Detention Center. He admitted that, in doing so, he violated Rules 8.4(c) and (d) of the Montana Rules of Professional Conduct by committing acts of dishonesty, misrepresentation and omission that resulted in prejudice to the administration of justice.

Sutton was ordered to pay costs incurred by the Office of Disciplinary Counsel and the Commission on Practice.



### Governor taps Halligan 4th Judicial District judge

Gov. Steve Bullock has appointed Leslie Halligan to replace Judge Ed McLean as Fourth Judicial District Court judge.

McLean retired on April 30.



Halligan

The governor chose Halligan, the current district court standing master, to serve as the new judge that will preside over cases in Missoula and Mineral counties.

Halligan is also chair of the board of the State Bar of Montana and an adjunct professor at the University of Montana School of Law in Child

Advocacy Law.

She is a graduate of the University of Montana and the UM School of Law.

### Judicial Nomination Commission forwards 4 names to governor for 8th Judicial District judge

The Judicial Nomination Commission has submitted four names to Gov. Steve Bullock for consideration for appointment to the seat to be vacated by Judge Kenneth Neill in the 8th Judicial District (Cascade County):

- John Andrew Kutzman
- Allen Page Lanning
- Michael Leon Rausch
- Joseph M. Sullivan

The Commission's action followed the close of a 30-day public comment period. Before recommending the four nominees to the governor, Commission members interviewed six candidates on Monday, May 18. Also interviewing were Kory Larsen and Kathleen Jensen.

The governor must fill the position within 30 days of receipt of the nominees from the Commission. The person appointed by the governor is subject to election at the primary and general elections in 2016. The candidate elected in 2016 will serve until January 2019.

### Ninth Judicial District CLE, trap shoot set

The Ninth Judicial District Bar Association will have a CLE seminar and trap shoot shootout on Friday, June 5, in Conrad.

The CLE will be from 10 a.m. to 3 p.m., with 4 CLE credits pending, including 2 ethics. Non-9th Judicial District Bar Association members will be charged a \$15 registration fee.

Presenting will be Kristen Juras, Real Estate Partition; Angie Wagenhals, Pro Bono; Mike Larson, Jeopardy!!; and Scott Radford, How to Protect Consumers from FCRA Violations by Data Brokers.

The trap shoot will start at 3:30 p.m. A 25-shot round is \$11 and includes ammunition and clay pigeons, or \$6.50 for shells and \$4.50 for birds.

The event will be at the Pondera County Shooting Sports Complex, 972 Granite St.



THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

## MONTANA CHAPTER

*The following attorneys are recognized for*

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Great Falls



Gary Zadick  
Great Falls

**Check Detailed Bios & Available Dates Online at [www.MontanaMediators.org](http://www.MontanaMediators.org)**

*As approved by local members of the national plaintiff (AAJ) and defense (DRI) bar associations\**

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# UM law school renamed for Great Falls attorney after \$10 million donation

The Montana Board of Regents on May 22 approved renaming University of Montana School of Law in honor of Great Falls attorney Alexander Blewett III.

The name change came after Blewett and his wife, Andrea, made a \$10 million donation to the law school.

Blewett studied law at UM after graduating from Montana State University. His sons, Anders and Drew, both graduated from UM and received their law degrees from the UM law school.

The Board voted 5-0 with Regent Bill Johnstone absent and Regent Martha Sheehy abstaining. According to news reports, Sheehy praised the Blewett family for their gift but also criticized the lack of public participation in the process. Sheehy is a Billings attorney and past president of the State Bar of Montana.

Interim law school dean Greg Munro said in a statement that the money will help students, and it will create a special program at the school. In part, the gift is creating an endowed chair in consumer law and a consumer law and protection program.

The funds will also provide \$1.5 million for the Access to Legal Education Scholarship Fund. Munro said the scholarship donation is structured as a giving challenge; Blewett and his family will match every gift of at least \$500 others give toward law scholarships with an equal contribution to the fund. If the challenge is met, new scholarship donations will total \$3 million.

The Blewetts' gift will nearly double the size of the law school's endowment, raising it to over \$21 million, Munro said.

Blewett credited the law school for his success in a state-ment. He has twice been named the Montana Trial Lawyers Association Trial Lawyer of the Year and also was the only Montana lawyer admitted to the 100 Mountain States Super Lawyers of 2012, according to the UM foundation.

"I received an outstanding legal education at UM Law, as did my father and our two sons," Blewett said. "We love the law school and wanted to do something to ensure that future generations have that same opportunity."

## State Bar News

# Veterans' Law Section OK'd at May meeting

The State Bar of Montana's Board of Trustees approved the creation of a new section, the Veterans' Law Section, at its May 15 meeting.

The section is open to any member of the State Bar or the Bar's Paralegal Section.

The Section's aim is to address and, when possible, resolve the many legal issues faced by Montana's military veterans and their families. The section will create a pool of veteran-issue-savvy lawyers to lean forward and assist when a veteran with legal issues comes to our attention.

Section attorneys could assist in the *pro bono* Legal Document Clinics held around the state, coordinate with the MLSA or the Bar's Self-Help Centers in order to address veteran-specific issues, and appear at the Veteran Stand-Downs in or near their community to address veteran issues.

To join the section, go to the State Bar website, [montanabar.org](http://montanabar.org), and under the drop-down menu "STORE," select "MEMBERSHIP." Section membership will be free for the first year.

The section also has a page at the State Bar website. The page is private, and you must be a member to access it. To get to the page, sign in at [montanabar.org](http://montanabar.org), go to "PRIVATE GROUPS,"

click on "SECTION," then select "VETERANS LAW."

The Section will be scheduling a meeting before early July in order to elect officers and initiate Section activities.

One of the section's first activities will be to co-host a free CLE being put together for Friday afternoon, Aug. 7, during the Helena Area Veterans' Symposium to be held at Carroll College. The CLE will be requested for two hours' credit, and will be on "Military Financial/Legal Issues and the Law." More information will be posted on the Section's website and in the August Montana Lawyer.

## Ethics Committee deadline on tech guidelines

After a lively discussion, the State Bar Board of Trustees voted to give the Bar's Ethics Committee a six-month deadline to make a decision on endorsing the American Bar Association's Ethics 20/20 guidelines on technology at its May 15-16 meeting.

The meeting coincided with the Board's long-range planning meeting that focused on issues related to legal technology (see story on page 16).

Pete Habein, chair of the Ethics Committee, suggested the six-month deadline to Trustees before the vote.

# Bar has successful lobbying efforts in 2015 Montana Legislative Session

The State Bar of Montana had a successful session when it came to lobbying for or against bills in the 2015 Legislature.

The bar took positions supporting six bills before the Legislature. All were successful, except Senate Bill 235, which would have clarified that Judicial Branch budget proposals must be included in the budget submitted by the governor without changes. That bill passed the Legislature but was vetoed.

Of the four bills the Bar actively opposed, only one was passed into law.

## Bills supported by State Bar

■ **HB 74:** Require notice to the attorney general regarding data breaches, sponsored by Ryan Lynch (D) HD76. SIGNED BY GOVERNOR AND BECAME LAW.


## Lobbying reimbursement for members

According to Board of Trustees Policy 3-104(c), an active member of the State Bar of Montana may, within 45 days of the date of publication, file with the executive director a written objection to a particular position of political or ideological expenditure, or the failure of the Bar to properly classify a particular expenditure as political or ideological. Failure to object within this time period shall constitute a waiver of any right to object to the particular issue or expenditure.

To receive a refund, send a request to: Lobbying Refund, State Bar of Montana, P.O. Box 577, Helena, MT 59624.

Register online at [montanabar.org](http://montanabar.org)

## CYBERSLEUTH'S Guide to the Internet



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.

### Billings

Crowne Plaza  
Tuesday, June 16, 2015

### Helena

Great Northern Hotel  
Thursday, June 18, 2015

6 CLE, including 2 ethics

Internet for Lawyers | State Bar of Montana | CLE Institute

■ **HB 430:** Provide for an interim judicial redistricting commission, sponsored by Steve Fitzpatrick (R) HD69. SIGNED BY GOVERNOR AND BECAME LAW.

■ **SB 15:** Clarify laws relating to the call of a retired judge or justice, sponsored by Sponsor – Nels Swandal (R) SD30. SIGNED BY GOVERNOR AND BECAME LAW.

■ **SB 89:** Sponsor – John Brenden (R) SD17 – Require supreme court justices/district court judges to file financial reports, sponsored by John Brenden (R) SD17. SIGNED BY GOVERNOR AND BECAME LAW.

■ **SB 235:** Sponsor – Kris Hansen (R) SD14 – An act clarifying that Judicial Branch budget proposals must be included in the budget submitted by the governor without changes. VETOED BY GOVERNOR AND DIED.

■ **SR 53:** Resolution to confirm Jonathan Motl as commissioner of political practices. ADOPTED AND FILED WITH SECRETARY OF STATE

### Bills opposed by State Bar

■ **HB 255:** Referendum regarding disqualification of judges receiving certain contributions, sponsored by Matthew Monforton (R) HD69. TABLED IN HOUSE JUDICIARY COMMITTEE AND DIED.

■ **HB 272:** Adoption of the uniform collaborative law act, sponsored by Ellie Boldman Hill. SIGNED BY GOVERNOR AND BECAME LAW.

■ **HB 424:** Bill to revise public meeting laws related to the Montana Supreme Court, sponsored by Matthew Monforton (R) HD69. MISSED DEADLINE FOR TRANSMITTAL AND DIED.



# A look at bills from session that impact civil law, courts, judges

The Montana Legislature passed dozens of bills in the 2015 Legislature that impact the practice of law in the state.

In all, 1,187 bills were introduced in the session, compared to 1,201 in the 2013 session, according to information provided by the State of Montana Legislative Services Division. Of the bills that were introduced, 512 were passed by both the House and the Senate. Another 55 passed both houses but were vetoed by Gov. Steve Bullock.

Ten of the vetoed bills were polled for possible override, but as of May 28, none had been overridden.

The following is a brief look at a number of the bills passed by the Legislature and which were not vetoed by the governor that pertain to civil law or directly affect the courts and/or judges. The bills are broken down by the area of law that they impact.

This information was compiled by Helen Thigpen of Legislative Services for a presentation she gave to the Montana judges' spring 2015 conference.

Please note that there may be bills

To learn more information about any of the bills listed below, go to the Montana Legislature's bill information page. [http://laws.leg.mt.gov/legprd/law0203w\\$.startup?P\\_SESS=20151](http://laws.leg.mt.gov/legprd/law0203w$.startup?P_SESS=20151).

## Contracts

- **Liability waivers and releases** (HB 204): Amends the Montana Recreational Responsibility Act of 2009 to authorize the use of pre-activity written waivers or releases for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks inherent in a sport or recreational opportunity. Took effect May 5.

## Courts/Judges

- **Authorize temporary appointment in vacancy of workers' compensation court judge** (SB 4): Allows the chief justice to appoint a substitute judge for the workers' compensation court if the office becomes vacant before the vacancy is permanently filled. The appointment must be made from a list of persons who are interested in the position or from the pool of retired state district court judges. The bill also addresses appointments in the event of a temporary vacancy that prohibits the judge from carrying out the duties of the office for more than 60 days. Effective Oct. 1.
- **Call of a retired judge or justice** (SB 15): Clarifies that a

## More on legislative session coming

**Look in future editions of the Montana Lawyer for updates on bills that came out of the legislative session that impact criminal law and health care law.**

retired judge or justice may handle all phases of a case if that judge is called in for service. Took effect Feb. 17.

- **Allow political party endorsements and expenditures in judicial races** (SB 72): Allows political parties to endorse and make expenditures to endorse judicial candidates, including justice of the peace candidates. See *Sanders County Republican Central Committee v. Bullock*, 698 F.3d 741 (9th Cir. 2012). Effective Oct. 1.
- **Require Supreme Court justices and district court judges to file certain financial reports** (SB 89): Amends 2-2-106, MCA, to require Supreme Court justices and district court judges to file a business disclosure statement with the Commissioner of Political Practices. The statement must include: (1) information regarding past or present employers from which the individual receives benefits, including retirement benefits; (2) businesses or corporate interests in which the individual holds an interest; (3) any entity in which the individual is an officer or director; and (4) all real property, other than a personal residence, in which the individual holds an interest. Forms are available from the Commissioner of Political Practices. Effective Oct. 1.
- **Jury selection laws** (SB 139): Provides that the portion of jury lists selected from registered electors will include only registered active electors. An active elector is defined as an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices. Took effect March 16.
- **Pretrial diversion laws** (HB 195): Amends 46-16-130, MCA, to allow a deferred prosecution to be entered into upon notification by the prosecutor to the court. Prior to passage, a deferred prosecution could be entered into only with the approval of the court. HB 195 does not apply to participation in drug treatment courts or mental health treatment courts, which both require approval by the prosecutor, the defense, and the court. Took effect Feb. 27.
- **Clarify standing provisions in water court proceedings** (SB





361): Provides that a person who has an ownership, leasehold, economic, or clearly demonstrated particularized interest in an existing water right, permit, certificate, state water reservation, or right to receive water through an irrigation project may object in the water court, provided the person's interest has been affected by the temporary preliminary or preliminary decree. Effective Oct. 1.

- **County district court clerk and justice of the peace compensation laws** (HB 366): Authorizes district court clerks and justices of the peace to receive up to \$2,000 a year in addition to their base salary. Effective July 1.
- **Salary for certain justice positions** (HB 461): Revises 7-4-2503, which addresses salary schedules for certain county officers, to provide that a justice of the peace for a justice's court of record may receive, in addition to the base salary, compensation up to an amount allowed by 3-10-207, MCA, and provides for additional longevity increases for deputy county attorneys. Effective July 1.
- **Laws relating to search warrants** (HB 518): Amends 46-11-701, MCA (pretrial proceedings – exclusion of public and sealing of records) to allow a judge to seal a search warrant until: (1) a date certain; (2) the occurrence of a specific event; (3) the filing of a charge arising from or related to the execution of the search warrant; or (4) such other time as the judge deems appropriate. The affidavit in support of the warrant must include a request by the peace officer to seal the documents. Took effect April 1.

### Evidence

- **Clarify rules of evidence for mental health professional-client privilege** (HB 513): Revises the psychologist-client privilege statute (26-1-807, MCA) to extend the confidential communication privilege to psychiatrists, licensed professional counselors, and licensed clinical social workers. Took effect April 2. (See the Evidence Corner article by Professor Cynthia Ford in the May issue of Montana Lawyer for an in-depth look at this change.)
- **Laws regarding older persons** (HB 410): Creates a new provision in Title 46 that allows otherwise inadmissible hearsay to be admitted into evidence in a criminal proceeding when the declarant of the out-of-court statement is an older person (65+), incapacitated person, or an individual with a developmental disability who is the alleged victim of exploitation or a witness to alleged exploitation of an older person, incapacitated person, or developmentally disabled person. Also establishes a new offense in Title 45 regarding the exploitation of older persons, incapacitated persons, and persons with developmental disabilities. Effective Oct. 1.

### Family Law

- **Provide for a decree of dissolution without a hearing when uncontested** (HB 12): Allows parties to a dissolution or legal separation to request entry of a decree without a hearing by filing joint or individual affidavits with the court, and allows the court to enter the decree without a hearing in certain cases. Effective Oct. 1, and applies to dissolution cases filed on or after Oct. 1.
- **Adjust debt limit allowed for summary dissolution** (HB 26): Amends the amount of unpaid, unsecured obligations and the amount of assets that a party to a summary dissolution proceeding may have from \$8,000 to \$20,000. Effective

Oct. 1.

- **Clarify who must move to amend parenting plan when one parent relocates** (HB 129): Clarifies that a parent who is subject to a parenting plan and who intends to change residence is responsible for filing the motion to amend the parenting plan if the parents cannot agree to a change in the residential schedule. Effective Oct. 1.
- **Revise grandparent/grandchild contact laws** (HB 165): Allows for the court to appoint a guardian ad litem to represent the best interests of a child with respect to grandparent-grandchild contact. Effective Oct. 1.
- **Adopt 2008 Uniform Interstate Family Support Act (UIFSA)** (HB 227): Amends the current version of UIFSA to comport with the obligations of the United States under the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. Federal law passed in 2014 requires all states to enact the 2008 version of UIFSA to continue receiving federal payments for the state child support enforcement program. In general, the amendments provide a framework for child support collection between states, tribes and other countries. Effective July 1.
- **Revise adoption laws related to release of birth certificates to adoptees** (HB 397): Revises birth certificate release laws, including allowing the birth parent to change a request to withhold a birth certificate from an adult adoptee without a court order. Effective Oct. 1.
- **Establish child abuse court diversion pilot project** (HB 612): Establishes a temporary child abuse court diversion pilot project administered by the court administrator's office to informally resolve cases in which a child has been removed from the custody of a parent, guardian, or other person having physical or legal custody of the child. Effective July 1.

### Landlord/Tenant

- **Court authorization required for notices of no contact between landlord and tenant** (SB 384): Requires that a notice of a no-contact order to a landlord for the benefit of a tenant or to a tenant for the benefit of a landlord may only be authorized pursuant to a no-contact order issued by a court of competent jurisdiction. Effective Oct. 1.
- **Generally revise landlord tenant laws** (SB 385): Revises definitions in the Residential Landlord and Tenant Act and Montana Residential Mobile Home Lot Rental Act and provides that a court shall issue a writ of possession if the landlord's claim for possession is granted. Effective Oct. 1.

### Mental Health

- **Appropriate money for new or expanded mental health crisis intervention** (HB 33): Appropriates money for new or expanded mental health crisis intervention and provides that money appropriated must be used to: (1) create crisis intervention or jail diversion services in areas of the state that currently lack services; (2) provide new crisis intervention or diversion services in areas of the state that have received state matching funds for other services; or (3) recognize an increase in the demand for or use of services that have received funding in previous years. Effective July 1.

Legislature, next page

- **Appropriate money for additional secure psychiatric detention beds** (HB 35): Appropriates money to the Department of Public Health and Human Services for short-term inpatient treatment. Effective July 1.
- **Appropriate money for youth crisis diversion pilot projects** (HB 47): Appropriates money to the Department of Public Health and Human Services for pilot projects involving youth mental health crisis diversion activities and requires DPHHS to grant money to up to six licensed children's mental health providers for community-based mental health crisis diversion services for youth. The money must be used for a specified purpose, including but not limited to a 24-hour crisis line, mental health crisis management, or short-term residential crisis stabilization services. Effective July 1.
- **Revising terminology relating to mental illness** (HB 382): Replaces references to "mental disease or defect," "mental defect" or similar phrases with references to "mental disease or disorder," "mental disorder" or similar phrases. Effective April 1.
- **Improve outcomes for youth in the children's mental health system** (HB 422): Requires the Department of Public Health and Human Services to establish a pilot project to improve outcomes for youth in the children's mental health system and to develop performance-based reimbursement options for providers that are identified by an interim study on improved youth outcomes. The purpose of the project is to: (1) improve youth outcomes by stabilizing youth and their families with appropriate services and supports; (2) improve the partnership and collaborative efforts between DPHHS and children's mental health service providers; and (3) link documented outcomes to performance-based reimbursement options for providers. Effective July 1.
- **Revising laws on period of commitment or treatment of developmentally disabled** (HB 468): Provides that the maximum period of commitment to a residential facility may not exceed 90 days or, for a community treatment plan, 1 year. Effective Oct. 1.
- **Revising laws regarding the commitment of incapacitated persons** (HB 517): Revises guardianship laws to allow a full guardian or limited guardian to seek admission of the ward for stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility, other than the Montana state hospital, if the court finds that the ward has a primary diagnosis of a major neurocognitive disorder (primarily dementia). Effective Jan. 1, 2016.

## Property

- **Patent and copyright trolling laws** (SB 39): Creates a civil cause of action for the bad faith assertion of a patent right, prohibits a person from stating in bad faith that the intended recipient or an affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person in certain cases, and authorizes the attorney general to conduct civil investigations and bring civil actions for violations. Took effect April 2.
- **Expediting recovery of trustee sale surplus funds** (HB 164): Requires a party to file a petition with the court for

the disbursal of surplus trustee sale funds, requires trustee sale funds to be deposited with the clerk and recorder of the county in which the sale took place, along with notice of the amount of the surplus funds, requires the clerk to notify the parties, and authorizes a party who is awarded any portion of surplus funds because of an existing interest in or lien against the property to seek costs and attorney fees from the surplus funds. Effective Oct. 1.

- **Laws regarding legal fences** (HB 557): Revises the definition of a legal fence by providing that a legal fence must be at least 42 inches high, but not more than 48 inches high, and includes an electric three-wire fence within the definition of a legal fence. Took effect April 17.

## Right to Know/Right to Participate

- **Right to participate laws related to attorney fees** (HB 447): Allows a prevailing party in a proceeding to enforce right to participate laws to recover costs and reasonable attorney fees. Took effect April 23.
- **Right to know laws related to attorney fees** (HB 448): Allows a prevailing party in a proceeding to enforce right-to-know laws to be awarded costs and reasonable attorney fees. Took effect April 27.

## Tort Reform

- **Creating the Montana Health and Economic Livelihood Partnership Act** (HELP Act) to Expand Medicaid Coverage to Additional Individuals (SB 405): Accepts federal funds to expand Medicaid coverage to Montanans earning less than 138 percent of the federal poverty line. The bill includes certain tort reform provisions, including: (1) requiring a plaintiff in a medical malpractice action to accomplish service within six months after filing the complaint or risk having the complaint dismissed without prejudice unless the defendant has made an appearance; (2) extends 27-2-205, MCA, regarding actions for medical malpractice to physician assistants, dental hygienists, and advanced practice registered nurses; and (3) shortens the time-frame for the commencement of malpractice actions from 3 years to 2 years after the date of injury or after the plaintiff discovers the injury. The tort reform provisions are effective April 29, while the remainder of the bill is effective upon approval of the U.S. Department of Health of Human Services.

## Trusts and Estates

- **Provide for Uniform Powers of Appointment Act** (UPAA) (SB 253): Adopts the UPAA, which generally codifies existing common law with respect to powers of appointment. The UPAA is based on the Restatement (3rd) of Property and provides statutory consistency and authority with respect to the creation, revocation, and use of powers of appointment. The bill also repeals 70-1-704, 72-2-618, and 72-2-714, MCA. Effective Oct. 1.
- **Montana Uniform Trust Code** (UTC) (HB 436): Makes certain updates to the UTC, which was adopted in 2013, as suggested by the business, trusts, and estates section of the State Bar of Montana. Addresses consistency issues, including provisions in 72-38-1008, MCA, which addresses the exculpation of a trustee; clarifies that a certification of trust must

identify the governing state law; and clarifies that a certification may not be construed as constituting consent by any person receiving a certification of trust to the jurisdiction or application of the laws of any state. Effective Oct. 1.

### Miscellaneous

- **Asset forfeiture** (HB 463): Revises asset forfeiture laws by: (1) prohibiting forfeiture of property unless the owner has been convicted of a criminal offense, the criminal offense specifically provides for forfeiture of property upon conviction, and the property has been found by clear and convincing evidence to have been used in connection with or to constitute proceeds from the criminal offense; (2) requiring notice to owners of seized property; (3) requiring property subject to forfeiture to be identified in the charging documents; (4) establishing a pretrial hearing process in which a defendant may challenge the validity of the seizure; and (5) requiring the court to hold a hearing following a conviction to determine whether the property must be forfeited. Effective July 1.
- **Adoption of the Uniform Collaborative Law Act (UCLA)** (HB 272): Enacts the UCLA, which establishes a voluntary dispute resolution process in which the parties agree to work toward resolving disputes out of court. In general, the UCLA formalizes the collaborative law process by establishing certain minimum criteria for participation in the collaborative process, specifies when and how the collaborative process is initiated, clarifies the scope of representation, addresses representation issues if the collaborative process is terminated, addresses confidentiality issues, and authorizes a court to approve and enforce a collaborative law agreement. Under the UCLA, participation is voluntary and does not prohibit subsequent litigation. Effective Oct. 1.

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**How does the LRIS work?** Calls coming into the LRIS represent every segment of society with every type of legal issue imaginable. Many of the calls we receive are from out of State or even out of the country, looking for a Montana attorney. When a call comes into the LRIS line, the caller is asked about the nature of the problem or issue. Many callers “just have a question” or “don’t have any money to pay an attorney”. As often as possible, we try to help people find the answers to their questions or direct them to another resource for assistance. If an attorney is needed, they are provided with the name and phone number of an attorney based on location and area of practice. It is then up to the caller to contact the attorney referred to schedule an initial consultation.

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# And justice for all, someday: Indians, Alaska Natives face unique obstacles

By Professor Maylinn Smith

American Indians and Alaska Natives experience many of the same barriers to legal services that other similarly situated individuals encounter. Poverty, unemployment, transportation issues, communication difficulties, limited access to attorneys, the rural nature of communities, and limits on technological resources are barriers commonly identified when analyzing gaps in legal services. American Indians and Alaska Natives often experience these same limitations, but additional barriers regularly exist that can profoundly impact both the quality and quantity of the legal services received by this segment of society.

For many American Indians and Alaska Natives there are additional factors affecting their ability to adequately address legal needs. Conditions such as implicit biases within governing legal systems; a lack of cultural awareness among service providers and the various court systems; a lack of awareness of, or appreciation for, tribal customs and traditions, and communication styles that can differ significantly from those utilized in dominant society all impact the experiences of American Indians and Alaska Natives involved in state and federal justice systems. Within tribal systems there is an inadequate number of attorneys with knowledge of Indian law principles even licensed to practice in any tribal court; a minimum number of law enforcement officers monitoring activities within Indian country; and complex jurisdictional provisions that must be evaluated and navigated when a matter occurs within Indian country all affect delivery of legal services in Indian country. Regardless of the justice system involved, there can be a reluctance to trust outsiders due to the past policies and practices of non-Indian entities toward tribal people that makes information gathering more challenging. These are just a few of the conditions making access to justice more problematic for American Indians and Alaska Natives.

Seven Indian reservations are located in Montana. These areas are the homelands to 11 federally recognized tribes. In addition, Montana has recognized the Little Shell Tribe which continues its efforts to obtain federal recognition. More than eight million acres of land in Montana are Indian country and nearly two-thirds of the Indian population, which makes up approximately 6.5 percent of Montana's population, is domiciled within Indian country.

Whether an American Indian or Alaska Native resides within or outside of Indian country, there can be significant challenges obtaining adequate legal assistance. The following scenarios illustrate some of the unique challenges associated with handling legal matters involving American Indians and Alaska Natives.

■ **An individual residing within Indian country experiences domestic violence by a partner.** Which sovereigns will have jurisdiction over this matter? Tribal, state or federal? What law enforcement division should be notified of the situation? How will the victim notify law enforcement? The answers require an appreciation of factors beyond what is experienced outside of Indian country.

Initially, a factual determination regarding the status of both

parties must be made. If the victim is Indian and the perpetrator is Indian, the tribal system will have jurisdiction over any criminal charges filed in association with this offense. Depending on the severity of the violence, the federal system may exercise concurrent jurisdiction over the perpetrator under dual sovereignty theories. If a state has assumed criminal jurisdiction within Indian country, in accordance with 280 requirements<sup>1</sup>, a state may have concurrent jurisdiction over the perpetrator instead of the federal system. In Montana, the Confederated Salish and Kootenai Tribes is the only tribe which has consented to limited P.L. 280 jurisdiction on its reservation. If the victim is Indian and the perpetrator is non-Indian, the federal system historically has had exclusive criminal jurisdiction in the absence of a P.L. 280 situation. Responding to statistics showing violence against American Indians and Alaska Natives had reached epidemic proportions, and a significant number of the perpetrators were non-Indian who were systematically not being prosecuted, in 2013 Congress amended

the Violence Against Women's Act, 25 U.S.C. § 1301, *et. seq.* Now tribal governments may exercise criminal jurisdiction over certain non-Indian defendants when the tribal system ensures the identified due process guarantees are provided. Currently in Montana, only the Assiniboine and Sioux Tribes of the Fort Peck Reservation

*Without adequate knowledge of tribal cultures, contemporary and historical issues impacting Indian peoples, and the laws applicable to Indian country, access to justice for American Indians and Alaska Natives can never be achieved.*

1 Enacted by Congress in 1953, Public Law 83-280, (P.L. 280), is a transfer of jurisdictional authority from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments.



have taken the required steps to exercise special domestic violence jurisdiction over non-Indian defendants.

This level of jurisdictional complexity means individuals involved in domestic violence related situations may be subject to interviews from numerous justice systems; require assistance from someone with legal knowledge about the operations of all three possible justice systems; and, will need to insure that any protective orders issued will in fact be recognized by all three sovereigns in accordance with federal statutory requirements.

■ Assume now that the parties in the above situation wish to obtain a dissolution. Even though the federal court system is no longer implicated, a complex jurisdictional analysis must occur for purposes of determining whether the matter should be filed in a state court or in a tribal court. Depending on where the parties are domiciled, whether the parties are members of a tribe, what the tribal code allows, and whether any involved children are members of a tribe, more than one tribal court could possibly exercise jurisdiction in this matter, in addition to possible state court jurisdiction. Navigating legal systems becomes even more challenging when multiple jurisdictions are involved and there may be intra-tribal or inter-tribal conflicts associated with the legal issues that involve tribal customs and traditions.

Finding an attorney willing to assist in this type of family law matter is difficult even if the parties have resources to pay for services. Now imagine the difficulties associated with obtaining a divorce when someone is asking for free legal representation in a small rural community and there are Indian law issues associated with the action. Although Montana Legal Services Association can assist victims of domestic violence with dissolutions, only three MLSA attorneys are currently providing direct services in Indian country. The number of attorneys licensed to practice in the tribal courts on any of the seven reservations found within Montana remains disproportionately low compared to the legal needs in Indian country. This number shrinks further when those reluctant to practice in the area of family law are eliminated from this select group.

■ **Now assume, as a result of the domestic violence situation, the children of this family have been removed by protective services.** This removal can involve tribal social services programs, Bureau of Indian Affairs social services, or state social services programs. If the removal involves a state action and the parents or Indian custodian is not domiciled within Indian country, the requirements of the Indian Child Welfare Act, 25 U.S.C. §1901 *et. seq.*, are triggered. This federal statute establishes the minimum standards that must be followed in state custody proceedings involving an Indian child. There are very specific notice provisions under this statute that must be followed, higher standards of proof required and detailed placement preferences imposed on state actions. Without access to legal representation from someone with an adequate knowledge of the federal requirements, the dual purposes of the Indian Child Welfare Act may not be realized. As a result both Indian parents and tribes may suffer the loss of an Indian child.

■ **Due to injuries inflicted in the domestic violence situation, an Indian parent dies.** This parent had fractionated interests in trust lands located on three different reservations, as well as personal property. The parent had no will. Determining the children's inheritance will involve an understanding of the American

## About the Gaps and Barriers series

This is the fourth installment in a series of articles giving an in-depth look at "The Justice Gap in Montana: As Vast as Big Sky Country," a study authorized by the Montana Access to Justice Commission. Past articles in the series looked at veterans and victims of domestic violence as populations in particular need of consideration. Future installments will examine other populations the study identified as needing particular consideration: the mentally ill or mentally disabled, Native Americans, and people with limited English proficiency or who are hearing impaired.

Indian Probate Reform Act, possibly three different tribal codes, and the customs and traditions for handling the property of a deceased tribal member. Finding legal representation in this matter is probably going to be difficult due to the multi-jurisdictional situation, the need to have a working knowledge of tribal customs and traditions, and a lack of resources to pay for the services of an attorney given the nature of tribal trust property.

These examples illustrate some of the challenges faced by American Indians and Alaska Natives dealing with legal issues both within and outside of Indian country. They do not reflect the legal impacts of implicit bias that contributes to disproportionate incarceration of American Indians and Alaska Natives; to the disproportionate removal of Indian children from their families by state agencies; to voting rights issues within Indian country; to disparities in educational achievements of American Indians and Alaska Natives, nor to racism and discrimination directed toward American Indians and Alaska Natives in housing, employment and health and welfare situations.

Access to justice for many Indian peoples remains an unattainable goal. This reality for American Indians and Alaska Natives can be changed by creating pipelines to employment, higher education and alternative dispute processes that utilize traditional community-based problem-solving techniques, which are not based on the adversarial state and federal justice systems model. Without adequate knowledge of tribal cultures, contemporary and historical issues impacting Indian peoples, and the laws applicable to Indian country, access to justice for American Indians and Alaska Natives can never be achieved. This reality can be changed by expanding the Montana constitutional Indian Education for All requirements to reach beyond K-12 education. Incorporating this principle into the higher education system; making it part of governmental training obligations, and covering it through professional licensing requirements could meaningfully improve access to justice issues for American Indians and Alaska Natives. Montana has a sizeable population of American Indians and Alaska Natives, and significant amount of Indian country within its borders. If Montana is going to fulfill its constitutional commitment to preserving the cultural heritage of American Indians, it must address the fact that access to justice issues can adversely impact cultural preservation efforts.

**Professor Maylinn Smith is director of the Margery Hunter Brown Indian Law Clinic at the University of Montana School of Law.**

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# Embracing technology

## State Bar Board of Trustees discusses adoption of ABA model rule guidelines

By Joe Menden

**T**echnology — particularly when it applies to competence of an attorney — is a word that can strike fear into the hearts of some lawyers.

But according to participants in a panel discussion at the State Bar's long-range planning meeting in May, that doesn't need to be the case.

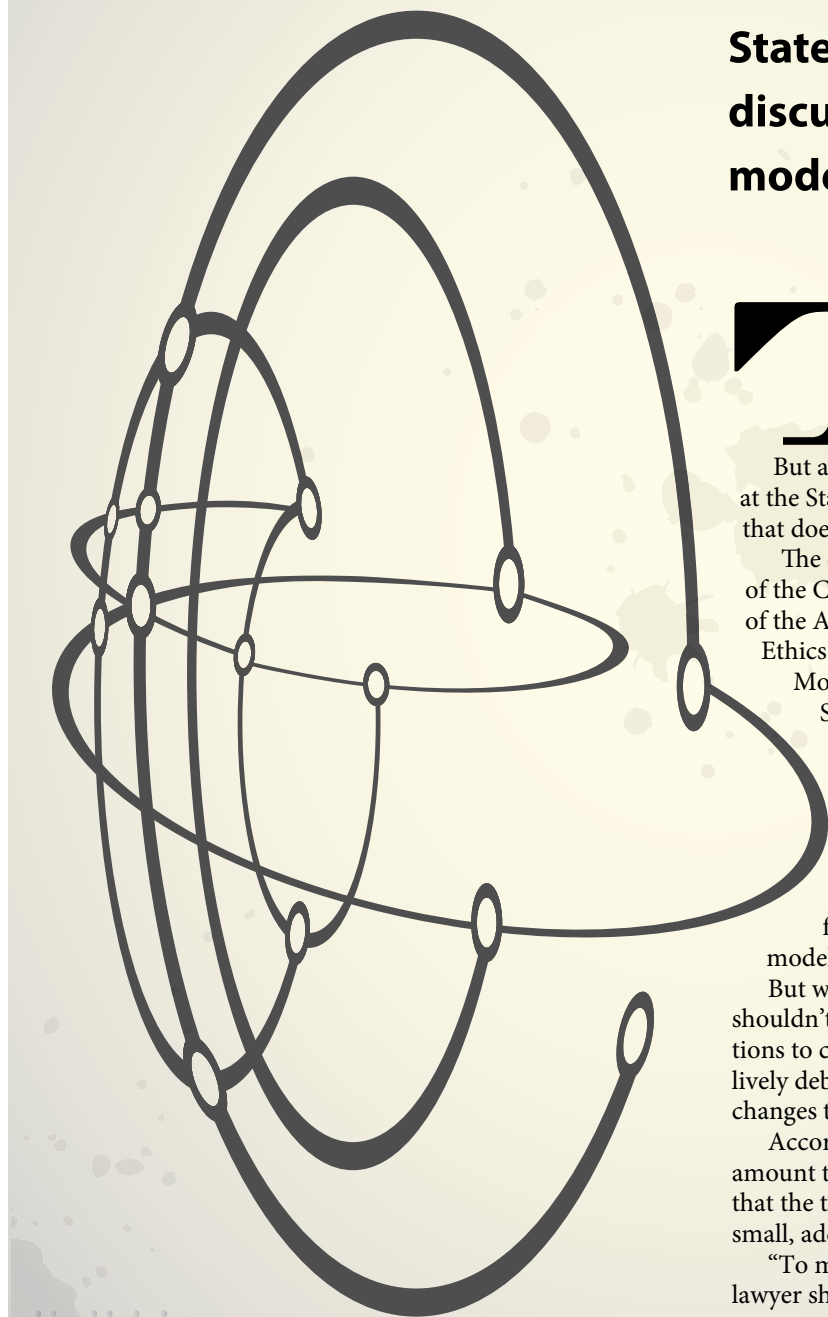
The discussion — led by Fred Ury, a past president of the Connecticut Bar Association and a member of the American Bar Association's Commission on Ethics 20/20; Pete Habein, chair of the State Bar of Montana's Ethics Committee; Shane Vannatta, State Bar delegate to the ABA; and Joe Sullivan, chair of the bar's Technology Committee — focused on recent changes to the ABA's model rules on competence to include technology and whether the State Bar of Montana should adopt them.

All four members of the panel said they favor the Bar endorsing the changes to the model rules, as did most members of the Board.

But while no one present argued that attorneys shouldn't have to worry about technology or its implications to client confidentiality, the discussion did spark a lively debate on the merits of the State Bar adopting the changes to the model rules.

According to Vannatta, attorneys' fears on the issue amount to much ado about very little. He pointed out that the technology competence change is actually very small, adding one nine-word clause:

"To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and







From left, Pete Habein, chair of the State Bar of Montana Ethics Committee, Fred Ury, of the American Bar Association's Commission on Ethics 20/20, Joe Sullivan, chair of the bar's Technology Committee, and Shane Vannatta, the State Bar delegate to the ABA, participate in a panel discussion at the bar's long-range planning meeting May 16.

its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” (Emphasis added.)

Vannatta said visceral response to that of some people is, “I don’t know all this technology, and I don’t know if I can understand it.” But in reality, he said, the rule doesn’t require technological proficiency — only that attorneys understand that there are risks associated with using technology in their practice and take reasonable steps to ensure confidential data is not compromised.

“I don’t think it’s as scary as people think,” Vannatta said. “We have a unique opportunity as a board and as a bar: There’s technology out there. Let’s be aware of it. We don’t need to be experts

at it, but we do need to understand how it impacts our responsibilities. Competence and confidentiality are bedrock principles of our profession.

Sullivan said the Technology Committee unanimously supports adopting the rule changes as they exist. “This is minimal,” he said. “We’d like to see more.”

He said the committee wants to be seen as a resource for attorneys to go to and ask for advice.

He said one way of doing that will be to give attorneys resources to understand what equipment and software is out there and what some good options are to help them effectively run their practice. The committee plans to review software and products, he said, and make the reviews available on the committee’s website and in the Montana Lawyer.

Sullivan added that the committee also plans to continually update its resources page to give members an idea of where they need to be headed.

“Our goal is, if they’re not at the level of competence they need, helping them get to that level,” he said.

Habein said he supports the rule change but that there are some on the Ethics Committee who have reservations, which has delayed the committee in making a recommendation to the board on the matter.

He noted that the Ethics Committee has a responsibility to be slower and more deliberate than the Technology Committee, because it deals with the discipline of attorneys, and once the committee’s work is done, it is harder to be undone.

# Advances will keep transforming our lives — and threaten privacy, security

By Sharon D. Nelson, Esq. and John W. Simek  
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What does the Internet of Everything mean for lawyers? Evidence — lots and lots of new sources of evidence. The continuing loss of privacy. A life that is so connected to the Internet that it will be hard to get through even a few minutes of our day without the Internet having an impact. But we are ahead of ourselves — so let's step back and analyze an accelerating trend.

We first became interested in the Internet of Everything (known as IoE) when wearable technology became the hot new trend. We've heard the words for a couple of years but wearable tech really started to pick up steam in 2014 as companies rushed to the marketplace with, in particular, smartwatches.

Research firm Gartner anticipates that revenues from wearable tech will more than triple by 2016, going from \$1.6 billion to \$5 billion. It is no wonder that companies are rushing to board that train.

## A Day in the Life of an IoE Lawyer

The day is not far off when we will be awakened by a clock that we have programmed over the Internet. We will wake, by our choice, to slowly increasing light, gradually louder nature sounds, or one of many other possibilities. If you prefer, your smartwatch can do the same thing — or just pulse gently on your wrist or not so gently until you turn it off. Your “smart” home will either sense that you are up through your motion or be programmed to know your wake-up time. Lights, music, TV — everything will come on as you walk down the hall. By the time you get to the kitchen, your coffee will be ready and waiting. Your refrigerator may remind you that you are out of milk — or simply order it for you.

If you hop on the treadmill, your smartwatch will dutifully record your pulse, heart rate, miles logged, speed, etc. and place it all conveniently on the Internet for you. No data entry required.

As you check your e-mail on your smartphone, you can also remotely turn on the car to warm it up if it is cold — and no worries about thieves — the doors are locked and will not unlock until you step outside because only the proximity of your smart key can unlock them. Pull out of the driveway and your smart home will lower the heat and turn off the lights. The car itself will notify your secretary that you are on your way in — and via the car and Bluetooth, you can do a little billing by talking to clients about case strategy while you sit in traffic. In the not-too-distant future, the car will drive itself, constantly pinging the Internet for the fastest route in current traffic.

When you get to work, it will be to an office that a previous generation would not recognize — where the Internet is, even



more than today, in constant use. Remote appearances in court will be the rule rather than the exception, with real-time recording of proceedings and real time machine-assisted translation where needed. And of course, proceedings will be webcast by default.

Your smartphone or smartwatch, both of which have access to your calendar, will softly ping you from time to time so you don't forget to call a client or attend a meeting – they will know how long it will take you to get to the airport and remind you when it is time to leave. Even while clearing security, you'll be able to keep up with your e-mails and texts while standing in line thanks to your smartwatch or smartphone. Or if you prefer Google Glass, it can serve the same function – and let you videoconference with clients. And if you don't mind people thinking you're talking to yourself, you can inquire from either device about the weather at your destination. Hungry? Stop and grab a burger – and pay with your iPhone via ApplePay.

All of this is only the tip of the iceberg.

## The Testimony of Your Nest Thermostat

Suddenly, everyone is talking about the Internet of Everything, many about the marvels it will provide and a fair number talking about privacy implications. We recently attended a CLE taught by digital forensics expert (and good friend) Craig Ball who pointed out that the new world has given us many new sources of evidence.

The audience was stunned when he said that one day his Nest thermostat might provide evidence against him.

The Nest Learning Thermostat learns your schedule, when you are away and when you are home — and it can be manually programmed using a browser or an app. While the machine's "evidence" that you were "likely gone" because of your customary schedule is suspect, if you have deliberately connected to the device over the Net and adjusted the temperature to reflect that you would be away for two days, that action could effectively counter your sworn testimony that you were at home when your business partner was murdered.

## Smartwatches and Smartphones

Of course, there are plenty of smartwatches available now, including, among others, the Samsung Gear, the LG G, the Moto 360 and the Apple Watch.

If you've ever wondered how lawyers use a smartwatch, just Google Florida solo practitioner Rick Georges and the word "smartwatch" and you'll find articles and podcasts describing his love affair with his Samsung Gear 2. As he points out, lawyers get in trouble using their smartphones in court, but the more subtle use of the smartwatch doesn't seem to cause a problem.

And who among you does not own a smartphone? We have already given up much of our privacy by allowing apps (and the phone manufacturer and service provider) to collect our data. But it will get worse.

Already, some smartphones can recognize a face or a voice, providing ample evidence of where you were and what you said. Technology can also analyze our voices to determine emotion. Moodies, an app developed by Beyond Verbal, is able to detect a speaker's mood based on nothing more than a voice. Worldwide call centers are testing the technology to help operators determine whether callers are upset and likely to switch their business to a competitor unless they are moved up in the queue.

Many app-makers are experimenting with software that can also analyze someone's emotions or honesty by a few facial cues. Sensors could be on your wristband activity tracker (which connects to the Net too), your smartphone or your smartwatch, continuously tracking your emotions. Software is currently being developed to analyze emotions and then project the results on a screen such as Google Glass.

What will happen to the white lies we live by? "I'm so happy to see you" to someone you can't stand. "Of course I remember you" to someone who is nowhere in your memory banks. And what about the common phenomenon of someone saying "I love you" — when they don't? The consequences there could be far more serious.

Politicians might be driven out of politics by technology that could determine whether they are lying. Hmm, now there's a

thought . . .

## How Big a Deal is IoE?

Pretty darn big. We referred to the company Nest above. It is fascinating that Google purchased Nest in January of 2014 for the whopping price tag of \$3.2 billion. Do you think Google sees a future in IoE? At work, at home, in cars — on phones, computers, tablets, appliances — in wearable tech (on people and animals) and in machines of all descriptions. On wired or wireless networks, Google (and many others, notably including Apple) see the world through the prism of endless interconnection possibilities.

We live in a world where cars drive themselves, health monitors can interact with medical staff, and refrigerators can order food for you (they can also send out spam if compromised — yes, this has really happened). We can make sure our elderly parents take their meds and even watch or listen to them to make sure they haven't fallen. We can watch our kids at school and our dogs at the doggie day care center. It is getting to the point where we almost lose track of all the ways in which we are connected to the Internet.

This is largely the point. When Apple representatives talk about the "Apple ecosystem", they refer to having interconnected computers everywhere in our lives.

## Privacy

In a full-blown Apple ecosystem, how much would Apple know about you? A whole lot.

How safe is our data in such an interconnected world? Which laws apply to protect it? Can the U.S. protect information that will likely be scattered across the globe with domestic laws alone? Is there any realistic way for international law to govern and to be adequately enforced?

From a government snooping point of view, the IoE is a Christmas gift many times over. Data, data everywhere. The more IoE you have, the more you can analyze the resulting "big data" and even anonymized information might lead to identifying individuals and their activities. It is simply a complicated mosaic which the supercomputers can figure out — far better and faster than the humans.

Needless to say, from the point of view of commercial vendors, all the data about us will be collected, analyzed and sold. As it is often wryly observed, "If something online appears to be free, you are the product."

## Security

While we used the word "privacy" as a subhead, we might just as well have used the word "security" since the two are so closely intertwined. The greater the volume of data kept on all of us, the less likely it is to be adequately secured. And we guarantee, much of the time, we will be so busy living our lives connected to the Net or functioning via the Net (sometimes without any real thought on our part) that we will be clueless about all the "evidence" we leave documenting where we are, what we are doing, thinking, buying, etc.

Cybercriminals will exploit the data, happy to know

Internet, page 22

# 10 lessons law school didn't teach you



*This article was originally published by Lawyerist.com.*

By Jeena Cho

It is often said law schools fail to prepare students for the actual practice of law.

Yes, law school does a good job at training you to “think like a lawyer” and spot issues, do legal research, draft legal documents, and put together a legal argument. But there are so many practical things that law school doesn’t teach you, especially a number of soft skills. This includes things like social grace, communication, language, personal habits, friendliness, optimism, and resilience.

Here are ten critical skills missing from many law school curricula.

## 1. How to Handle Conflict

Related “Don’t Let Intimidation Drive Your Litigation Strategy”

Most of the time, your client will be in a conflict with someone else. Your role is to represent the client in the conflict with competence. Most people don’t enjoy being in conflict. Conflict is uncomfortable, triggers stress responses, and can make you angry. Because of our desire to win, it often brings out the absolute worst in all of us.

Law schools should teach ways of engaging in conflict that are constructive, healthy, and maintains civil relationships with opposing counsel. This can be done by valuing emotional intelligence, tact, and grace over aggression. Law schools should teach students that they are a part of the larger legal community, and today’s opposing counsel may be tomorrow’s judge, co-counsel, co-worker, or your best referral partner. Students should never think about an interaction with a particular lawyer as a single transaction.

Law students should also learn different conflict styles and be familiar with their own conflict style. Graduates should come with a toolbox full of different ways of living with, working through, and managing conflict. It’s not enough to teach or talk about civility as an abstract concept. Students should also understand that conflict isn’t inherently bad, and can be used as an opportunity to grow and strengthen a relationship.

## 2. How to Forgive

“Resentment is like drinking poison and waiting for it to kill your enemy.” – Nelson Mandela

I used to walk around with a rolodex of every terrible thing that people said or did to me. This included classmates, bosses, co-workers, judges, opposing counsel, clients, family, and friends.

That’s a lot of baggage to carry around.

When you’re in the conflict management business, people are bound to step on your toes and piss you off. How do you let go of these feelings of anger, resentment, hostility and revenge? How do you stop these experiences from consuming you?

The answer lies with forgiveness. Forgiveness doesn’t mean you forget about what the other person did (that’s probably unwise anyway). It doesn’t mean you have to kiss and make up. It’s not about repairing the relationship, although, in certain situations, it can certainly involve that. And it doesn’t mean letting the other person off the hook or condoning their behavior.

The primary beneficiary of forgiveness is yourself.

Law schools can foster an environment where forgiveness is a valued skill by encouraging professors to discuss it in the classroom and give students the opportunity to practice it. To forgive each other can enhance the moral of the student body and increase social bond.

## 3. How to Have Difficult and Uncomfortable Conversations

I could not have imagined the incredibly difficult conversations I would have with my clients over the years. There are the usual uncomfortable calls to remind a client about an unpaid invoice, quoting a fee, or telling her that you lost a Motion for Summary Judgement.

We constantly deal with incredibly delicate issues and are charged with delivering life altering news yet we don’t receive any training on how to do this. We also don’t receive any training on ways to manage our own internal challenges of being in these difficult situations.

It took me many years to figure out how to manage these



difficult conversations with grace, authenticity, and compassion — key ingredients needed to make a good lawyer.

#### **4. How to be Present**

Related “How to Increase Focus on Productivity with Mindfulness”

As lawyers, our time is the commodity we trade for money. The more fully present we can be in each moment, the better we will be as lawyers. Luckily, being in the moment is a trainable and learnable skill.

Some law schools are, in fact, teaching contemplative lawyering skills, which includes mindfulness — learning to be in the present moment without preference or judgment.

As lawyers, we must be agile and able to pivot as information is gathered. If our mind is completely preoccupied with thoughts about the future or the past, we can't be fully be present to process the information available to us, hindering our ability to be agile and pivot when necessary.

#### **5. How to Maintain Physical and Emotional Health**

As lawyers, we have a duty to provide competent representation to a client. And to do that, we must maintain our mental, emotional, and physical health.

The key to maintaining your mental, emotional, and physical health is self-care. You must be self-aware enough to recognize and care for your mental health, which requires noticing when you are experiencing stress or anxiety. In order to care for your emotions, you must be able to recognize when you are experiencing negative emotions and find healthy ways of working through them. Maintaining your physical health requires a balance of exercise, rest, and a healthy diet.

Law schools should bring more awareness to this and start teaching law students tools for self-care. This would help many of the problems which is so prevalent in our profession — burnout, depression, alcohol and substance abuse.

#### **6. How to Be Compassionate**

When I say compassionate, what I am referring to is our innate feeling of wanting to help when witnessing someone else's suffering. What I am not referring to is sympathy, being soft, or let's hold hands and sing Kumbaya.

In our line of work, we often witness a lot of pain. Rarely do clients come into our office to share happy news. In many ways, our relationship to our clients is very intimate. We gain inside information about our client that she wouldn't share with anyone else. Therefore, our ability to handle the suffering of our clients without losing ourselves is a critically important skill.

Maintaining a healthy balance between our client's difficulties and ourselves is a skill that can only come with practice. It's important to know how to be compassionate with our client's suffering while being compassionate towards ourselves. This is an essential part of self-care. If we can't recognize that we're hurting and take time to care for ourselves, we begin to deplete our mental and emotional reserve. When lawyers continue to push ourselves without refilling our reserve, he or she will experience burnout.

#### **7. How to Manage Personal Finances**

Law students often graduate with \$150,000 or more in student loan debt. Rarely do these students seriously think about what repaying that amount of debt looks like. When I taught a Solo Practice Management course, I was surprised at how few students could answer questions these basic questions:

How much do you owe?

What will be your monthly minimum payments?

How much do you have to earn to be able to repay that loan within a reasonable amount of time?

If your gross income was \$100,000, what would be your net income?

What is your anticipated monthly living expenses?

As a bankruptcy attorney, I'm seeing an increased number of graduates (some law school graduates) who clearly had little or no understanding of what it will take to repay the debt. Even one-day course on personal finance would go a long way in giving students basic tools to help understand and manage their financial futures.

#### **8. How to Manage Law Firm Finances**

For most lawyers, the practice of law is a business. It's a profit driven activity, yet there is little or no emphasis on the business end of the law practice. This includes things like law firm finance, understanding overhead, hiring/managing staff, how to price your services, as well as marketing and advertising. Some basic knowledge of law firm finance would not only benefit students who are going into solo practice, but also those who go on to work in a law firm.

#### **9. How to Create and Sustain Your Own Brand**

Long gone are the days where most law student graduates find a nice associate job, make partner seven years later, and retire at the same firm. Lawyers must actively market and brand themselves. They must also grow and learn to leverage their network. They must figure out their own networking style and understand what works for them. This doesn't happen overnight. It's a skill law students should be encouraged to hone from their first day in law school.

Law students should be familiar with social media and proper ways to use it to promote themselves. Too often, law students don't pay enough attention to networking during law school.

#### **10. How to Collaborate With Others (Nicely)**

During my first year in law school, I was doing legal research for a Research & Writing class. When I went to the library to pull the book that I needed, I was horrified to find that the pages I needed had been torn out of the book. Stories like this are all too familiar in law school. I don't know if law school attracts students who enjoy aggressive competition, or if law school trains them to become this way, but we must equip students with more tools than one.

Law students should understand that even in adversarial situations, cooperation is often critical in moving a case forward towards a resolution. Students should also know you can zealously represent your clients without demonizing the other side. And at the end of the day, you can safely enjoy a beer with opposing counsel.

***Jeena Cho is a bankruptcy lawyer in San Francisco, California who also teaches mindfulness and meditation to lawyers. Her second book, The Anxious Lawyer will be published this year.***

when we are not at home, or where our expensive car is. They are no doubt chortling at the constant proliferation of data about individuals that will be available to them. As noted above, they have already utilized a refrigerator to create a botnet to send out spam — and how many other smart appliances are there?

We have already seen how easy it is to hack a car to cause an accident or how simple it might be to hack a medical device like (yikes) a pacemaker. Former Vice President Dick Cheney was so concerned about this that he deactivated the Wi-Fi function on his pacemaker.

A July 2014 HP study revealed that 70 percent of IoE devices use unencrypted network services and 80 percent of devices did not require passwords of sufficient length and complexity. Why? Because the majority of IoE devices are targeted to the consumer, where convenience and ease of use are far more important than security. Adding security, authentication and logging functions will also add additional cost. Hence the resistance to go down that road.

As ever, encryption is your friend, and you should encrypt your data wherever possible, but all too often, the protection of your data, including your law firm data, is managed (or mismanaged) by a third party over whom you have no control.

IoE will mean a wealth of opportunity for legal privacy and

cybersecurity experts. If you are looking for “open space” in a crowded field of horses, this is your chance to make a run for the roses.

## **The Future of IoE**

While no one can predict the future of IoE with any certainty, the vast monies invested in it indicate that widespread adoption is inevitable. Our guess is that in no more than 5-10 years IoE will be the rule rather than the exception for all except the poor.

We can pretty well guarantee that the law will lag far behind the technology, as it always has. Law firms, many of which don't even have “bring your own device” (BYOD) policies, will fail to adopt policies or controls governing IoE in the workplace. Privacy will continue to diminish and governments and cybercriminals will increasingly snoop on all of us, each for their own reasons.

The IoE is unstoppable. Like a global earthquake, it is sure to rattle (and open) windows into all our lives. Lawyers will need to be vigilant that their personal and professional use of the IoE doesn't result in the compromise of client data. The line between personal and professional use may blur beyond recognition in an always-connected world.

***Sharon D. Nelson and John W. Simek are the president and vice president of Sensei Enterprises, a digital forensics, information technology and information security firm in Fairfax, Va.***

“We need to be careful about the way we tweak and modify model rules. If you change one rule, you affect a whole series of other rules,” Habein said. “You have to be careful what you touch, you don't know what it might be connected to.”

State Bar President-Elect Matt Thiel, who moderated the discussion, ended the meeting by going around the table to have all the trustees give their thoughts.

The majority said they support the changes, some saying that it is a no-brainer that the imperative of maintaining confidentiality also applies when using technology. Others commented that using technology poorly has such huge implications that a change is worthwhile and that if people are going to be using technology, they ought to be savvy enough to protect it.

Meri Althaus, who represented the New Lawyers Section at the meeting, said that most recent law school graduates understand proficiency on technology as just good business sense.

“This is the way people interact,” she said. “It's not hard (to secure digital documents). It's not expensive.”

But others weren't so sure that making technology a competence issue was such a good idea.

Trustee Jason Holden was among those who said he wasn't convinced.

“Technology is a practice management issue,” he said. “Is it

a core-competence issue? Maybe, maybe not. It's one thing to talk about helping members. It's another thing to add it to the code of conduct.”

Board chair Leslie Halligan said she struggled with how it is framed.

“The part I struggle with is reasonableness,” she said. “It's not well defined. It's vague, especially in a rural bar. It might be quite a different thing in Miles City than in Billings or Missoula. You never know who's meting out the discipline.”

Ury said that all of the issues raised during the board's discussion were raised when the ABA debated the issue. He wanted the ABA to go a lot further than it did, which he described as a tiny change.

“We felt the word technology had to be in there,” Ury said. Vannatta agreed with Ury.

“Clients already have the expectation that when we say we keep information confidential, that means at all times, in all formats,” Vannatta said. “The expectation is far beyond where our rules are.”

Habein requested that the Board of Trustees impose a six-month deadline on the Ethics Committee to make a decision on the technology issue, which it did. The board will then act on the recommendation at its meeting in December.

***Joe Menden is editor of the Montana Lawyer. You can reach him at 406-447-2200.***

**For more information** about upcoming State Bar CLEs, please call Tawna Meldrum at 406-447-2206. You can also find more info and register at [www.montanabar.org](http://www.montanabar.org). Just click in the Calendar on the upper left of the home page to find links to registration for CLE events. We also mail out fliers for multi-credit CLE sessions, but not for one-hour CLE or webinars.

# Learn to research like a private eye with Cybersleuth's Guide to Internet

Learn how the Internet is changing the way legal professionals need to research and run their practice to competently represent their clients with Cybersleuth's Guide to the Internet.

The program will be in Billings Tuesday, June 16, and Helena Thursday, June 18, with 6.0 CLE credits, including 2 ethics.

Don't be left behind in exploiting this gold mine of information that will help you meet your investigative research obligations. 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 unearth information free (or at low cost!) on the Web.

Attendees will learn strategies for discovery, trial preparation and successfully completing transactions. Some of the highlights:

- Master Google for more effective searches, background checks on people and companies, uncovering news from current and archival sources, and locate information from "the invisible Web";
- Go beyond Google to track down altered or deleted Web pages, authenticate altered or deleted Web pages, learn about other search engines and discover meta-search sites;
- Learn how to search like a private investigator to uncover driver's license records, mine the Web for missing people, extract background information from dockets and more;
- Access expensive databases for free—to find factual information, background information, newspaper and magazine articles and press releases;
- Use social networking sites for investigative research;
- Learn about Fastcase — an alternative to Lexis and Westlaw, and a FREE member benefit for all active attorney and paralegal members of the State Bar of Montana.

Each attendee will also receive a copy of Levitt and Rosch's 500-page book, "The Cybersleuth's Guide to the Internet," 2014 edition, a \$64.95 value.

## Litigating Parental Alienation Cases CLE

Family law cases that involve, or potentially involve, Parental Alienation (PA) can be especially difficult. This workshop will help attorneys recognize PA.

The workshop will be June 26 in Bozeman and is approved for 7.0 CLE credits.

Participants will learn to identify specific behaviors of the favored, or alienating parent, and those of the rejected parent and the affected child, that are commonly observed in these cases. Presenters will cover what PA is and provide suggestions about case management, litigation strategy, and options for families where PA is at issue. Faculty are:

- Robert A. Evans, Ph.D. Approved sponsor of continuing education for psychologists by the American Psychological Association. Approved by many bar associations to conduct CLE on many topics, including Litigating Family Law Cases with Parental Alienation.
- Jennifer Schmieding Bjelland, MS, LCPC. Licensed Marriage and Family Therapist. Her practice in Bozeman focuses on counseling for families, parenting evaluations, parenting coordination, and guardian ad litem work.
- Kathleen Rock (formerly Cullen) JD, MS, LCPC. Licensed Clinical Professional Counselor in Montana, Certified Family Law Mediator, and Certified Advanced Life Coach. She has extensive experience with mood disorders, guardian ad litem, parenting coordination and parenting evaluation.
- Shirley Wantland. Co-founder of Recovery Consultants LLC, which works with adolescents and adults with alcohol/substance abuse, mental health and behavioral issues.
- Kellie A. Voyich, JD. Livingston attorney who has consistently acted as a guardian ad litem and parenting evaluator for over 20 years. The majority of her practice focuses on domestic relations and mediation work. She has mediated over 1,300 family law cases.

## Other upcoming State Bar CLE

**Monday, July 15:** Subpoenas of Medical Records and Motions to Quash: Webinar

**Thursday-Friday, Aug. 20-21:** Annual Bankruptcy CLE, Great Falls

**Wednesday-Saturday, Sept. 9-11:** Annual Meeting, Missoula

**Thursday-Friday, Oct. 1-2:** Women's Law Section CLE, Chico Hot Springs

**Friday, Oct. 23:** Family Law Section, Missoula

**Friday, Oct. 30:** Tech Talk, Tech Talk, Time is Running Out, Missoula

# Immigrant abuse victims often face new threats due to status

Spouse's manipulation of system, misguided police enforcement sometimes cause additional troubles, fear of deportation

By Shahid Haque-Hausrath

Every immigration case implicates matters of family unity or separation, and can dramatically impact a client's livelihood and quality of life. Immigration matters involving domestic violence and abuse are often the most challenging — but also the most important — types of cases for immigration practitioners. In my practice, I have assisted dozens of immigrant victims of domestic abuse, including both male and female victims. In this article, I will discuss some of the common characteristics of these abusive relationships and the difficulties these victims can experience — particularly when law enforcement works against the victim instead of providing support.

## How Our Immigration System Provides Opportunities for Abusive Spouses

Immigrant victims of domestic abuse may enter the country on a marriage or fiancé(e) visa, enter the country illegally, or “overstay” a visa. The victim may be married to a U.S. citizen, a permanent resident, or another person who is undocumented. All of these factors play into the type of relief that may be available to the victim.

Abusive U.S. citizens often use their spouse's immigration status as a way to exert undue control. Often the immigrant spouse is isolated from society, unable to easily leave home because he or she lacks a driver's license, prevented from using a phone or computer to connect to friends and family, and prohibited from forming friendships with others. The abuse may manifest as physical violence or extreme emotional cruelty. The abuse is often furthered by threats of deportation if the immigrant spouse ever reports the abuse. Often, there are children in the household, and the abused spouse doesn't dare report the abuse to police because of the risk of being deported and leaving the children in the hands of the abuser.

There are many ways that an abusive spouse can use someone's immigration status as a constant threat. This type of control is possible because our immigration system provides unfortunate opportunities for U.S. citizens to manipulate their partners' ability to obtain legal immigration status. For instance, when a U.S. citizen applies for a fiancé(e) visa, the partner enters on a visa that expires unless they get married within 90 days. Sometimes the U.S. citizen deliberately refuses to get married, leaving the immigrant partner undocumented and unprotected by our immigration laws, but dependent on the abuser.

Even when a couple gets married, the U.S. citizen spouse can still wield control over the immigrant spouse. When a couple has been married for less than two years, the immigrant spouse only gets a two-year “conditional” green card. During that time, immigrant spouses could lose their status if they get divorced or separated, giving the abuser undue control during that time period. Just before the “conditional” green card expires, the couple is expected to jointly file a petition to prove that the marriage is ongoing and is genuine. If an abusive spouse intentionally misses that deadline, the immigrant spouse can be at risk of being removed (i.e. deported) from the U.S. An immigrant can request a “waiver” of the requirement to file a joint petition after the two-year period, but faces a high burden of proof to show the marriage was genuine, and many abused spouses are either unaware of this or afraid to do so.

I have seen many instances in which a U.S. citizen spouse has forced the immigrant spouse to work despite simultaneously refusing to fix the spouse's immigration status, which puts the immigrant spouse in the position of working without government authorization — often at low wages and without proper workplace protections. It also places the immigrant spouse at higher risk of being detected and arrested by immigration authorities.

## Police Need to Be Vigilant and Understanding About Immigrant Victims of Abuse

It is critically important that police be aware of these dynamics and work to protect immigrant victims of domestic abuse. However, sometimes police and immigration officials have worked against abuse victims and helped the abusers. This is due, in part, to the manner in which immigration violations have been “criminalized” in our culture. Despite the fact that most immigration violations are civil in nature, local police have incorrectly viewed them as being serious crimes, and have



overlooked the more serious issues of abuse that should be their focus.

A few years back, a female client of mine was strangled in public and police were called to the scene. The male abuser was convicted of partner/family member assault. Although they had been married for many years, and she had no impediment to getting a green card through marriage, the husband refused to follow through with a petition. He had not held a job for years, and he had forced his spouse to purchase a fake green card to obtain employment to support both him and their children. But, after his conviction, he “tipped” immigration authorities that she was undocumented and had a fake green card.

Immigration authorities took the bait. They launched an investigation and a few months after the abusive spouse’s tip, they had arrested my client, taken her into custody, and issued a final order of deportation against her. They apparently did not take note of the fact that at the time the abusive ex-spouse “tipped” them, he had already pleaded guilty to Partner/Family Member Assault, had a permanent restraining order against him, and the Missoula County Attorney’s office had just brought misdemeanor and felony charges against him for violations of the order of protection. To make matters worse, the U.S. Attorney’s Office brought charges against her in federal court for possession of a fake green card, and she pleaded guilty. Now, that conviction is posing an obstacle to getting immigration relief as an abuse victim.

## Types of Relief Available

The options available to immigrant victims of domestic abuse vary considerably depending on the circumstances, and have detailed requirements. Without delving into the minutiae of each type of relief, the following are some of the possibilities.

The Violence Against Women Act provides opportunities for the spouse of a U.S. citizen or permanent resident to “self petition” for lawful immigration status when he or she is the victim of physical abuse of extreme emotional cruelty. The petition must be filed while still married or within a year of divorce. “Good moral character” is a requirement, and is sometimes a real obstacle. In the example referenced above, U.S. Citizenship and Immigration Services agrees that my client was the victim of abuse, but is asserting that her criminal conviction for possession of a fake green card shows bad moral character. We continue to fight her case and argue that they have their priorities wrong.

When the victim of abuse cooperates with law enforcement in the prosecution of an abusive spouse, he or she may also pursue a “U” visa. This application must be certified by a Judge, prosecutor, or law enforcement officer. While many law enforcement officers are reluctant to certify due to unfamiliarity with the U visa, this visa provides a pathway to permanent residency and citizenship, and should be seriously considered.

Victims of human trafficking, whose situations may differ considerably from abused immigrant spouses of U.S. citizens, may pursue a “T visa” under the Victims of Trafficking and Violence Protection Act.

In some rare instances, an immigrant victim of domestic abuse can pursue asylum. Refugees who flee from their home countries to escape persecution on account of race, religion, political beliefs or particular social group can ask for asylum in the

U.S. It is a difficult form of relief to win due to its high burden of proof. However, we recently won asylum for a woman from Mexico who fled the country to escape her husband’s severe violence and cruelty. We were able to demonstrate that she was viewed as the property of her husband, that she had reported the abuse to police and been ignored, and that she had fled multiple times only to be captured and returned to her husband. Under these rare circumstances, the immigration judge agreed that the abuse amounted to persecution on account of her “particular social group” and that she had a reasonable fear of returning to Mexico.

## ‘Mail Order Brides’?

Sometimes, we hear of immigrant victims of domestic violence referred to as “mail order brides.” Except in the rarest instances, the term is really a misnomer, as it is not representative of most relationships or the manner in which most immigrant spouses came to the United States. In addition, it has some offensive and sexist undertones. First, it implies that the legal burden to get a visa for a spouse is easy. That is certainly not true, as one who goes through normal immigration channels to obtain entry on a fiancé(e) or marriage visa has to prove a genuine relationship, and this can often be difficult. In our practice, we have often dealt with legitimate marriage petitions that get wrongly denied because they don’t fit into traditional stereotypes.

The term also implies that the women who enter the U.S. as immigrants are complicit in wanting to enter into fake marriages just for the visa. In my experience, the immigrant spouse has typically wanted to enter into a genuine and legitimate relationship, but the relationship ends because of abuse or misconduct by the U.S. citizen.

While there are instances in which women have literally posed in magazines, been trafficked into the country, and ultimately sold into marriage, the broad usage of the term goes much farther than this limited scenario. Language is important because it shapes perspective and policy. The term is currently being used to malign legitimate relationships that may appear “suspicious” to someone based on their own preconceived ideas, but is actually just a form of stereotyping. Therefore, I encourage readers to either limit the term to the small instances where it would be correct, or simply stop using the term.

## Concluding Thoughts

If you are interested in helping immigrant victims of domestic abuse, opportunities are often available to assist. Please feel free to contact me ([Shahid@bordercrossinglaw.com](mailto:Shahid@bordercrossinglaw.com)) or any number of excellent advocates for victims of abuse, including Brandi Ries ([office@rubinrieslaw.com](mailto:office@rubinrieslaw.com)) or Hilly McGahan ([hilly@safefarbormt.org](mailto:hilly@safefarbormt.org)). We hope to create a list of volunteer attorneys we can turn to for assistance with these important cases.

***Shahid Haque-Hausrath is an immigration attorney and founder of the Border Crossing Law Firm, P.C., and also serves as president of the Montana Immigrant Justice Alliance, a nonprofit group advocating for the rights of immigrants. He will be teaching immigration law at the University of Montana School of Law starting in the fall semester.***

# Distillery industry has had resurgence last in 5 years

*Note: This is the last of three articles on Montana alcoholic beverage licensing laws. See the March and April issues of the Montana Lawyer for articles on wineries and breweries.*

**By Antoinette Tease**

This article is the third in our three-part series on the burgeoning winery, brewery and distillery industries in Montana. RoughStock Distillery of Bozeman claims to be the first legal distillery in Montana since the Prohibition, and 17 micro distilleries have opened in Montana since 2010.

According to the American Distilling Institute, the number of micro distilleries in the United States increased five-fold—from 50 to 250—from 2005 to 2012. Triple Divide Spirits, founded by attorney Karen Powell, is one of the newest Montana breweries. Located in Helena, Triple Divide Spirits introduced its first vodka a year ago. Bozeman Spirits Distillery's product line includes a huckleberry-flavored vodka and Ruby River Gin, which is flavored with botanicals from the Ruby River Valley.

There are fewer regulations governing Montana distilleries than there are for wineries and breweries, which may be one of the reasons our state has seen a proliferation of micro distilleries in recent years. Distilled spirits are also regulated on a federal level, however, and unlike beer and wine, distilled spirits may not be made at home for personal use. The production of distilled spirits in the United States requires a federal application, the posting of a bond, the use of approved equipment, a separate building (other than a personal residence), the maintenance of records and the filing of reports. One of the first things a would-be distiller must do is obtain a federal Distilled Spirits Permit (DSP) from the Alcohol and Tobacco Tax and Trade Bureau (TTB), an arm of the U.S. Treasury Department. The TTB also administers labeling requirements for all alcoholic beverage products, a full discussion of which is beyond the scope of this article. We often work with clients to ensure that their product names are available for federal trademark registration before the product label is submitted to the TTB.

Montana distilleries must also obtain a domestic distillery license from the Montana Department of Revenue, Liquor Control Division. Under current law, all distilled spirits produced in Montana must first be shipped to a warehouse in Helena for distribution by the state. Mont. Code Ann. § 16-4-311. Under House Bill 506, a bill that was passed by the 2015 Montana Legislature, a distillery producing less than 25,000 gallons of product annually will be permitted to deliver its product directly to a state agency liquor store; the distillery must use its own equipment, trucks and employees to do so, and the amount delivered must be at least a case. The bill was signed into law on April 30 and will go into effect on Jan. 1, 2016.

In a somewhat strange (and strained) juxtaposition of federal and state law, controversies have arisen in the distillery industry concerning state of origin labeling. Under U.S. trademark law, a product need not be manufactured in the state in order to

include the word "Montana" in the product name. Rather, in order to avoid a geographically misdescriptive refusal, a trademark applicant must show some nexus between the goods sold and the geographic location that is part of the trademark. For example, in the apparel category, one of my firm's clients was required to show that it planned to locate its distribution facility for a DAKOTA DIRT clothing line in North Dakota. Similarly, in the example noted above, Bozeman Spirits was required to show that its Ruby River Gin had some connection to the Ruby River Valley.

In cases involving marks that include the word "Montana," the applicant is usually required to disclaim the word "Montana" (which simply means that the owner of the mark cannot prevent others from using the word "Montana") without requiring any particular showing of connection to the state. Examples of the latter include U.S. Trademark Registration No. 3890739 for the mark Montana Ghost Wood, U.S. Trademark Registration No. 3726454 for the mark Roughstock Montana Whiskey, and U.S. Trademark Registration No. 4685436 for the mark Montana 1889 Whiskey. (If the applicant is located in Montana, the trademark office usually presumes there is some connection between the goods and the state of Montana.) In fact, the only legal requirement in terms of federal trademark registration is that the applicant show that the goods will be manufactured, packaged, shipped from, sold in *or will have any other connection with the geographic location named in the mark*. See 37 C.F.R. §2.61(b); TMEP §1210.03 (emphasis added).

In the distillery context, however, certain industry giants (Brown-Forman and Diageo) have locked horns over what constitutes "Tennessee" whiskey. A bill that was passed by the Tennessee state legislature in 2013 imposes specific limitations on when a product can be represented as a "Tennessee whiskey." For example, the bill requires that the product be manufactured from mash fermented in Tennessee, distilled in Tennessee, aged in charred oak barrels, etc. Tennessee's attorney general apparently believes the bill is unconstitutional, and its fate is uncertain. Montana has no such legislation, the salient point being that under federal trademark law, as long as the product has some connection to the state of Montana, use of the term "Montana" in connection with the name of a distilled spirit product is perfectly legal. The TTB requires that the state in which a product is distilled must be specifically identified on the label if it is *not* the state in which the distiller is located; this requirement has nothing whatsoever to do with the use of geographic terms under federal trademark law, however, and is particular to the distillery industry.

Finally, no seller of any product can make affirmative representations in connection with a product that are false or misleading; such practices are illegal under Section 43(a) of the Lanham Act.

***Antoinette Tease is a registered patent attorney in based in Billings.***



## Would you like to boost your income while serving low- and moderate-income Montanans?

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**While you are not required to accept a particular case, there are certainly benefits!**

You are covered by the Montana Legal Services malpractice insurance, when you spend 50 hours on Modest Means and / or Pro Bono work (you'll need to track your time and let us know), you will receive a free CLE certificate to attend any State Bar sponsored CLE. State Bar Bookstore Law Manuals are available to you at a discount and attorney mentors can be provided. If you're unfamiliar with a particular type of case, Modest Means can provide you with an experienced attorney mentor to help you expand your knowledge.

## Questions?

**Please email:** Kathie Lynch at [klynch@montanabar.org](mailto:klynch@montanabar.org) or Erin Farris at [erin@montanabar.org](mailto:erin@montanabar.org)

You can also call us at 442-7660.



## Are You Interested in Joining The Modest Means Program?

To get started, please fill in your contact info and mail to: *Modest Means, State Bar of Montana, PO Box 577, Helena, MT 59624.*

You can also email your contact info to Kathie Lynch -- [klynch@montanabar.org](mailto:klynch@montanabar.org)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

Email: \_\_\_\_\_

# Gallagher, former PSC chair, dies at age 55

William Anthony (Bill) Gallagher Jr., a Helena attorney and former chairman of the Montana Public Service Commission, died on May 22 of pancreatic cancer at age 55.

During Gallagher's tenure on the Public Service Commission, Montana reacquired its hydroelectric dams, which were sold off as a result of electricity deregulation in the 1990s.



Gallagher

Gallagher attended Western Montana College in Dillon on an athletic scholarship, where he said he immediately fell in love with the state.

After college, he worked as a high school history teacher and coach in Plains.

After pursuing careers in insurance and farming, he was able to "retire" at age 42, at which time he enrolled at the University of Montana School of Law.

After law school, he had a solo practice in Helena where he said he especially enjoyed helping the elderly navigate an increasingly complex business and tax world. Law school also led to him running for public office and his election to the Montana Public Service Commission.

Gallagher wrote his own obituary. In it he wrote that he was

grateful for the two years "heads up" that he was going to die, "(e)very bit of which I needed to set things right, especially torn relationships. Believe it or not, I was far from perfect. Thank you God for the time and forgiveness.

"After a long running battle with pancreatic cancer, I am headed into Chapter 3 of my life. Chapter 1 being that time that I was comfortably ensconced in my mother's womb and Chapter 2 being my delightful life here on earth."

He is survived by his wife, Jennifer, of 37 years. They had two children and five grandchildren: David Buckley Gallagher (Helena) and his son Tristan; Catrina Jean (Gallagher) Majack (Enumclaw, Wash.) and her daughters, Grace and Anna, and sons, Caleb and Samuel.

A funeral service was held May 28 at Last Chance Chapel in Helena. A graveside service was held at the Plains Cemetery in Plains. In lieu of flowers please make donations in Bill's name to [optionsfriends.org](http://optionsfriends.org) or Options Women's Clinic on Facebook or mail to 1005 Partridge Place, Ste. 1, Helena, MT 59602.

Visit [www.aswfuneralhome.com](http://www.aswfuneralhome.com) to offer the family condolences, share a memory of Bill and read his full obituary.

## Robert J. (Bob) Holland

Bob Holland of Butte passed away on April 23, 2015, just two weeks short of his 90th birthday.

He was born on May 7, 1925, in Butte to Patrick "Paddy" and Lila Mae "Chick" Holland. Bob grew up in Butte with his sister, Patricia "Pat." Bob graduated from Butte High School in 1943. He was on Butte High's basketball and track teams that both were state champions his senior year. He enlisted right after graduation, and went into the V12 Naval Officer training at Montana Tech, then further training at UCLA, and was later assigned to various stateside posts. In 1945, when the war ended, he was discharged and moved to Seattle to live with his parents and sister who moved there during the war. During this time, he worked at Longacres horseracing track and attended college at Seattle University. He then returned to Montana to attend the University of Montana Law School where he received his law degree in 1950. His first legal job was in Helena working for a state agency. He then moved back to Butte in 1951 to practice law, and spent the rest of his career in Butte.

He initially practiced with Jack Emigh, with John Mullany later joining the office, and later in the 1950's Bob also joined the County Attorney's Office, eventually becoming Chief Deputy County Attorney. In 1960, he was elected County Attorney, and later re-elected to a second term. When he left the County Attorney's office in 1965, he returned to private practice and practiced with Dave Holland (no relation but always close friends), and later Leonard Haxby joined their practice to become Holland, Holland & Haxby. They practiced in that firm until 1974 when Dave and Leonard left to pursue in-house counsel positions, and Bob then practiced with Mark Sullivan until Mark became District Court judge in 1980. Bob then shared an office with John Mullany for many years until John retired, at which

time Bob had a solo practice until he retired in 2000 at age 75. Bob had a typical small firm/solo practice including personal injury, workers compensation, and assisting clients with wills/estates and numerous other legal matters. He had many close lawyer friends, especially his lunch cronies, including Tom Joyce, Allen McKenzie, John Prothero and Bob O'Leary.

Bob enjoyed many activities throughout his life, including handball, bowling, hunting, poker, golf and horse racing, where he forged lifelong friendships. His passion for horse racing led to his appointment by Gov. Tom Judge to the State Horse Racing Board in 1973, where he served for eight years, many years as its chairman. Bob was also a devout Catholic and lifelong member of St. Patrick's Parish.

Bob married Peggy Semmens in 1952, and they were married for over 60 years until Peggy passed away in 2013. They had six children, Marcia, Laurie, Brian, Mike, Nancy and Tracy. Two (Marcia and Brian) also became lawyers. Bob and Peggy had 11 grandchildren and he was proud of all of them.

Bob was preceded in death by his wife, Peggy; his parents; his sister, Pat and her spouse, Mark Murphy; his father and mother-in-law, Ed and Madge Semmens; in-laws, Rich Lorello and Pauline Semmens; and numerous other beloved relatives and friends.

He is survived by his children – Marcia (Chuck Pengilly) and son, Mick; Laurie Holland and sons, Kevin and Brien Depner; Brian and children, Brianne and Patrick; Mike (Debbie) and son, Shawn; Nancy (Jim Powell) and children, Meghan and Kyle; and Tracy Holland-Holter (Tom Holter) and children, Angela, Matthew, and Ryan. He is also survived by in-laws, Patsy Lorello, Jack Semmens, Ellen Rene and Roger Arntson, and Joe and Zoe Harstead, and numerous nieces and nephews.

Funeral services were held on May 2 in Butte. The family suggests donations to a charity of the donor's choice.

## Job Postings and Classified Advertisements

**CLASSIFIEDS Contact** | Joe Menden at [jmenden@montanabar.org](mailto:jmenden@montanabar.org) or call him at (406) 447-2200.

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**ASSISTANT CITY ATTORNEY:** The City of Kalispell is advertising a job opening in the Office of City Attorney in the position of Assistant City Attorney. The primary responsibility of this full-time position is to prosecute criminal misdemeanors and civil infractions. The salary range is \$56,500 to \$76,300. Additional benefits include contributions to retirement under PERS and health care insurance. The minimum qualifications are three years of experience in the practice of law, including trial practice and to be a member in good standing of the Montana State Bar. This position will remain open until filled. A complete job description and application form (required for consideration) may be obtained on the City of Kalispell website at [www.kalispell.com](http://www.kalispell.com) or from the City Human Resources Department at 201 1st Ave. E., Kalispell, MT 59903; Phone: (406)758-7774 or from the Kalispell Job Service, 427 1st Ave. E., Kalispell, MT 59903; Phone (406)758-6200.

**ASSOCIATE ATTORNEY:** Small Missoula civil litigation firm is accepting applications for a full time associate attorney. Litigation experience and strong research, writing, and communication skills required. Benefits available, salary DOE. Please respond to [missoulalawyers@gmail.com](mailto:missoulalawyers@gmail.com) with cover letter, resume, writing sample, and references. All inquiries confidential.

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**ASSOCIATE ATTORNEY:** Hall & Evans, LLC, a well-established and respected law firm headquartered in Denver is seeking an Associate with litigation experience to join their expanding and busy Insurance Defense practice in Billings. Qualified candidates must be currently licensed to practice in Montana. General practice and insurance defense experience is preferred. Please visit [www.hallevans.com](http://www.hallevans.com) for the full job description and requirements. To apply, please email your resume with a cover letter, salary history and requirements, personal and professional references, and a writing sample to: [employment@hallevans.com](mailto:employment@hallevans.com). EOE.

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**LEGAL AID ATTORNEY:** Legal Aid of Wyoming, Inc. is hiring a licensed attorney for our Rock Springs, Wyo., office. Position is full time \$42,000-\$69,900/year with benefits including health, vision, 401k and match, paid holidays and vacation. Equal Employment Opportunity Employer. Application Deadline July 15, 2015. Please send resume and cover letter to: Legal Aid of Wyoming, 1813 Carey Ave, Cheyenne, WY 82001

**LEGAL AID ATTORNEY:** Legal Aid of Wyoming, Inc. is hiring a licensed attorney for our Gillette, Wyo., office. Position is full time \$42,000-\$69,900/year with benefits including health, vision, 401k and match, paid holidays and vacation. Equal Employment Opportunity Employer. Application Deadline July 15, 2015. Please send resume and cover letter to: Legal Aid of Wyoming, 1813 Carey Ave, Cheyenne, WY 82001

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Montana State Society of CPAs; Level 3 DAWIA certification in government contracting; Data base developer for \$3B government financial services organization. DATA WORKS OF HELENA, P.C., 7 West 6th Avenue, #517, Helena MT 59601; [brad@dataworksofhelena.com](mailto:brad@dataworksofhelena.com); (406) 457-5399.

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