

March 2015 | Vol. 40, No. 5

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- > Parental access to child's health records – Tips for navigating the privacy maze
- > Bar Elections nomination petition

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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Subscriptions are a benefit of State Bar membership.

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

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From the cover

The Montana Lawyer is devoting space in the coming months to the topic of domestic violence. The first article in the installment focuses on the recent national discussion about the topic ignited by the high-profile case involving NFL running back Ray Rice – and whether we are talking about the issue in the right way. See page 14.

Domestic violence: My small step — I just hope it is in the right direction

Patricia Fain, working for the Montana Supreme Court on Equal Access to Justice issues, stopped by my office last fall. She wanted the State Bar of Montana, including me, to help out on the issue of domestic violence. I felt helpless. Every social institution to which we turn for guidance sends starkly contradictory messages – how was I supposed to sort it all out? I had little faith in how I have sloshed through the issues in the past, and was convinced I could be of no help. But I said I would try. Thus, here I go. Let's look at some of these contradictions.

We turn to politics and see our national leaders of every flavor herald the toothless "Violence Against Women Act" as a bold step and bear hug the Saudi Prince. There appears to be very crude explanation, and, as it turns out, there is a "crude" explanation.

We turn to the arts. In my life, we have gone from belly laughing Ralph Kramden's fist in the face of Alice yelling "One of these days Alice, to the moon..." to the sickening lyrics of popular rap songs. Along the way, Jimi Hendrix sang us a ballad about "going down to shoot my old lady" and Neil Young dispassionately told us in song "I shot my baby." The arts don't help us. They confuse us.

Perhaps the NFL can help. Yes, we have actually seen a trend of otherwise clear-thinking people expect professional sports franchises to step up to the plate and provide leadership. In the wake of Ray Rice's vicious attack on his fiancée, the world watched the NFL's ambitious effort to bring awareness to the problem of domestic violence. I think we can agree it was very well done. Regrettably, the problem of "domestic violence" was quickly shoved out of the public's view by the burning issue of deflated footballs.

Science gives us some false, some true, and many equivocal messages. Terry Hanson, attorney in Miles City says, "Once a wife beater, always a wife beater...they cannot be cured." At least, he held that view a few decades ago as I recall. Largely, he seems to be right. But I have seen enough anecdotal evidence that "Anger Management," psychotherapy, sobriety programs and pharmaceuticals can help with modifying abusive behavior that I am not ready to abandon any of these scientific answers. I am not ready to herald them as miracle cures either. I remain firmly confused.

We also see wide schisms in the self-described world of "progressives." Some embrace the "battered spouse defense" as justifying domestic violence to end domestic violence. Others call it – most notably, Alan Dershowitz – "The Abuse Excuse."

The legal system is a hodgepodge of contradictions. Domestic abuse victims can be overwhelmed with a helpless feeling. For years, their wishes have not been respected by those with power over them, usually the abusers. Yet, when

they beg the prosecutor to drop the charges, we have seen prosecutors charge ahead, and the victim's voice goes once again unheard. As I write this down, I can say I have not a clue as to which is the better policy. We all embrace mediation and other alternative dispute resolution methods as better than court. Yet, we institutionalize barriers to the suspected victim of abuse in using these tools. Under *Hendershott v. Westphal*, 2011 MT 73, 360 Mont. 66, 253 P.3d 806, its progeny, and statutory predicate, we tell victims of domestic abuse that they may not qualify for these blessings, but may have to go to court.

The chattering class, bloggers, social media junkies and cable news crowd, produce the usual yammering. There are those who believe every accusation of domestic abuse, and those who discredit every report of it. Neither helps the cause and, I believe, all hurt the cause.

Historians don't help us. They can chronicle domestic abuse through the ages, the most egregious practiced by those history treats with such grandeur – like Henry VIII. History leaves us with a "We've always had it, and always will" taste in our mouths.

On a one-on-one level, the issue of domestic violence is as wrought with contradiction as the macro issues I discussed above. When representing those accused of domestic violence, I have had the victim come in to pay the accused's outstanding legal bill. When sitting at counsel table defending an accused, the complaining witness approached and planted a big kiss on the cheek of the defendant before taking the stand. (Although she was still mad at him for not giving her a ride to court.)

A couple years ago, I weaned myself from new family law cases. The work was too hard. I could not do it with the same vigor I once did. But in the three decades which preceded this partial retirement, issues of domestic violence were constant, and I confess I did not come to that conclusion until I sat down to write this "President's Message."

Some of the more shocking ones bubble up quickly. The woman with organized family ties who told me she still wanted to be named on her husband's life insurance after the divorce and her family had decided it would not play a role in accelerating the death benefit. The woman who told me that her husband had said "you can hire any attorney in town but Parker. If you hire Parker I will have you killed." She found a new attorney.

The man who told me about how his wife and he had hired a hit man to kill his ex-wife for \$3,000, but then got cold feet. They called off the hit, but did not seek a refund.

Erickson joins Phillips Haffey

Robert Erickson has joined the Missoula firm Phillips Haffey PC in 2015 after practicing for 11 years at firms in Missoula and Albuquerque, N.M.

Erickson's principal areas of practice include commercial and civil litigation; real estate, land use, and construction; probate; insurance; creditor's rights and bankruptcy; business and real estate negotiations and transactions; and civil appeals.



Erickson

Erickson earned his J.D., with honors, in 2003 from Tulane University Law School in New Orleans, along with a certificate in environmental law. He was a Managing Editor of the Tulane Environmental Law Journal. In 1997, he earned a BS in business administration (management) and a BA in political science (public administration) from the University of Montana.

Phillips Haffey PC represents individuals, businesses and institutions across a broad spectrum of legal concerns, including insurance defense, construction law, tort defense, patent and trademark, real estate/commercial transactions, bad faith, and mediation.

Christensen & Prezeau PLLP opens in Helena

Amy D. Christensen, Cherche Prezeau, and John F. Sullivan announce that they have opened the new law firm of Christensen & Prezeau PLLP following the dissolution of Hughes, Kellner, Sullivan & Alke, PLLP, on Dec. 31, 2014. Christensen & Prezeau, PLLP, is at 314 N. Last Chance Gulch, Suite 300, in historic downtown Helena. The new firm opened its doors on Jan. 2.

Christensen & Prezeau, PLLP, provides consultation and litigation services in the areas of employment and labor law, construction law, civil litigation, administrative law, nonprofit law, personal injury defense, land use and real estate law, and other areas. The firm consists of the following attorneys:

- **Amy D. Christensen**, managing partner, holds an undergraduate degree from the University of Notre Dame (high honors) and a Juris Doctor from the University of Colorado. She was in private practice with Hughes, Kellner, Sullivan, & Alke from 1998 until she founded Christensen & Prezeau. Her practice areas include employment law, civil litigation, health care law and professional defense.
- **Cherche Prezeau**, managing partner, received her Juris Doctor degree from the University of Colorado and was admitted to practice in the state of Montana and the U.S. District Court of Montana in 1995. Prezeau clerked for the Montana Supreme Court and worked for the United Nations before entering private practice. She practiced law with the firm of Hughes, Kellner, Sullivan & Alke from 2005 until she founded Christensen & Prezeau. Her practice areas include civil litigation, employment law, construction law, personal injury defense and land use and real estate law.
- **John F. Sullivan**, partner, received his Juris Doctor degree with high honors from the University of Montana School of Law in 1973. Sullivan was admitted to practice in both state and federal courts in Montana in 1973, and is also

admitted to the U.S. Court of Appeals for the Ninth Circuit. He has been in private practice for 33 years, and was a founding member of Hughes, Kellner, Sullivan & Alke. His practice focuses on insurance law claims.

- **Kate McGrath Ellis**, associate attorney, is a 2008 graduate of the University of Montana School of Law. Ellis clerked for the Montana Supreme Court from 2008 until 2010, at which time she joined Hughes, Kellner, Sullivan & Alke. She is admitted to practice in Montana and Oregon and serves on the Board of Trustees for the State Bar of Montana. Her practice areas include employment law, insurance law, health care law and civil litigation.
- **Christian Dietrich**, associate attorney, is a 2005 Yale University graduate and a 2009 University of Montana School of Law graduate (with honors). Dietrich served as a law clerk at the Montana Supreme Court before entering private practice. His practice areas include land use and real estate law, civil litigation, employment law, and advising nonprofit organizations, small businesses and social enterprises. He is the current chair of the Nonprofit Law Section of the State Bar of Montana and is a frequent presenter on nonprofit and conservation easement law topics.

Koegen named partner at Spokane law firm

Kutak Rock LLP has announced that Roy J. Koegen of the firm's Spokane, Wash., location has been admitted to the firm's partnership as of Jan. 1. Kutak Rock elected 27 new partners across the firm, selected from 11 of the firm's 17 locations.

Koegen focuses his practice on municipal finance and municipal law. He has primarily served as bond counsel to numerous states, cities, counties, school districts, special purpose districts, underwriters and banks, colleges and universities. In addition, he has provided general municipal advice to a large array of clients with respect to tax, investment, finance and regulatory issues. He received his J.D. from the University of California, Hastings College of the Law, and his B.A. from Gonzaga University. Koegen is admitted to practice in California, Montana, Oregon and Washington.

Keiser opens law practice in Bozeman

Kathryn E. Keiser has announced the opening of her own law practice, Kathryn E. Keiser Law, PLLC, in Bozeman. Her practice will focus primarily on family law.

Keiser has been practicing law since 2011. Formerly a partner at Angel, Coil & Bartlett, Kathryn formed Kathryn E. Keiser Law, PLLC, in 2014. She is a member of the State Bar of Montana and is licensed to practice in the U.S. District Courts of Montana. Kathryn served as the Treasurer for the New Lawyer's Section of the Montana State Bar in 2012-2013 and is an active member in the Gallatin County Chamber of Commerce.

Keiser was born and raised in Bismarck, North Dakota. Prior to practicing law, she obtained her Bachelor of Science in elementary education from Montana State University in Bozeman. She earned her Juris Doctorate from the University of Montana School of Law in Missoula. Prior to beginning her family law practice, she served as a judicial clerk to the Hon. Russell Fagg in

Member and Montana News

Yellowstone County, and practiced as an associate attorney with Kasting, Kauffman & Mersen in Bozeman prior to accepting her partnership with Angel, Coil & Bartlett.

Keiser can be contacted at 406-624-6060 or kek@kkeiser-law.com. Her mailing address is P.O. Box 4827, Bozeman, MT, 59772, and her website is www.kkeiserlaw.com.

Nunnally joins P. Mars Scott Law Offices

Tiffany A. Nunnally has joined P. Mars Scott Law Offices as an associate attorney. Nunnally, a Missoula native, graduated from the University of Montana in 2005, and from the University of Montana School of Law in 2013. She spent the last ten months clerking for the Honorable Russell C. Fagg in Billings, Montana. Nunnally's Montana practice focuses on all aspects of family law, including divorce, property division and parenting issues.



Nunnally

Nunnally attended the University of Montana and graduated in 2005 with a degree in sociology and focus in criminology.

She attended the University of Montana School of Law, graduating in 2013. While in law school, she was a member of the national Moot Court team; the team was awarded Best Brief in the regional tournament and she proceeded to the national competition in New York. She was also selected

to serve as a teaching assistant and mentor for the legal writing department. Upon graduation she clerked for District Judge Russell C. Fagg in the Thirteenth Judicial District in Billings.

Nunnally joined P. Mars Scott Law Offices in June of 2014. She practices primarily in the area of family law and parenting. In her spare time, Tiffany enjoys running, spending time with her family, playing softball and mountain biking.

Tarlow Stonecipher & Steele names Kelly partner

The law firm of Tarlow Stonecipher & Steele PLLC has announced that Matthew J. Kelly has become a partner.



Kelly

Kelly litigates disputes in state and federal courts in Montana, North Dakota and Wyoming. His practice focuses on both construction law and mineral owners' rights. In the field of mineral owners' rights, Kelly often represents plaintiffs in class actions relating to improper payment of oil and gas royalties.

Matt graduated with honors from the University of Wyoming College of Law in 2007 and Montana State University in 2004. Prior to moving to Bozeman, he was a law clerk for the Hon. Alan B. Johnson in the U.S. District Court, District of Wyoming, and an associate for three years at a large, regional law firm in Cheyenne, Wyo.

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Oral arguments scheduled at UM, MSU in April

Case Nos. DA 14-0260 and DA 14-0089

The Montana Supreme Court has scheduled oral arguments at the University of Montana in Missoula on April 10 and at Montana State University in Bozeman on April 27.

The arguments to be heard at UM on April 10 are in the case *Montana Department of Revenue v. Priceline.com*. Oral argument will begin at 10 a.m. at the George Dennison Theater with an introduction to the oral argument beginning at 9:30 a.m.

The First Judicial District Court granted summary judgment to Priceline and other online travel companies (OTCs) in this action for declaratory and injunctive relief concerning the Montana lodging facility use tax and sales tax on lodging and vehicle rentals. The Department of Revenue (DOR) appeals.

The Department of Revenue raises the following issues on appeal:

- Whether the District Court erred by upholding the OTCs' calculation of taxes based on their wholesale cost, instead of on the total amount paid by a hotel guest or car renter.
- Whether the District Court erred by disregarding the § 15-68-103(1), MCA, presumption of taxability.
- Whether the District Court erred by treating the OTCs as

taxpayers rather than as tax collectors.

- Whether the District Court erred when it failed to rule on the OTCs' practice of keeping all monies, including taxes, in "breakage" transactions (in which the guest or car renter paid for the room or car but then did not make the trip).

Friend-of-the-Court briefs have been filed by the Multistate Tax Commission (in support of DOR) and the Montana Chamber of Commerce and Montana Taxpayers' Association (in support of the OTCs).

The arguments to be heard at MSU on April 27 are in the case *State of Montana v. Robert E. Spady*. Oral argument will begin at 10 a.m. at the Strand Union Ballroom with an introduction to the oral argument beginning at 9:30 a.m.

The Court has decided to exercise its power of supervisory control in order to review: (1) the constitutional issues upon which the District Court relied in its order declaring the 24/7 sobriety program unconstitutional, and (2) the Fourth Amendment search and seizure implications of the pretrial 24/7 program.

IN RE THE APPOINTMENT OF A MEMBER OF THE ACCESS TO JUSTICE COMMISSION

Summarized from Feb. 3 order in case No. AF 11-0765

Judge Michele Snowberger has submitted her resignation from the Access to Justice Commission due to a change in employment. The Court thanks Judge Snowberger for her service on the Commission and for her willingness to remain as Chair of its Standing Committee on Self-Represented Litigants.

The Court ordered that Yellowstone County Justice of the Peace, David A. Carter, is appointed immediately to replace Judge Snowberger on the Access to Justice Commission for the term ending Sept. 30, 2017.

IN THE MATTER OF THE RULES OF THE APPELLATE PROCEDURE

Summarized from Feb. 18 order in case No. AF 07-0016

The comment period for various proposed revisions to the Montana Rules of Appellate Procedure expired on April 7, 2014. The Court has considered the comments received and has determined to adopt most of the proposed revisions, with a few minor changes and some additions. Mainly, the revisions constitute what could be called housekeeping matters.

The Court hereby adopts changes to Rules 2, 4, 5, 7, 12, and 17 of the Montana Rules of Appellate Procedure.

IN THE MATTER OF THE COMMISSION ON COURTS OF LIMITED JURISDICTION

Summarized from Feb. 3 order in case No. AF 06-0263

The term of the Hon. Gary Olsen in the position of justice of the peace — small jurisdiction on the Commission on Courts of Limited Jurisdiction expired on Dec. 31, 2014.

The court ordered that the Hon. Holly Frederickson is appointed to serve in the justice of the peace — small jurisdiction seat on the Commission for a four-year term commencing the date of the order and ending Feb. 28, 2019.

ATTORNEY DISCIPLINE

Supreme Court publicly censures Stinson

Feb. 18 order in case No. PR 14-0746

Laurence W. Stinson received a public censure from the Montana Supreme Court on Feb. 17 in reciprocal discipline proceedings founded upon discipline imposed upon him by in the state of Wyoming.

The original discipline was for violation of Rule 3.1(c) of the Wyoming Rules of Professional Conduct. Stinson filed pleadings that contained allegations for which he did not have a good-faith basis and which were made for the improper purpose of publicly embarrassing the other party to the action.

State Bar News

State Bar tracking bills in 2015 Legislature

This is the list of bills that the State Bar of Montana is currently following closely during the 2015 Montana Legislature. Track the progress of these bills at montanabar.org.

HB 2 — General Appropriations Act — Support Judicial

HB 12 — Provide for a decree of dissolution without a hearing when uncontested — **monitoring**

HB 26 — Adjust debt limit allowed for summary dissolution — **monitoring**

HB 71 — Define income for eligibility for public defender representation — **monitoring**

HB 72 — Revising laws related to costs of assigned counsel — **monitoring**

HB 74 — Require notice to the attorney general regarding data breaches — **support**

HB 133 — Authorize the

public defender to award fixed-fee contracts — **monitoring**

HB 139 — Authorize certain public defender involvement in eligibility determination — **monitoring**

HB 143 — Suspend payment of public defender fee during incarceration — **monitoring**

HB 220 — Revise recall provision laws for local and district elected officials — **monitoring**

HB 255 — Referendum regarding disqualification of judges receiving certain contributions — **oppose**

HB 261 — Revise laws regarding clerk of court fees for transmitting records — **monitoring**

HB 272 — Adoption of the uniform collaborative law act — **oppose**

HB 343 — Prohibit request of online passwords as a condition of hiring or employment — **monitoring**

HB 366 — Revise county

district court clerk and justice of peace compensation laws — **monitoring**

HB 424 — Revise public meeting laws related to the Montana Supreme Court — **oppose**

HB 426 — Revise attorney-client privilege laws providing a crime-fraud exception — **support**

HB 430 — Provide for an interim judicial redistricting commission — **support**

HB 447 — Revise right to participate laws related to attorney fees — **monitoring**

HB 448 — Revise right to know laws related to attorney fees — **monitoring**

HB 461 — Revise right to participate laws related to attorney fees — **monitoring**

HB 513 — Clarify rules of evidence for mental health professional-client privilege — **monitoring**

SB 15 — Clarify laws

relating to the call of a retired judge or justice — **support**

SB59 — Clarify the court's consideration of the eligibility process — **monitoring**

SB 72 — Allowing political party endorsements and expenditures in judicial races — **monitoring**

SB89 — Require Supreme Court justices/district court judges to file financial reports — **monitoring**

SB 139 — Revise jury selection laws — **monitoring**

SB 199 — Prohibit the application of foreign law in state courts — **monitoring**

SB 234 — Revise tax and fees for professional liability insurance — **monitoring**

SB 235 — Generally revise laws related to the courts — **monitoring**

SB 306 — Generally revise laws on notarial acts — **monitoring**

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- Presenting and Attacking Expert Testimony
- Persuasive Closing Arguments
- Ethical Pitfalls for Trial Lawyers

Tuition: \$1200 (Approx. 30 CLE credits, including 1 ethics credit - pending approval)
Enrollment for this program is limited. Register early to avoid being placed on a wait list. A limited number of partial tuition scholarships are available for public service attorneys.

Faculty Include: Ron Clark, Esq.; Michael Cok, Esq.; John Connor, Esq.; Randy Cox, Esq.; Triel Culver, Esq.; Katie DeSoto, Esq.; Professor Cynthia Ford; Sean Goicoechea, Esq.; Steve Harman, Esq.; Tom Henderson, Esq.; Natasha Prinzing Jones, Esq.; Michael Lessmeier, Esq.; Hon. Ted Lympus; Keith Strong, Esq.; Hon. Karen Townsend; Hon. Loren Tucker; and Gary Zadick, Esq. Communication faculty include Sam Boerboom, Ph.D.; Nikki Schaubel, M.S.; and Melinda Tilton, M.A.

Registration will open mid-March online at umt.edu/law.

For program questions, please contact:
Karen Stephan, Boone Karlberg P.C., (406) 543-6646.

MyMTCLE gives attorneys an easy way to track their credits earned online

The Montana Commission of Continuing Legal Education recently launched a service — MyMTCLE — that makes it easy to track your compliance with MCLE requirements online, search for timely and relevant CLE courses and more.

Your login for the main State Bar of Montana website will not work with MyMTCLE, but creating a MyMTCLE account is easy. To create an account, simply go to www.mtcle.org, scroll down to the box that says “Log In to MyMTCLE,” click on “Create Account” and follow two easy steps:

1. You will see a box that says “Step One: Confirm Contact Information.” Enter your Bar number and year you were admitted to the State Bar of Montana. Click on “Continue to Step 2.”
2. You will now see “Step Two: Create Username and Password.” Enter your email address, then enter it a second time to confirm. Note the “Password Rules” on the right-hand side of the screen. Click on “Finish.”

You’re done.

When you log in, you will see your CLE compliance information, with your status for the period ending March 31, 2014; your status for the period ending March 31, 2015; what fees you owe; and your license status.

Your credit summary for the current compliance period shows your annual requirement, your credits completed and credits required to meet compliance by May 15, 2015.

You will also see your most recently

posted credits, with the option of seeing your full transcript.

The site also includes other helpful information on CLE, including a CLE course search; rules for CLE; forms for reporting CLE credit and applying for accreditation; links to resources; and more.

CLE reporting

The CLE Commission discontinued the “affidavit method” of reporting CLE credits at the end of the reporting cycle in March 2013.

Because of the discontinuation, the CLE Commission requests that you now report your credits when you earn them, rather than waiting until the end of the reporting cycle in March.

Please note: Most sponsors report the names of the attorneys who attend their programs. However, this information is not always submitted in a timely manner. Sometimes it is not submitted at all. To make sure your credits are accurately being recorded, please check your CLE record by following the instructions above to access the MyMTCLE function on our website at www.mtcle.org.

Please report any course that does not appear on your online transcript by sending your certificate of attendance/participation to:

- Montana CLE Commission, PO Box 577, Helena, MT 59624; or
- cle@montanabar.org

If you do not have the program’s attendance/participation certificate, please

use the “CLE Credit Reporting Form” found here: <http://www.mtcle.org/pdfs/AdditionalCLEReportingForm.pdf>.

CLE FAQs

Below are answers to some frequently asked questions about Montana CLE. For answers to more FAQ about Montana CLE, go to www.mtcle.org/lawyer/law_faq.asp.

What is the ethics requirement?

Starting in the reporting year that ran from April 1, 2013, through March 31, 2014, Montana attorneys are required to report 2.0 hours of instruction in legal ethics/professionalism every year.

What about the Substance Abuse/Mental Impairment (SAMI) requirement?

The SAMI requirement was eliminated starting with the April 1, 2013, through March 31, 2014, reporting year. Attorneys may earn ethics credits, including SAMI, through live or self-study programs.

How many total CLE credits do I need each year?

All active attorneys must complete at least 15 credits of CLE every reporting year. Of these 15, a minimum of two credits must be earned from programs on the topic of ethics or professionalism.

Do all 15 credits have to come from attending live seminars?

No. You must earn a minimum of 10.0 credits per year from participating in “live” or “interactive” seminars. A maximum of 5.0 “other” credits may be earned by self-study programs or methods.

Women’s Law Section’s Spring Dinner is April 24

The Women’s Law Section of the State Bar is holding its Annual Spring Dinner on Friday, April 24, to celebrate and honor women in the legal profession.

Cost is \$35 per person and includes a full dinner, including appetizers and dessert. The menu will include vegetarian and

gluten-free options.

At the dinner, the section will announce the winners of the Fran Elge Scholarship and the Margery Hunter Brown Assistantship.

The dinner will be held at the Bonnie Heavyrunner gathering place in the Payne Family Native American Center, located

on the Oval of the University of Montana campus, next to the Grizzly statue. A reception begins at 6 p.m., with dinner to follow at around 7 p.m.

RSVP Kelly J. C. Gallinger by email at KGallinger@brownfirm.com or by phone at 406-247 2824 by 5 p.m. on Friday, April 17.

Judicial Nomination Commission seeks comment on applicants for 4th Judicial District judge seat

Seven attorneys submitted applications for the position of District Court Judge for the Fourth Judicial District — Missoula and Mineral counties — to fill the seat to be vacated by Judge Ed McLean in May.

The Commission received applications from the following attorneys:

- Brenda Constance Desmond
- Barbara Leslie Halligan
- Lisa B. Kauffman
- Thomas Charles Orr
- Brian J. Smith
- Shane Anthony Vannatta
- Leta J. Womack

The Commission is now soliciting public comment on the applicants. The applications may be viewed through a link available at www.courts.mt.gov. Comments will be accepted until 5 p.m. on **Wednesday, March 25**.

The Commission welcomes public comment, either in writing (e-mail or paper) or via telephone. These comments, which become part of an applicant's file, will be posted on the Commission's web page and forwarded to Gov. Steve Bullock. Public comment may be submitted to:

Judicial Nomination Commission, c/o Lois Menzies, Office of Court Administrator, P.O. Box 203005, Helena, MT 59620-3005; or mtsupremecourt@mt.gov

The Commission will forward the names of three to five nominees to Gov. Bullock for appointment after reviewing the applications and public comment and interviewing the

applicants, if necessary. 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 for the remainder of

Judge McLean's term, which expires January 2019.

Judicial Nomination Commission members are District Judge Richard Simonton of Glendive; Hal Harper of

Helena; Mona Charles of Kalispell; Patrick Kelly of Miles City; Lane Larson of Billings; Ryan Rusche of Columbia Falls; and Nancy Zadick of Great Falls.

Mark your calendars!

The University of Montana School of Law invites you to participate in the

SPRING 2015

On-Campus Interview Weekend

Interview 1st, 2nd and 3rd year students for intern, law clerk, and associate positions during our semi-annual on-campus interview program.

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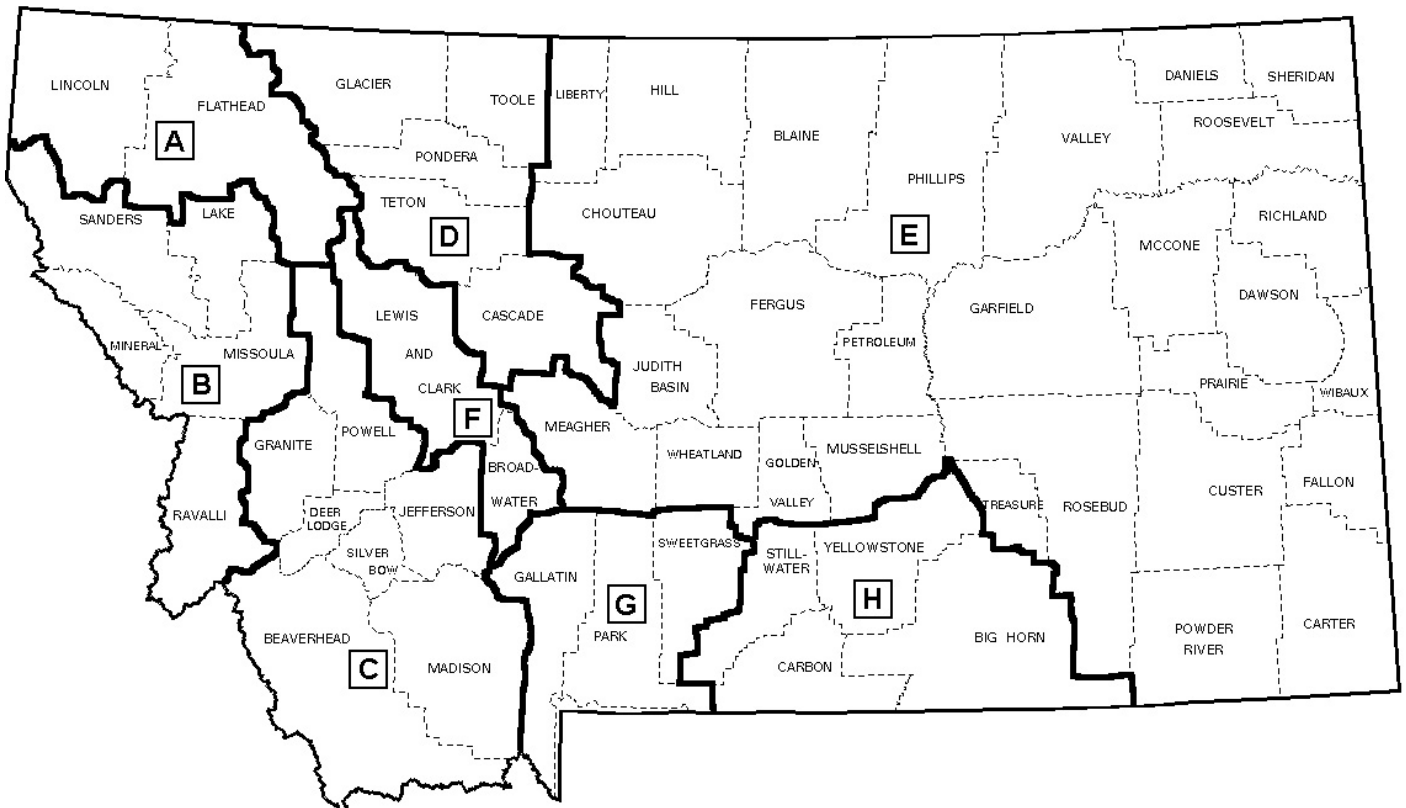
State Bar of Montana elections begin

Election season is under way for State Bar positions. Letters have been sent to those whose terms are expiring. A copy of the nominating petition is on page 25, and at www.montanabar.org. See schedule below for details. The following positions are up for election: Areas E, F and H; Secretary/Treasurer; President-Elect.

2014 election calendar

- March — Letters to Areas E, F and H trustees, and Secretary/Treasurer whose terms are expiring, enclosing nominating petition and deadline for returning to bar
- April 6 — Filing deadline for original nominating petitions (Postmarked or hand-delivered 60 days before election)
- April 15 — Ballots to printer (only contested races)
- May 6 — Ballots mailed no later than 30 days before election (contested races only)
- May 26 — Ballots postmarked or hand-delivered no less than 10 days before the date of the election
- June 5 — Ballots counted, affidavit signed by canvassors; Winners and losers notified by executive director

State Bar Trustee Areas



Celebrate the Profession! Nominate a peer for honor

"Mediocrity knows nothing higher than itself; but talent instantly recognizes genius."

— Arthur Conan Doyle (The Valley of Fear)

Each year our profession takes time to honor attorneys who have made a difference in the practice of law. We recognize women and men who make extra effort to lead by example and show us professionalism, honor, sacrifice, and duty. This recognition takes the form of two different awards administered by the State Bar:

- The George L. Bousliman Professionalism Award (recognizing a reputation for and tradition of professionalism as defined by Dean Roscoe Pound: "Pursuit of a learned art as a common calling in the spirit of public service."); and
- The William J. Jameson Award (recognizing an attorney with the State Bar's highest award for attorney excellence).

But these awards don't simply happen. They require action — a nomination — by an attorney like YOU. Someone who will take a moment, and complete the nomination form located within this publication. It takes an hour or two of effort and few telephone calls. The results usually are priceless and sincerely appreciated.

We all know an attorney who is worthy of at least one of the above awards. If you don't, think harder! Take a moment to appreciate your profession and the people who work within it. Surely you have experienced a moment of grace given by an adversary, an encouraging word or act, mentorship by a veteran attorney, or help when you desperately needed it. This is your opportunity to highlight that conduct.

And so that your nomination receives favorable review by the Past Presidents Committee (the reviewing body), let



me suggest what makes a good nomination package:

1. A completed nomination form with the requisite contact information for the nominee and for you;
2. A statement describing the activities or qualities of the nominee that addresses the criteria for the award. Please tell the Committee how the nominee has met the criteria and why the nominee is worthy of the award;
3. A copy of the nominee's resume or curriculum vitae (if available); and
4. Letters of support for the nominee from 1-2 attorneys and, perhaps, a sitting judge. Please show the Committee that others share your esteem for the nominee and attest to the nominee's qualification for the award. These letters may be forwarded separately from the nomination form, but should be postmarked by the nomination deadline.

Please, take the time to recognize a colleague. Submit a nomination today! Let's celebrate the profession and find examples of attorneys we can emulate. Be the attorney who aspires to recognize genius!

Bar seeks award nominations

Print nomination forms for the William J. Jameson Award and George L. Bousliman Professionalism Award are on pages 12-13. The Karla M. Gray Equal Justice, and the Neil Haight Pro Bono awards forms will be printed in the April Montana Lawyer. Copies of the nomination forms for all awards are available online at montanabar.org. Information and criteria are listed on the individual awards.

Dues statements mailed to members March 1

The State Bar of Montana mailed annual dues statements to attorneys on March 1. Payments for all fees are due April 1 and can be made by check or online with a credit card. CLE

transcripts will be mailed separately in April with a filing deadline of May 15.

William J. Jameson Award

This is the highest honor bestowed by the State Bar of Montana. The Past Presidents Committee will be guided in its selection by the extent to which, in its judgment, the candidate:

- 1 | *Shows ethical and personal conduct, commitment and activities that exemplify the essence of professionalism.*
- 2 | *Works in the profession without losing sight of the essential element of public service and the devotion to the public good.*
- 3 | *Possesses an unwavering regard for the Rules of Professional Conduct, the Creed of Professionalism, the State Bar's Guidelines for Relations Between and Among Lawyers, and the State Bar's Guidelines for Relations Between Lawyers and Clients.*
- 4 | *Assists other attorneys and judges in facing practical and ethical issues.*
- 5 | *Participates in programs designed to promote and ensure competence of lawyers and judges.*
- 6 | *Supports programs designed to improve the discipline process for judges and attorneys.*
- 7 | *Participates in programs that aid the courts in ensuring that the legal system works properly, and continually strives for improvements in the administration of justice.*
- 8 | *Is actively involved with public and governmental entities to promote and support activities in the public interest.*
- 9 | *Actively participates in pro bono activities and other programs to simplify and make less expensive the rendering of legal services.*
- 10 | *Actively participates in programs designed to educate the public about the legal system.*

On a separate sheet of paper, please describe activities you believe qualify your nominee for the Jameson Award. Please attach additional pages as needed, and other supporting documents. Also, attach the nominee's resume. Note: Awards will not be made posthumously and may be given to more than one person.

Nominee: _____

Address: _____

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations must be postmarked no later than May 15. Send them to:

Jameson Award
State Bar Past Presidents Committee
P.O. Box 577
Helena MT 59624
or e-mail mailbox@montanabar.org

George L. Bousliman Professionalism Award

The award will recognize lawyers or law firms who have:

- 1 | Established a reputation for and a tradition of professionalism as defined by Dean Roscoe Pound: pursuit of a learned art as a common calling in the spirit of public service; and
- 2 | Within two years prior to the nomination, demonstrated extraordinary professionalism in a least one of the following ways:
 - Contributing time and resources to public service, public education, charitable or pro bono activities.
 - Encouraging respect for the law and our legal system, especially by making the legal system more accessible and responsive, resolving matters expeditiously and without unnecessary expense, and being courteous to the court, clients, opposing counsel, and other parties.
 - Maintaining and developing, and encouraging other lawyers to maintain and develop, their knowledge of the law and proficiency in their practice.
 - Subordinating business concerns to professional concerns.

Nominee/individual or firm _____

Address _____

On a separate sheet of paper, please describe the nominee's activity in your community or in the state, which you believe brings great credit to the legal profession. Please attach additional pages as needed, and other supporting documents.

Your signature _____ Print your name _____

Your address _____ Phone _____

Nominations and supporting documents will not be returned. Send them no later than May 15 to:

Bousliman Professionalism Award
P.O. Box 577
Helena MT 59624
or e-mail to *mailbox@montanabar.org*

UNDERSTANDING DOMESTIC VIOLENCE

Recent high-profile cases have brought the issue to national prominence. But are we talking about it in the right way?

By Hilly McGahan and Brandi Ries¹

In a recent interview, Hall of Fame football coach Bill Parcells was asked if the NFL should allow suspended Baltimore Ravens running back Ray Rice back into the league after he was seen on video punching out his then-fiancée. Parcells said he thought a second chance might be in order. “It was a very, very unfortunate incident, but young people, highly emotional, alcohol involved, sometimes stuff happens that you wish wouldn’t happen,” Parcells remarked.²

Parcells’ statements reflect commonly held misconceptions about domestic violence (also known as intimate partner violence). To really reckon with the issue of domestic violence, these — and other — pervasive myths must be confronted: Domestic violence is not caused by alcohol. It is not caused by drugs. It is not caused by “high emotions.” Nor is domestic violence caused by anger-management problems or mental illness.

While perpetrators of domestic violence may suffer from alcoholism or drug addiction, abusiveness and addiction are two distinct problems requiring two separate solutions. Perpetrators generally exhibit abusive behaviors toward their victims whether they are drunk or sober. Abusers who have successfully recovered from addiction continue to abuse their partners, demonstrating that “addiction does not cause partner abuse, and recovery from addiction does not ‘cure’ partner abuse.”³ In fact, a majority of abusers are not addicts, and many individuals who *do* suffer from substance addiction do not abuse their partners.

Although many abusers claim to have been “out of control” when they abused their victims, domestic violence is not caused by uncontrollable anger or a hot temper. In fact, abusers often control their anger very effectively at work and in other contexts outside of the home. Although abusers often exhibit angry

First in a series on domestic violence

This is the first in a series of articles on Domestic violence that will run in the Montana Lawyer in coming months.

See related article

See page 13 for an article in a separate series on the Gaps and Barriers study authorized by the Montana Access to Justice Commission. This article focuses on victims of domestic violence as an especially vulnerable population in need of full legal representation.

behavior toward their victims, this anger is a deliberate tactic used to coerce, punish or terrorize a victim “to achieve specific goals — to shut [the victim] up, to isolate her, to prevent her from spending money, to keep her from complaining about his infidelity, to keep her from asserting her independence.”⁴ In short, abusers are not out of control, they are decidedly in control.

With rare exceptions, most abusers do not suffer from mental illness. Abusers typically believe they are entitled to power and control over their victims because of societal norms, the media and their own upbringing. Abusers are made, not born, and “[a]busiveness has little to do with psychological problems, and everything to do with values and beliefs.”⁵

Many people also believe that domestic violence just happens to “those people” — those who live in poverty, those who suffer from addiction, those who adhere to a fundamentalist religion, those who are weak, or those living in an environment of high stress and emotion. This isn’t true. Domestic violence cuts across class, race, religion and sexual orientation. No matter where you live or what your community looks like, you

1 This is the first article in a series of articles on domestic violence and civil legal issues that will run in the Montana Lawyer.

2 “Should Ray Rice Get a Second Chance? ‘Maybe,’ Parcells Says,” National Public Radio (Jan. 30, 2015).

3 Lundy Bancroft, *Why Does He Do That? Inside the Minds of Angry and Controlling Men*, 191 (2002).

4 Judge Amy Holms Hehn, “Heartsick’ Elias-case judge challenges domestic-violence myths: Guest opinion,” *The Oregonian* (Nov. 11, 2014), available at http://www.oregonlive.com/opinion/index.ssf/2014/11/heartsick_elias-case_judge_tak.html.

5 Bancroft, p. 191.

almost certainly know someone who has experienced domestic violence.

Although the majority of abusers are males and most victims are female, domestic violence occurs in same-sex relationships in much the same way as it does in heterosexual relationships. Abusers in same-sex relationships tend to use the same tactics of power and control. “While it is true that some justifications used by heterosexual male abusers are not available to the gay or lesbian abuser — such as ‘I have the right to rule over you because I’m the man and you’re the woman’ — the same-sex abuser replaces these justifications with others that can be just as powerful.”⁶ For example, the abuser might tell her partner that the police will laugh at her if she tries to report the abuse, or that abuse just “doesn’t happen” in same-sex relationships, and therefore the victim is making it up.

Ultimately, abusers’ beliefs and behaviors — regardless of sexual orientation, religion or race — tend to be more similar than different.

So what is domestic violence and where does it come from?

Domestic violence is “a pattern of abusive behavior . . . used by one partner to gain or maintain power and control over another intimate partner.”⁷ It is characterized by behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or wound someone.⁸ Abuse is about power; “it means that a person is taking advantage of a power imbalance to exploit or control someone else.”⁹ Domestic violence is largely perpetrated by men against women.¹⁰ It is rarely a one-time occurrence. And it is not limited to physical abuse.

Anglo Saxon legal traditions are a good place to start to begin understanding the sources of domestic violence and why it is men who generally commit it.¹¹ In *Why Does He Do That? Inside the Minds of Angry and Controlling Men*, Lundy Bancroft explains how it was expressly legal for a man in the English-speaking world to abuse his wife until well into the 1800s.¹² A victim of domestic violence had no recourse to the police or the courts. If a victim chose to divorce her husband due to his abuse, he was legally entitled to custody of their children. In the late 1800s, criminal legal consequences for domestic violence were finally legislated in the United States. But these laws were rarely enforced against abusers until the 1970s, and were not consistently enforced until the 1990s. It is extremely unlikely that anyone over 25 years old who grew up in an environment of domestic violence ever saw their abusive parent face any consequences from the criminal justice system.

Hundreds of years of total impunity for perpetrators of

domestic violence, along with destructive social attitudes towards women, continue to shape cultural views among males — and females — about the abuse of women today. Take the rapper Eminem, for example. On his 2000 album “The Marshall Mathers LP,” Eminem raps about murdering his ex-wife, Kim, for being with another man. Kim, as performed by Eminem, can be heard screaming in terror throughout the song, pleading with Eminem not to kill her. At the end of the song, Eminem slits Kim’s throat and she audibly chokes to death. In a November 2014 video released to promote his most recent album, Eminem raps: “I’ll punch Lana Del Rey right in the face twice, like Ray Rice in broad daylight in the plain sight of the elevator surveillance, ‘til her head is banging on the railing, then celebrate with the Ravens.”¹³

Even more problematic than Eminem’s lyrics about murdering and abusing women is the fact that he won a Grammy award for the album featuring the song about murdering his ex-wife. Since that album, Eminem has gone on to win numerous Grammys and even an Academy Award for Best Song.

What are young men and women to conclude from these songs about the value of women in our culture? Even more importantly, what are young men and women to conclude about the fact that Eminem is one of the most highly acclaimed and award-winning artists of our time? In the form of Grammy and Academy Awards, Eminem has been given a cultural stamp of approval. Young men and women hear this message loud and clear.

Domestic violence in Montana

Between 2000 and 2012, domestic violence accounted for 112 deaths in Montana, including primary victims, children and perpetrators who committed suicide. Intimate partner homicides accounted for 73 of the deaths.¹⁴

John Buttram, a licensed clinical counselor who has worked with court-ordered domestic violence offenders in Flathead County since 1988, says that the majority of homicides in Flathead County in the last 15 years have been domestic violence related. Buttram says the crime of domestic violence is still not taken seriously in Montana, and abusers are rarely held accountable for the crime of partner or family member assault. “National studies show that something like 70 percent of domestic violence arrests around the country never end in conviction,” he says. “In my experience it’s at least as high in Flathead County.” Buttram explains that domestic violence crimes are usually pled down, generally to low-level offenses such as disorderly conduct. “This strikes me as odd,” Buttram says. “Domestic violence is treated nowhere near as seriously as drunken driving, yet this is the population where most of the homicides are coming from. It’s not necessarily that the police or prosecutors are bad or not doing their job — I believe that they are a reflection of our culture.”

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6 Id. at 167.

7 U.S. Dept. of Justice, Office on Violence Against Women, Domestic Violence, available at <http://www.ovw.usdoj.gov/domviolence.htm>.

8 Id.

9 Bancroft, p. 123.

10 Between 1994 and 2010, approximately 4 out of 5 victims of intimate partner violence were female. U.S. Dept. of Justice, Office of Justice Programs, Intimate Partner Violence, 1993-2010, Bureau of Justice Statistics, p. 1 (Nov. 2012).

11 While there are certainly exceptions, domestic violence is primarily perpetrated by men against women and children.

12 BANCROFT, pp. 320-321.

13 Jessica Goodman, Eminem Raps that He’ll Punch Lana Del Rey Right in the Face Twice Like Ray Rice, Huffington Post (Nov. 11, 2014), available at http://www.huffingtonpost.com/2014/11/11/eminem-lana-del-rey_n_6138712.html.

14 Mont. Dept. of Justice, Office of Consumer Protection and Victim Services, Report to the Legislature: Montana Domestic Violence Fatality Review Commission 11 (Jan. 2013).

Violence

from previous page

Even when perpetrators of domestic violence are held accountable by the criminal justice system, it usually happens leniently. Montana law provides harsher punishments for someone who abuses their dog than for someone who abuses their spouse. It takes only two convictions of animal abuse to rise to the level of a felony.¹⁵ It takes three convictions of partner or family member assault (the crime of domestic violence in Montana) before the offense is considered a felony.

Children and domestic violence

If the crisis of intimate partner homicides is not enough to motivate law enforcement, courts and the Montana Legislature to take domestic violence seriously, then the co-occurrence of child abuse and domestic violence should.

In 30-60 percent of domestic violence cases, children are also being abused by the batterer.¹⁶ A man who abuses his partner is seven times more likely to physically abuse his children than a man who does not abuse his partner. And *the* risk of child abuse increases with the frequency of the batterer's violence toward the mother of the children.¹⁷

Contrary to popular belief, simply exposing a child to domestic violence can be just as damaging as abusing them directly. Children who are raised in abusive homes learn values and beliefs that shape their behavior as adults and parents. And recent studies reveal that childhood exposure to domestic violence has physiological and neurological effects on children's brains that can result in anxiety disorders, learning disabilities and chronic health issues across a child's lifespan.¹⁸ The more prolonged the exposure to domestic violence, the greater the likelihood of long-term adverse symptoms. Although these studies show that the human brain has the capacity to heal, rewire, and add neurons, a child's exposure to domestic violence must end before proper development and healing can begin.

Why Does She Stay?

The issue of domestic violence raises several recurring reactions in the general public. *Why would anyone go back to that abuse? Why does she let him keep doing that to her? I just didn't think she was the kind of person who would allow herself to be treated that way.*

Victims of domestic violence endure intense scrutiny from their friends, family, the court system and society for their decision — if it can be called that — to remain in an abusive relationship. This scrutiny is misplaced.

Leaving an abusive relationship is the most dangerous step a victim can take. During a separation, the abuser senses he is

losing the one thing that is most important to him — power and control over the victim. Domestic violence victims are 75 percent more likely to be murdered when they are leaving an abusive partner than when they stay.¹⁹

Aside from safety, there are countless other reasons a victim may choose to stay in an abusive relationship.²⁰ Many victims have nowhere safe to go, little or no money to support themselves and their children, and no access to legal services for meaningful protection from their abusers.

And while leaving might seem the obvious solution for escaping domestic violence, abusers commonly find ways to exercise power and control even after their partner has left the relationship. Abusers even use the justice system to continue the cycle of abuse. If the abuser and victim have children together, it is very common for the abusive partner to request full custody of them, requiring the victim to engage in costly and contentious litigation and to renew contact with the abuser.

The scrutiny should therefore be shifted from the victims to the abusers. The right questions to ask are: *Why does he abuse her? Or more importantly: What are the conditions he created so that she feels she has no other safe choice but to stay?*²¹ Society must shift its judgment from the victim's decision to remain in the relationship to the batterer's bad behavior. A victim who feels supported — rather than shamed — by her community will be better able to successfully and safely leave an abusive relationship.

Need for Civil Legal Representation for Victims of Domestic Violence

Victims of domestic violence often present with multiple civil legal issues. These include family law (dissolution, parenting, child support, and amended parenting cases), orders of protection, immigration, housing, consumer protection, employment, name/identity changes, victim's rights advocacy, and estate planning.

The dynamics of power and control often involve economic abuse. Batterers commonly interfere with a victim's ability to work and with her access to money. Even if a victim is allowed to work, batterers often force the victim to hand over the money she earns. Consequently, regardless of income, victims often can't afford an attorney.

Access to legal services, however, can make or break a victim's ability to escape an abusive relationship. Victims who are able to access civil legal services are more likely to successfully and safely leave abusive relationships, and are significantly

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15 See Montana Code Annotated § 45-8-211, §45-5-206. The Montana Legislature is currently considering a bill that would toughen the penalties for those convicted of partner or family member assault.

16 In Harm's Way: Domestic Violence and Child Maltreatment, National Clearinghouse on Child Abuse and Neglect (2003).

17 Bancroft, p. 245.

18 Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, THE JUDGES' JOURNAL, Vol. 53, No. 3 (Summer 2014).

19 Sarah Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, THE COLORADO LAWYER (Oct. 1999), available at <http://www.vcpionline.org/%5C/pdfs/50%20Reasons%20Why%20Victims%20Stay.pdf>; Jana Kasperkevic, *Domestic Violence Victims Speak Out: 'If I Worked, He Would Take My Money'*, THE GUARDIAN (Oct. 20, 2014), available at www.theguardian.com/money/2014/oct/20/domestic-violence-victims-leave-work-partners-abuse-speak-out.

20 Susan McGee, *20 Reasons Why She Stays: A Guide for Those Who Want to Help Battered Women* (2005), available at <http://stopviolence.com/domviol/whytheystay.htm>

21 Holms, available at http://www.oregonlive.com/opinion/index.ssf/2014/11/heartsick_elias-case_judge_tak.html.

Victims of domestic abuse need particular consideration, study finds

By Iris Marcus, J.D.
Montana Justice Foundation

*The Justice Gap in Montana: As Vast as Big Sky Country, A Report on the Gaps and Barriers to legal assistance for low and moderate income Montanans*¹ brings an unflinching focus to the varied components that make up the world of civil legal issues in Montana. As each factor is discussed and placed among the many, one gap is repeatedly examined from different contexts:

“Montanans with legal problems need various levels of services. Some only need legal advice to get their questions answered. Others, like victims of domestic violence, need full representation in order to make it through the court system to obtain safety and untangle the relationship legally. Like victims of domestic violence, older adults with cognitive difficulties due to aging, those living with a mental illness, or those with limited education must have full representation in order to solve their legal problems. **Full representation by an attorney — both for brief and extended services — is the largest over-riding gap in services.**”²

Here, two important points are made: Sometimes help at a rudimentary level is all that is needed and sometimes full-scale representation is needed. About the first, later articles will discuss available services on that scale. About the second, another point needs to be made. As a budgetary reality, there is a very limited number of attorneys available to offer full-scale representation for low- and moderate-income individuals. Montana Legal Services Association (MLSA), and a few other nonprofit organizations with attorneys, are able to address only a fraction of the legal needs of the estimated 167,000 Montanans who qualify for legal aid.³ Even requests for legal aid coming from those populations identified as most vulnerable, must be further priority screened due to a lack of resources.

This is the second article in a series based on the findings in *Gaps and Barriers*, and focuses on victims of domestic violence as an especially vulnerable population in need of full-scale legal representation.⁴ For victims of domestic violence who are unable to afford an attorney, lack of legal representation

About the Gaps and Barriers series

This is the second 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. The series kicked off in February’s Montana Lawyer with an overview of the study. Future installments will examine other populations the study identified as needing particular consideration: the mentally ill or mentally disabled, Native Americans, people with limited English proficiency or who are hearing impaired, older Montanans and veterans.

Read the report

To read the study “The Justice Gap in Montana: As Vast as Big Sky Country,” visit www.mtjustice.org/gaps-and-barriers-study/

may have multiple consequences.⁵ Here the victim of domestic abuse confronts many gaps and barriers to access to justice. Potentially, if the victim is unable to locate relief from multiple threshold barriers, the abuser’s struggle for power over the victim is increased.

Individuals leaving an abusive relationship need a plan. Leaving is the most dangerous, but obviously most important action a victim of abuse in a domestic relationship can make. Often it must be done in secret. It is in fact, an escape. Organizing a plan to leave and executing it are huge steps. Among other considerations, leaving requires money or access to an emergency and confidential shelter. Just the act of traveling to a safe place may present numerous logistical difficulties: The victim might not have a car, or keys to the car, or money to buy gas, or might live where there is no public transportation, or where she has no trusted friends or family that can help her. In addition, if the victim has children, it makes the escape that much more difficult to carry out in secret, and at the same time more urgent.

Gaps, page 24

1 *The Justice Gap in Montana: As Vast as Big Sky Country, A Report on the Gaps and Barriers to legal assistance for low and moderate income Montanans*, Carmody and Associates, June 2014. Hereafter “*Gaps and Barriers*.”

2 *Gaps and Barriers*, 3.

3 *Id.*

4 About this, *Gaps and Barriers*, states: “Some groups of people, however, are more intensely affected by one or more of the barriers or gaps, have some specific barriers, that make accessing legal assistance even more difficult, or have a challenge that makes obtaining legal assistance even more important.” Page 29

5 The Department of Justice, Office on Violence Against Women, offers this brief definition of what constitutes domestic violence: “... a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.”

Tribal courts Part II: Crow, Ft. Belknap, Fort Peck and Northern Cheyenne

By Professor Cynthia Ford¹

In last month's column, I discussed some general principles and resources that apply to evidence in all tribal courts, and then discussed the evidence rules and cases in Blackfeet Tribal Court, Chippewa Cree Tribal Court and Confederated Salish and Kootenai Tribal Court. This month I will complete the subject of Evidence in Montana's Tribal Courts by discussing evidence law in the tribal courts of the Crow, Fort Belknap, Fort Peck and Northern Cheyenne reservations. I also want to share, up front, a great tool I have found since last month: The University of Washington Gallagher Law Library has a research guide specifically devoted to locating tribal court decisions, with a very handy table summarizing the sources tribe-by-tribe: <https://lib.law.washington.edu/content/guides/TribalCt>. This resource is well maintained, and was last updated in January 2015. Now, on to specific information about the remaining tribes:

CROW RULES OF EVIDENCE

The Crow Tribal Court is located at Crow Agency, Montana. Its website² is www.crowtribalcourts.org. (There is also a Facebook page³ but, like my own, it seems to be quite underutilized; the last posting on the timeline was in 2013). The website describes the Crow Court system:

The **Judicial Branch** consists of a statutory Crow Tribal Court, which is a trial court of general tribal jurisdiction, a statutory Crow Juvenile Court, and a statutory Crow Appellate Court (also known as the Crow Court of Appeals).

A Crow Traditional Supreme Court has been authorized by law but is not yet established.

The Crow Tribal Court consists of three judges elected at-large by the Tribal General Council: a chief judge (who is the head of the Judicial Branch) and two associate judges, each of whom serve unlimited 4-year terms. The Crow Tribal Court is authorized to appoint special judges to hear cases.

The Crow Appellate Court consists of an appellate judge (also known as the Chief Appellate Judge or Chief Justice), who is nominated by the chief judge (or tribal chairman if no nomination by the chief judge is made) and confirmed by the Legislature

to a four-year term, along with two associate appellate judges (who can either be Crow Tribal Court judges or licensed attorneys) appointed per case by the chief appellate judge.

However, the Tribal Court website itself does not link to any legal authorities. The Tribe's 2001 Constitution and Bylaws (but not the Law and Order Code) are located on the Tribe's general government website, www.crow-nsn.gov/constitutions-and-bylaws.html, but simply provide for the Judicial Branch of Government without any detail as to the conduct of tribal court proceedings.

The Crow Law and Order Code is available on at least three unofficial websites, all of which are consistent with one another,⁴ and in hard copy at the UMLS Jameson Law Library.⁵ Title 3 of the Code establishes the Tribal Court branch; Title 4 is reserved; and Title 5 is entitled "Rules of Civil Procedure." Rule 11 of the Rules of Civil Procedure is short and clear:

RULE 11. EVIDENCE AND DISCOVERY.

(a.) Evidence. The rules of evidence applicable to civil actions in the Crow Tribal Court shall be the Federal Rules of Evidence, as amended....⁶

Title 8A of the Crow Tribal Law and Order Code deals with Criminal Procedure. It is not as clear about the Rules of Evidence as the civil portion of the Code:

8A-7-106. *Trial Procedures.*

The ... rules of evidence to be followed by the court and all other details of judicial procedure shall be set out in rules of the court. In the absence of such a rule on a particular subject, the federal rules may be followed.

I could not find anywhere online a set of "Rules of the Court" for the Crow Tribal Court, so I observed FRE/MRE 601 and called some folks with personal knowledge. The clerk of the court was not really sure, but she referred me to the tribal prosecutor, Robert LaFountain, who was very helpful. He has served in that post for two years, and said he had not seen anything governing criminal evidence other than the Law and Order Code itself. He reported that, functionally, when there

4 These three consistent websites are: the Montana State Indian Law resource website, http://indianlaw.mt.gov/content/crow/codes/title_05.pdf; the National Indian Law Library maintained by the Native American Rights Fund (NARF), http://narf.org/nill/Codes/crow_montana/; and http://crowlaws.org/crow_law_and_order_code. This last resource has not been updated since July 8, 2013. Its founder/editor is Jay Harris, who was then employed by the Crow Tribe; he now is the county attorney for Big Horn County. He informs me that he does intend to maintain the site, and to improve it. We had a terrific telephone discussion about Crow tribal law in general, and it is clear that he is a keen student of the system and an asset to those who work within it.

5 Crow Law and Order Code REF KF8228 .C76 2005.

6 As I recommended in last month's column, I crosschecked this language against both of these versions and they are identical to the language quoted in the text.

1 Copyright Cynthia Ford.

2 The general Crow Nation website describes the Court and lists the current judges, www.crow-nsn.gov/courts.html, but lacks the detail of the Tribal Court's own webpage.

3 https://www.facebook.com/CrowTribalCourts/timeline?ref=page_internal.

are issues of evidence in criminal cases, the FRE are used. I also spoke to Bill Watt, the tribe's attorney general, who said he has not seen any set of court rules, but that he would look around to be sure he hadn't overlooked them. Jay Harris, author of the "Crowlaws" website, pointed me to the Code provision (3-3-303(2)(g)) assigning the responsibility for promulgating such rules to the chief judge of the Tribal Court.⁷

My conclusion is that, at this time, the Crow Tribal Court has not established any "Rules of Court" and that because there is an "absence of such a rule" on criminal evidence, "the federal rules may be followed." Thus, in the Crow Tribal Court, the FRE are to be applied in both civil and criminal matters.

The Crow Court of Appeals opinions are what I would call "semi-published." The official website for the court, Crowtribalcourts.org, does not have any link to appellate opinions. However, the Montana state Indian Law Portal, www.indianlaw.mt.gov/crow/decisions/default.mcp, does have links to 36 cases from the Crow Court of Appeals from 1986 to 2002 listed by name, although they are not searchable (meaning you have to open and read each one). Similarly, the "Crowlaws" unofficial website has a link to published decisions from 1986-2002, and comments: "Note: this is not an exhaustive listing of Crow Tribal case law. Extraordinary difficulty arises when attempting to locate post-2002 decisions of the Crow Court of Appeals. For more information, please contact the Crow Tribal Judicial Branch at (406) 638-4050." The NILL website, http://narf.org/nill/tribes/crow_montana.html, shows some Crow Court of Appeals decisions are available at several sources, but again none seems to be more recent than 2002:

At Indian Law Reporter (not available online).
1982-2000. Abbreviations: Crow Tr. Ct.; Crow Ct. App.; Crow Tr. Ct. App. See NILL's cumulative subject index of tribal court cases in the ILR.

At Versuslaw (\$\$\$). Crow Court of Appeals cases.
1986-2001.

At Lexis-Nexis (\$\$\$). Earliest opinion dated 1986. Includes official and parallel citations from: Crow (1986-2002); ML (1986-2002). Not currently updated. (A search for "court" returned 39 documents on 11/10/11.)

Finally, the UMLS Jameson Law Library has some Crow cases in its collection⁸ but the dates here are even more restrictive, ending in 1999. I have not read through all of the cases available from the combination of these sources, so I don't know for sure how many deal with evidence issues. If I were actually conducting a case in the Crow Tribal Court, I would read the cases to see if there is any specific Crow precedent. I would also cite the Advisory Committee Notes to the FRE and federal cases as persuasive but not binding guidance for the current Crow Tribal Court (and Court of Appeals), in addition to precedent from other tribes that follow the FRE.

FORT BELKNAP RULES OF EVIDENCE

The Fort Belknap Reservation in north-central Montana is home to the Assiniboiné and the Gros Ventre tribes. "Today, the two tribes are united as one government called the Fort Belknap Indian Community."⁹ The Tribes' Tribal Court is located in Harlem, Mont. The Fort Belknap Constitution¹⁰ and Bylaws¹¹ were adopted in 1935; neither mentions a tribal court or judicial branch. However, Title I, Part I of the Tribal Code establishes the Fort Belknap Indian Community Tribal Court, and the rest of Title I is devoted to the operation of the judicial branch. The Code is found on the Tribes' website at www.ftbelknap.org/documents/Fort%20Belknap%20Tribal%20Code.pdf.

Section VII of Title I, enacted on March 8, 1999, anticipates the adoption of court rules dealing with evidence issues:

C. The Chief Judge and Associate Judges shall adopt rules of pleadings, practice, and procedures applicable to any or all proceedings in the Court and in the Court of Appeals. In addition, **they shall adopt uniform rules for the admission of evidence...** (Emphasis added)

Additionally, Section VI of Title II of the Code, "Civil Procedure," is entitled "Evidence." Its subsections address:

- 6.1 Oral Testimony—Admissibility;
- 6.2 Scope of Examination and Cross-Examination;
- 6.3 Documentary and Tangible Evidence;
- 6.4 Record of Excluded Evidence;
- 6.5 Evidence on Motion;
- 6.6 Interpreters;
- 6.7 Official Records; and
- 6.8 Record Search.

(Another section of Title II, 11.2, also deals with evidence at trial but simply refers back to sections 5 and 6). However, Title II section 11.28 does have a substantive impact on civil trials:

11.28 Evidence as to Character

Not more than two witnesses will be allowed to testify as to character in any civil cause, without leave of the Court being first had and obtained.

This provision appears to be quite different from the state and federal rules of evidence 404a, both of which essentially ban character evidence in civil cases, essentially limiting the number of witnesses on the subject to zero. By allowing as many as two character witnesses, the Fort Belknap Code at least implies that character evidence may be admissible in civil cases.¹²

Title III of the Fort Belknap Law and Order Code governs Criminal Procedure. Part X of Title III is entitled "Evidence of Character," and contains three sections. The second of these, Section 1.2, echoes the two-witness limit for criminal as well as civil cases. The third, Section 1.3, lays out the Tribe's restrictions

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7 In the Montana and federal systems, this responsibility falls to the highest court in the system, rather than to the trial court: the Montana Supreme Court and U.S. Supreme Court each is responsible for the applicable Rules of Evidence. This difference is another result of the sovereignty of tribal nations.

8 Decisions of the Crow Court of Appeals, 1986-1999 REF KF8228 .C76 1999.

9 <http://www.ftbelknap.org/fortbelknaphistory.html>

10 <http://www.ftbelknap.org/documents/1935%20Constitution.pdf>

11 <http://www.ftbelknap.org/documents/1935%20Constitution.pdf>

12 Interestingly, the next section in Title II, Civil Procedure, is entitled "Guilty Plea."

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for evidence of prior sexual conduct in sex crime prosecutions, akin (but not identical to) FRE 412 and M.C.A. § 45-5-511. Section 1.1, “When Evidence of Character May be Presented,” is titled encouragingly but its text is still murky:

- A. In all questions affecting the credibility of a witness, his general moral character may be given in evidence.
- B. The prosecutor and the defendant may take and use depositions of witnesses in accordance with the Rules of Civil Procedure.

Neither Title III, Part X, Section 1.1 nor Title II, Section 11.28, contain any clear prohibition against use of character to prove action in conformity therewith in civil cases or in criminal cases by the prosecution (as MRE and FRE 404a do). Further, Section 1.1 above certainly expands on the federal and state rules 608 limiting evidence of character of a witness to the single trait of “truthfulness or untruthfulness” by allowing evidence in tribal criminal cases of the “general moral character of the witness” whose credibility is at issue.

The other significant aspect of Section 1.1 is its allusion to “the Rules of Civil Procedure,” which corresponds to Title I, Section VII, authorizing the Judge to adopt rules of procedure and evidence. I could not locate either Rules of Procedure or Rules of Evidence on the Tribes’ website or through the Montana Indian Law portal website for Tribal Court Rules for Fort Belknap.¹³ When I called the Clerk of Court’s office, I was told that they did not know of any rules other than the Law and Order Code, but that the newly retired Tribal Judge Russell Healey might know. She, in turn, told me that there are no rules (of either procedure or evidence) apart from the Code, and that tribes are just beginning the process of revising the 1999 Code.

Although the Tribes’ Law and Order Code establishes an appellate court, the official website does not contain any reference to decisions of that court. Unofficial sources are also unhelpful. As is the case with the link for Fort Belknap Court Rules, the Montana Indian Law portal shows “no materials” for Fort Belknap under “Tribal Court Decisions.”¹⁴ The Jameson Law Library at UMLS has a copy of the Tribal Code¹⁵ but for appellate decisions directs the researcher to the NARF/NILL website, which in turn indicates that Fort Belknap Tribal Court opinions may be located “At Indian Law Reporter (not available online). See NILL’s cumulative subject index of tribal court cases in the ILR. 1984. Abbreviations: Ft. Blkp. Tr. Ct.” When I typed “Belknap” into the search block, I found a citation to a single case from 1984: Fort Belknap Community Council, et al., No. CV83-238 (Ft. Blkp. Tr. Ct., Jan. 20, 1984) 11 ILR 6017. As I advised last month, now that I have that citation, I would call very helpful folks at the UMLS Law Library¹⁶ and ask them to

print, scan and email that decision to me. Retired Tribal Judge Russell Healey confirmed that the current Fort Belknap appellate opinions are not published anywhere, although again there is talk of doing so in the near future.

FORT PECK RULES OF EVIDENCE

The Fort Peck Assiniboine & Sioux Tribes, which include several bands from each tribe, occupy the Fort Peck Reservation, headquartered in Poplar, Montana. The Tribes’ official website is www.fortpecktribes.org, which contains a link to the Tribal Constitution.¹⁷ There is a separate website for the Tribal Court, www.fptc.org, which includes links to the Fort Peck Tribes Comprehensive Code of Justice (CCOJ)¹⁸ and to a Civil Form Book (which both explains civil procedure and helpfully provides forms for litigants to use in their tribal court civil cases). Title 2 of the Code deals with the Tribal Courts, Chapter 1 with the Tribal Court and Chapter 2 with the Court of Appeals. Title 2, Section 104 states:

Section 104. Rules of Court.

The Chief Judge may prescribe written rules of court, consistent with the provisions of this Code, ...the rules shall be approved by the Tribal Executive Board before becoming effective.

Appendix 2 to the Tribal Code is “Rules of Civil Procedure,”¹⁹ effective Oct. 1, 2007. There are 11 rules of Civil Procedure, including Rule 9-6(5) which requires civil parties at the final pretrial conference to exchange trial exhibits and identify objections thereto; failure to do so presumptively waives use/objection at trial. Under Rule 9-6(6), the parties must also identify at the pretrial conference the witnesses they intend to call at trial. Nothing else in the Rules of Civil Procedure deals with the admissibility of evidence at trial.

The Code (CCOJ) does have separate titles for “Criminal Procedures” and “Civil Procedures” (Titles 6 and 8 respectively). For criminal cases, Title 6 Section 510 is blessedly short and clear:

Federal Rules of Evidence and Federal Rules of Criminal Procedure.

(a) The Federal Rules of Evidence shall be followed in **all** Tribal Court proceedings. (Emphasis added).

(b) When necessary, the Tribal Court will supplement the Rules of Criminal Procedure of this Title with the Federal Rules of Criminal Procedure.

For civil cases, the situation is murkier because of the apparent conflict between Title 6 Section 510’s language about “all” tribal court proceedings and other language in the civil procedure title. Title 8 Section 201, “Trial procedure,” provides:

17 “The Fort Peck Tribes adopted their first written constitution in 1927. The Tribes voted to reject a new constitution under the Indian Reorganization Act in 1934. The original constitution was amended in 1952, and completely rewritten and adopted in 1960.” www.fortpecktribes.org/tribal_history.html The Montana Indian Law portal also has a link to “2013 Proposed Changes to the Constitution and Bylaws,” www.indianlaw.mt.gov/content/fortpeck/constitution/2013_ft_peck_prop_const_changes.pdf, but I have not been able to find verification of their adoption.

18 www.fptc.org/ccoj/ccoj.html.

19 www.fptc.org/ccoj/appendix/appendix_2.pdf

13 www.indianlaw.mt.gov/no_material.mcpx, which reported “We have no materials on this topic.”

14 www.indianlaw.mt.gov/no_material.mcpx.

15 REF KF8228 .B44 2000.

16 The phone number for the Reference Desk is 406-243-2699.

(a)... the rules of evidence to be followed by the court and all other details of judicial procedure may be set out in rules of court.

(b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

The very last section of Title 8 deals with “Applicable laws and discretionary guidance.” It states “where appropriate, the Court may in its discretion be guided by statute, common law or rules of decision of the State in which the transaction or occurrence giving rise to the cause of action took place.” CCOJ Title 8, Section 501(d). Curiously, there is no reference in the Civil Procedure Title to the Federal Rules of Evidence, and the direction of Section 501(d) to state law seems inconsistent with the mandate of Title 6, Section 510. To add to the confusion, yet another provision in Title 6, dealing with Wellness Court (for proceedings in which substance abuse plays a part), refers to tribal Rules of Evidence but not to the FRE:

Section 1004. Rules of evidence.

...The Rules of Evidence adopted by the Fort Peck Tribes shall not apply in any Wellness Court proceedings.

Thus, the statutory provisions are ambiguous, given the fact that there do not appear to be any formal Tribal Rules of Evidence as contemplated for civil actions. (For sure, in criminal cases in Fort Peck Tribal Court, the FRE govern.) This is not uncommon in any statutory scheme, sadly, and is exactly the situation where the system’s appellate opinions may fill the gap. Fort Peck’s decisions do exactly that.

Fort Peck publishes its appellate decisions on the Tribal Court website in PDF format at <http://www.fptc.org/opinions/opinions.html>. The most recent decision posted is dated Feb. 2, 2015; the earliest is 1986. I counted, with no guarantee of precision, 634 opinions, in chronological order. Again without warranty, I was able to search these opinions, the Tribal Code, and the Civil Form Book by using the freefind search block on the first page of the opinions link. (I first searched for the simple word “evidence” and got what we refer to technically in the law as “a boatload” of results). Later in my research, I again used the search function, this time more specifically for “Rules of Evidence.” This yielded many references to the Code, and to several Court of Appeals opinions. As I love to find, one of these decisions definitively answered the question:

...it would be appropriate to adopt rules of evidence to be adhered to in Tribal Court for subsequent trials and hearings. Because a Tribal Court decision or an Appellate Court opinion could possibly be reviewed by a Federal Court, hereinafter the Federal Rules of Evidence shall be followed in all Tribal Court proceedings. This Court deems it appropriate that Tribal Prosecutors, Public Defenders and Lay Counselors and Attorneys practicing in Tribal Court to [sic] familiarize themselves with the Federal Rules of

Evidence and hereinafter apply the same in Tribal Court proceedings.

Fort Peck Assiniboine and Sioux v. McDonald, Appeal No. 039 (1988). See also, *Tribes v. Youpee*, Appeal No. 237 (1998); *Tribes v. Reddog*, Appeal No. 082 (1990); *Tribes v. Turcotte*, Appeal No. 054 (1988).

Thus, without leaving the tribes’ own website²⁰, I was able to find Code provisions on my question of which rules of evidence apply in the Fort Peck Tribal Court, and to resolve a possible ambiguity in the Code provisions on civil and criminal proceedings by reference to opinions by the Fort Peck Court of Appeals. Based on these authorities, I conclude that in the Fort Peck Tribal Court, in both civil and criminal cases, the F.R.E. apply, and that there is no separate set of Tribal Rules of Evidence for the Fort Peck Tribal Court. And, just sayin,’ Fort Peck is clearly the winner of all the tribes in Montana on the accessibility of legal information²¹ related to evidence rules and their application. Thanks, and way to go!

NORTHERN CHEYENNE RULES OF EVIDENCE

The Northern Cheyenne Tribe, whose reservation is in southeastern Montana abutting the Crow Reservation, has a website: www.Cheyennation.com. The Tribal Constitution, as written in 1934 and amended in 1960 and 1996, explicitly provides for three branches of government, including the judicial branch.²² The direct link to the judicial branch is www.cheyennation.com/nct/judicial.html. At the bottom of that page, there is another link to the Tribe’s Law and Order Code online, but this takes you to the NARF/NILL site. Thus, it’s better to access the Northern Cheyenne Code simply by going to http://narf.org/nill/codes/northern_cheyenne/index.html or via the Montana Indian Law portal: www.indianlaw.mt.gov/northerncheyenne/codes/default.mcp.x. The Jameson Law Library at UMLS also has a hard copy of the Code: REF KF8228 .C53 1987.

Title I of the Law and Order Code, “General Provisions,” contains Section 1-1-4, which establishes the judicial branch:

There is hereby established the Northern Cheyenne Court, constituting the Judicial Branch of Tribal government, comprised of the Trial Court, Appellate Court, Constitutional Court and Office of the Court Clerk, as described in Chapter 3 of Title IA of this Code.

The Trial Court is the court of general subject matter jurisdiction for both civil and criminal cases. The subject matter jurisdiction of the Constitutional Court²³ is limited

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20 The Fort Peck Constitution, Code and judicial decisions are also available through the Montana Indian Law portal (www.indianlaw.mt.gov/fortpeck/decisions/default.mcp.x), the NILL/NARF website, and on Westlaw (database FortPeck-CS). Judicial opinions from 1986 to date also appear on Versus Law. Lexis-Nexis has coverage, too, but only for the period 1984-2004.

21 The Montana Indian Law portal link to the Fort Peck judicial opinions contains this language: “This site is designed to provide the public and advocates with easy access to the information needed to make the legal process efficient.” Mission achieved...

22 <http://www.cheyennation.com/legislative/tribal%20constitution.pdf>

23 The Constitutional Court acts en banc, and consists of the three members of the Appellate Court. Section 1A-6-2.

Parental access to a child's health records: Quick tips for navigating the privacy maze

This article is part of a series of writings presented by members of the State Bar's Health Care Law Section.

By Steve Kreitner

From time to time, Montana attorneys may be called upon to navigate a parent, guardian, or other person acting *in loco parentis* (collectively, referred to herein as "parent") through the confusing maze of Federal and State privacy regulations in an effort to determine whether the parent has the right to access the health care records of an unemancipated minor who is in the parent's charge (referred to herein as "child"). This article surveys the basic Federal and Montana regulations that should first be considered when evaluating whether a parent has the right to access his/her child's health care records.

Federal Regulations - HIPAA

Since most health care providers in Montana are subject to the Health Insurance Portability and Accountability Act of 1996's Privacy Rule ("HIPAA Privacy Rule")¹, the Privacy Rule is the first place an attorney should look in determining whether a parent has the right to access his/her child's health care records in Montana.

In general and when allowed by State or other applicable law, the HIPAA Privacy Rule permits a parent to access his/her child's health care records when the parent has the authority to act on behalf of the child in making decisions related to the child's health care.²

The HIPAA Privacy Rule provides for some situational exceptions to this general rule:

- When the child consents to treatment and the parent's consent is not required under State or other applicable law³;
- When a court or another person authorized by law consents to the child's health care⁴;
- When the parent agrees to a confidential relationship between the child and the child's provider⁵;
- When a covered entity reasonably believes that the parent may have or may be subjecting the child to domestic violence, abuse, or neglect⁶;
- When the covered entity reasonably believes the granting access to the parent could endanger the child⁷; and
- When the covered entity, in the exercise of professional judgment determines that granting health care records access to the parent is not in the child's best interest.⁸
- When State or other law, including applicable case law, prohibits a parent from gaining access to his/her child's health care records.⁹

Even in the above referenced situations, however, the HIPAA Privacy Rule does permit a parent to access his/her child's health care records when:

- State or other law, including applicable case law, permits or

Health Care Law Section CLE series

The State Bar of Montana Health Care Law Section will be hosting a series of informative continuing legal education (CLE) seminars and webinars throughout 2015. The first CLE seminar will be a free, two-hour session entitled "Minimizing the Risk of a Medical Malpractice Claim." The speaker will be Martha Raymond, Esq., Associate Vice President of Risk, Claims & Insurance for Providence Health & Services and the CLE session will be hosted at Providence Patrick Hospital on Friday, April 10 at 7:30 a.m. For more information about this CLE seminar, please contact Tawna Meldrum at 406-442.

requires such access in any of the above referenced situations¹⁰; and

- State or other law, including applicable case law, is silent on the issue of providing a parent with access in the above referenced situations and a licensed health care professional decides to allow such access in the exercise of the licensed health care professional's judgment.¹¹

Federal Regulations – Confidentiality of Drug and Alcohol Abuse Patient Records

Another Federal regulation that Montana attorneys should consider when analyzing a parent's right to access the health care records of his/her child focuses on the confidentiality of alcohol and drug abuse patient records¹². Like HIPAA, this regulation regarding the confidentiality of alcohol and drug abuse patient records refers to State law when determining a parent's right to access his/her child's health care records.

42 CFR §2.14 mandates when a minor patient's consent to release records must be obtained:

- When State law does not require parental consent to treatment, "any written consent for disclosure authorized under subpart C of these regulations may be given only by the minor patient¹³; and
- When State law does require parental consent to treatment, "any written consent for disclosure authorized under subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf¹⁴".

Montana Law

As noted above, in some circumstances the Federal regulations put control of the use/disclosure of a child's health care information in the hands of the person who, under State law, was allowed to consent to the involved health care services. So, below is a brief summary of the circumstances in which Montana law affects a parent's right to have access to his/her child's health care records.

- Circumstances when a parent may not have the right to access his/her child's health care records because Montana law does not require parental consent for a child to receive health care services:
 - a. When minors are 16 or older and are allowed to consent to mental health treatment¹⁵; and
 - b. When a minor may provide consent for medical services in Montana because the minor professes or is found to be:
 - i. Married or to have had a child or graduated from high school;
 - ii. Married;
 - iii. Separated from the minor's parents and is self-supporting;

Treated for pregnancy, communicable diseases (including sexually transmitted diseases), and substance abuse.¹⁶

- Circumstances when a parent has the right to access his/her child's health care records because Montana law requires or allows parental consent for a child to receive health care services:
 - Abortions¹⁷; and
 - Mental health services allowing parental consent¹⁸

In conclusion, correctly determining whether a parent in Montana has the right to access his /her child's health care record requires a truly synergistic application of the relevant Federal and State laws, regulations, and case law to the circumstances at hand. This article has provided a brief introduction to the basic Federal and Montana privacy regulations and laws that should first be consulted when making such a determination. For attorneys who want to learn more about how Federal and State privacy regulations affect the health care records of minors, the

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Lawyer Referral & Information Service

When your clients are looking for **you** ... They call **us**

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.

It's inexpensive: The yearly cost to join the LRIS is minimal: free to attorneys their first year in practice, \$125 for attorneys in practice for less than five years, and \$200 for those in practice longer than five years. Best of all, unlike most referral programs, Montana LRIS doesn't require that you share a percentage of your fees generated from the referrals!

You don't have to take the case: If you are unable, or not interested in taking a case, just let the prospective client know. The LRIS can refer the client to another attorney.

You pick your areas of law: The LRIS will only refer prospective clients in the areas of law that you register for. No cold calls from prospective clients seeking help in areas that you do not handle.

It's easy to join: Membership of the LRIS is open to any active member of the State Bar of Montana in good standing who maintains a lawyers' professional liability insurance policy. To join the service simply fill out the Membership Application at www.montanabar.org -> Need Legal Help-> Lawyer Referral and forward to the State Bar office. You pay the registration fee and the LRIS will handle the rest. **If you have questions or would like more information, call Kathie Lynch at 406-447-2210 or email klynch@montanabar.org.** Kathie is happy to better explain the program and answer any questions you may have. We'd also be happy to come speak to your office staff, local Bar or organization about LRIS or the Modest Means Program.

Gaps

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The goal of an escape is to leave without being caught. However, escaping with children presents immediate legal questions that must be quickly and effectively dealt with to secure the victim's safety and to make sure that potential issues regarding children, including custodial kidnapping or abandonment, are effectively handled. If not, the abuser, possibly armed with an attorney, can challenge the mother's right to have taken the children. The victim needs an attorney to present her case so that the history of her abuse is effectively presented and made part of the case's foundation.

A victim of domestic violence, once she has left the relationship needs a lawyer to balance the power between her and her abuser. If the victim is unable to hire an attorney, and the abuser is able to hire one, the imbalance of power characteristic of domestic violence is replicated. If the person who has been abused does not have access to a lawyer or other advocate, experienced in assisting victims, the abuser may use the legal system as yet another venue in which to intimidate, harass and silence the victim.

Among the population of victims of domestic violence there are some groups which are even more vulnerable. For instance, women who risk losing their immigration status by leaving their spouse and those who are completely financially dependent on their partners. Native American women are also at special risk in this already vulnerable population. If they live on a reservation, finding respite shelter might be especially difficult. In addition, few attorneys are licensed or even knowledgeable about tribal courts, making jurisdictional complexities all the more difficult to navigate. In fact, according to the "Gaps and Barriers" study, between the domestic programs at shelters and MLSA, there are only 6.5 domestic violence attorneys to cover the entire state of Montana — only two of which are funded to represent Native Americans only.⁶

Children

While the Gaps and Barriers does not focus on the impacts

⁶ *Gaps and Barriers*, page 31.

Violence

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less likely to suffer future abuse.²² The need is greater than ever for Montana's attorneys to provide pro bono legal services to victims of domestic violence.

Domestic violence will continue to confront our communities. But if we are to truly confront the crisis of domestic

²² Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMP. ECON. POL'Y 158 (April 2003).

of domestic violence on children, children are an especially vulnerable subset of the domestic violence demographic. The U.S. Department of Justice Office on Violence Against Women, has this to say about it:

"Every year, millions of children and adolescents in the United States are victimized and exposed to violence in their homes and communities. Children and youth who are victims of, or witnesses to, violence often suffer severe long-term emotional and physical consequences. When these problems remain unaddressed, children are at higher risk for school failure, substance abuse, repeat victimization, and perhaps most tragically, perpetrating violent behavior later in their own lives."⁷

For children who witness domestic violence the impact can be devastating. Some shelters have programs for children who are suffering from their own constellation of post-traumatic stress symptoms. Among providers it is agreed that in almost all cases, children do better when their mother has taken the step to leave the home, even if that means living in a shelter, being taken out of school or going for a period without seeing their father. As soon as a mother has left an abusive relationship and the environment is no longer so unpredictable in regard to abuse, children are able to relax from exercising constant vigilance.

Conclusion

"Gaps and Barriers" points out that few pro bono attorneys are willing to, or feel adequately experienced to, take on domestic violence cases.⁸ Family law cases involving domestic violence are especially time-consuming and, by nature, not routine. However, this gap is not insurmountable. Some of the strategies that are suggested in "Gaps and Barriers" will be examined in a series of articles on the subject of domestic violence representation written on behalf of the Justice Initiatives Committee of the State Bar of Montana, and will be highlighted in forthcoming articles in this series. The threshold step is to learn about the nature of the gaps and barriers to legal assistance for Montanans.

⁷ Dept. of Justice, "National Advisory Committee on Violence Against Women" statement on March 3, 2010.

⁸ *Gaps and Barriers*, page 31.

violence, we must first know what it is and what it is not. We must shift our scrutiny from victims' behaviors to abusers' behaviors. Cultural norms and stereotypes that perpetuate domestic violence must be recognized, addressed, and eschewed. Abusers must be held accountable by the criminal justice system. Childhood exposure to domestic violence must end. And victims must have access to quality civil legal services in order to safely escape the cycle of abuse.

The challenge is significant but we can all play a part.

Hilly McGahan is staff attorney for SAFE Harbor Montana. Brandi Ries is a partner at Rubin and Ries Law Offices.

Message

from page 3

This is a bleak assessment so far. Lots of fodder for the cynic in this piece. A long menu of reasons to give up on the issue. But, let's muddle through a bit further. Every American civil rights movement has been in the exact same spot at one time or the other — beginning with the first one. In the Revolutionary War, Washington lost many more battles than he won and a third of the colonists were loyal to the Crown. Thurgood Marshall protested against blacks being hired to desegregate his college faculty. Despite the cynics and internal strife, the efforts succeeded.

Let's talk about a usual case — the one where we need to focus our attention. The usual case is the woman (yes, I know it can be a man but it is usually a woman, so let me continue) who just feels powerless, trapped and afraid. She keeps her coat on when everyone else thinks it is too warm. There are red blotches under her chin. Her gaze is fixed and her affect is flat. She mutters "I just want him to stop." "I don't want to hurt HIM." "If he would just quit drinking." "If he would just stay on his meds." "If work was not so stressful." "If I could just keep the kids under control." "But, I love him." The more severe and chronic the abuse, the more the abuse victim seems worried about the abuser rather than herself. But, even talking about the "usual case" can be seen as science by some, and myth perpetuation by others.

The *Montana Lawyer* and the State Bar of Montana are going to dedicate some ink and paper to move the discussion of domestic violence along a bit. This "President's Message" is a step. I cannot call it the first step because hundreds have trod this path before me, and there will be thousands coming along behind. I am not even confident enough to declare my efforts a step in the right direction.

What do we do about the case of the chronically abused victim who feels trapped, cannot get out, and seems to be beyond help? Let's leave aside for a minute the couple who largely is on a level playing field, gets drunk, exchange punches and tries to leverage this single bad night into an edge in the Battle of Roses.

I am not going to tell anybody what they should do, except this. First, be a bit gentle with those, like me for instance, who are willing to help, but whose clumsy use of the vocabulary of "domestic violence" and whose remnants of ancient prejudices rub you the wrong way.

Second, do not despair. I believe there are modern advancements, even in my short tenure as an attorney, which are moving us in the right direction. This is how I look at the issue of domestic violence in 2015 — I make no suggestion that it should be your view.

Here is why I see hope.

The biggest risk to the chronically abused spouse is

returning to the abuser. There are those who disagree — I understand. I have gone, in my own mind, from the "well-it's-your-funeral" world view to the addiction model. I don't know if it has helped the world, but it has helped me. I have seen some help for my clients when I confront them with the idea. Viewing addiction as a disease is not a perfect intellectual fit in my mind, but it is sufficiently helpful that I am not giving up on it until someone comes along with something better. How does one treat an addiction? With an intervention. How does one conduct an intervention? With the pros. As near as I can tell, treating addiction as a disease does not have much of an historical predicate. It is a modern invention. Like antibiotics and other modern advances, if we keep struggling for answers, we might find one. Thus, my first effort at a conclusion — progress can be made. The journey will take some time. Today's myths will be tomorrow's science. Today's science will be tomorrow's myths.



Do not despair. I believe there are modern advancements, even in my short tenure as an attorney, which are moving us in the right direction (on domestic violence).



Another way to look at the client's world which has been helpful to me has been through the understanding of the grieving process. I have read exactly one book on the issue — *On Death and Dying* by Elizabeth Kubler-Ross. Ending even a pathological relationship involves a great amount of grief. If you understand what grief is, you might understand what your client is going through. We have dealt with grief in the modern era more healthily.

It also is helpful to understand the mechanics of PTSD. There is a reason why the more traumatic the person's experience the less you are likely to hear about it. "Dad was in the war, but he never talks about it." Knowing

a bit about PTSD helps.

Some say my world view is a way to "blame the victim." I disagree. Injecting the victim into the grind of being the plaintiff in a restraining order proceeding or even a witness in a criminal proceeding creates complicated entanglements with the system and the abuser which are largely aggravating the trauma. Society may get some good out of punishing, correcting or otherwise modifying the abuser's behavior; however, the victim truly does not get much help from these unpredictable rituals.

And lastly, from Dr. Seuss (and here is where I back slide a bit and get a bit pedantic). "They don't care how much you know, until they know how much you care." If you are listening to a person who has been a victim of domestic abuse, you may well be the first person in the world to do so. The victim will not follow you on the tough journey out of the despair until she knows for certain that you have heard her. There will be plenty of time for forms; interrogation; scribbling on yellow pads; manic trips to the courthouse; proclamations of indignations such as "we will fight for you and show him who's boss." None of that matters. Not a speck of it. They are usually beaten up by the drama of violence and don't want any more, even in their favor. They want to be heard.

Listen.

The art of persuasion: Lessons from an author who shaped presidential policy

This article first appeared in Precedent, the Missouri Bar's quarterly magazine. It is being reprinted by permission.

By Douglas E. Abrams *

In October of 1962, the world stood on the brink of war as the United States demanded dismantling of offensive medium-range nuclear missile sites that the Soviet Union was constructing in Cuba, potentially within striking range of American cities. From behind-the-scenes accounts, we know that a new book by historian Barbara W. Tuchman, a private citizen who held no government position, contributed directly to the negotiated outcome of the Cuban Missile Crisis as the world watched and waited. After chronicling Tuchman's contribution, this article discusses her later public commentary about what she called the "art of writing,"¹ commentary that holds valuable lessons for lawyers who write for clients and causes.

The Missiles of October

In the last week of January 1962, Barbara W. Tuchman was a little-known historian whose three books had not won much popular attention. Then she published "The Guns of August," a military history of the antecedents and first month of World War I. The book presented a penetrating, carefully researched and eminently readable account of the chain reactions that led European powers to stumble into the four-year conflict in the summer of 1914, after an obscure 19-year-old Bosnian Serb assassinated the obscure Austrian Archduke Franz Ferdinand and his wife during a motorcade in Sarajevo.

Few European leaders wanted the war, some thought it would last only a few weeks, but none could overcome the miscalculations, national resentments and interlocking alliances that abruptly ended years of peace.² When the guns finally fell silent more than four Augusts later, 30 nations had suffered a total of 20 million military and civilian deaths, plus 21 million more wounded.³

The "The Guns of August" sold more than 260,000 copies in its first eight months, remained on the New York Times best seller list for nearly a year, and won Tuchman the first of her two Pulitzer Prizes. The war's origins continue to intrigue historians today,⁴ but the Modern Library ranks "The Guns of August" as number 16 on its list of the 100 best non-fiction books of all time.⁵

One of the book's earliest and most avid readers was President John F. Kennedy, who requested his aides to read it, had copies distributed to U.S. military bases throughout the world,⁶ and reportedly gave copies as gifts to visiting dignitaries who visited the White House.⁷ In a world overheated by Cold War tensions, the president was particularly struck by Tuchman's account of a late 1914 conversation between the former German chancellor and his successor about the blunders that sparked the outbreak of war.

"How did it all happen?," asked the first. "Ah, if only one knew," answered the other, without even trying to make sense of things.⁸

During the tense faceoff with the Soviet Union, President Kennedy explained the price of miscalculation to aides who had not yet read "The Guns of August". "If this planet is ever ravaged by nuclear war – and if the survivors of that devastation can then endure the fire, poison, chaos and catastrophe – I do not want one of those survivors to ask another, 'How did it all happen?' and to receive the incredible reply: 'Ah, if only one knew.'"⁹

Nearly all of Kennedy's advisers urged him to bomb the Cuban missile sites that American reconnaissance flights had photographed. The Joint Chiefs of Staff urged a full-scale invasion of the island, but the President resisted escalation that might have slid the United States and the Soviet Union into World War III.

"The Guns of August" directly influenced Kennedy's thinking. "I am not going to follow a course which will allow anyone to write a comparable book about this time, 'The Missiles of October,'" he told his brother, Attorney General Robert F. Kennedy. "If anyone is around to write after this, they are going to understand that we made every effort to find peace and every effort to give our adversary room to move."¹⁰

A 'What If' of History

When "The Guns of August" appeared late in January of 1962, President Kennedy was a busy man beginning the second year of the New Frontier, with little time outside the Oval Office for extracurricular reading. Tuchman's book was more than 450 pages long, and any White House aide dispatched to the Library of Congress could easily have returned with other books to satisfy the President's appetite for written history.¹¹

What if President Kennedy found "The Guns of August" opaque, stodgy or inartful and put it aside after a few pages, without drawing lessons that helped stiffen his resolve to avoid the sort of impetuous missteps that led Europe into total war nearly 50 years earlier?¹²

Instead Tuchman delivered prose that observers have called "erudite and highly readable,"¹³ "elegant,"¹⁴ "illuminating,"¹⁵ lucid and graceful,¹⁶ and "transparently clear, intelligent, controlled and witty."¹⁷ Historiography held real-world consequences during the tense super-power standoff, and her best-seller sent a powerful message with powerful writing that kept legions of readers (including the president of the United States) turning the pages.

"The Art of Writing"

Tuchman said that "the art of writing interests me as much as the art of history."¹⁸ In 1981, she wrote "Practicing History," a slim volume of essays drawn from her earlier articles and speeches. The book opened with observations about what she called "that magnificent instrument that lies at the command of all of us – the English language."¹⁹

Historians' writing can yield helpful, though not necessarily perfect, analogies for lawyers' writing. These analogies remain readily adaptable by lawyers because there are only two types of writing – good writing and

bad writing. Good historical writing is good writing about history, and good legal writing is good writing about law.²⁰ Tuchman's major observations about good writing appear in italics below.

Personal and Professional Commitment

*"[B]eing in love with your subject . . . is indispensable for writing good history — or good anything, for that matter."*²¹

For practicing lawyers, "being in love" may often be an inapt phrase. "Being committed" may better describe the impulse that should sustain legal writers, even ones not moved by "love" of subject in the general sense of the word. In private practice and the public sector alike, lawyers sometimes write for clients or superiors whom we find difficult or may not know very well, and we sometimes argue forcefully for positions that would draw our ambivalence, distaste or even rejection if we were writing for ourselves and not as representatives.

As an advocate, the lawyer "zealously asserts the client's position under the rules of the adversary system."²² Zealous representation advanced by the Model Rules of Professional Conduct does not always afford lawyers the personal autonomy to choose among topics that pique our interest, and then to pursue research wherever it leads.

Personal and professional commitment, however, does matter to lawyers. When fueled by commitment to client or cause, the lawyer's research and writing can show life and vitality. But when research and writing remain unstimulated by that commitment, the final product inevitably sags. Perceptive readers can distinguish between legal writing that (in the words of former U.S. District Judge Charles E. Wyzanski, Jr.) "shines with the sparkling facets of a diamond,"²³ and legal writing that appears dry and listless.

*"[C]oupled with compulsion to write must go desire to be read. No writing comes alive unless the writer sees across his desk a reader, and searches constantly for the word or phrase which will carry the image he wants the reader to see and arouse the emotion he wants him to feel. . . . [T]he reader is the essential other half of the writer. Between them is an indissoluble connection."*²⁴

Lawyers summon personal and professional commitment most effectively when we recognize that just because we write something does not necessarily guarantee that anyone will read it, wholly or even in large part. This frank recognition, drawn from humility and not entitlement, led Catherine Drinker Bowen to keep a simple sign posted above her desk as she wrote her well-crafted biographies: "Will the reader turn the page?"²⁵

This remains a good question for lawyers too. "The writer's object is — or should be — to hold the reader's attention. I want the reader to turn the page and keep on turning to the end," Tuchman said.²⁶ Achievement of this desire does not normally follow from taking readers for granted.

Before a lawyer ever puts words on paper, the effort to spark a dialog with prospective readers begins with a threshold inquiry: "Who is likely

to read this?" The answer is usually well within the lawyer's grasp because most legal writing targets a discrete audience readily identifiable in advance. Before ever hitting the keyboard, the lawyer may even know the prospective readers personally or by name or reputation.

Lawyers know, for example, that briefs, motion papers and contracts target the parties and the court but hardly anyone else. An opinion letter is usually for the client's eyes only. A judicial opinion speaks first to the parties and then to future courts and litigants, academic researchers and (this invites spirited debate) perhaps lay readers when the decision touches on matters of social concern.²⁷

Once the legal writer identifies the intended audience, the writer can tailor style, tone and content in ways that help engage readers. This rhetorical empathy is particularly important to quality writing in today's frenetic legal practice. Federal and state judicial dockets have increased faster than population growth for most of the past generation or so, leaving judges with limited patience for submissions that remain bloated, sloppy or off the point.²⁸ Judges may sense when they have read enough of a brief, just as counsel researching precedents may grow bored with an overwritten judicial opinion. Counsel may have no choice but to plod through an opponent's unwieldy brief or motion papers, or through unnecessarily verbose legislation or administrative regulations, but even here the writer risks obscuring important points amid the fog.

"I never feel my writing is born or has an independent existence," said Tuchman, "until it is read."²⁹ In the legal arena and elsewhere, the sinews of her "indissoluble connection" with readers depend on writers who recognize, as stage and screen actress Shirley Booth said soon after winning an Academy Award in 1952, that "the audience is 50 percent of the performance."³⁰

Writing without readers is not writing, and writers without readers are not writers.

Research and Expression

*"The most important thing about research is to know when to stop. . . . One must stop before one has finished; otherwise, one will never stop and never finish. . . . I . . . feel compelled to follow every lead and learn everything about a subject, but fortunately I have even more overwhelming compulsion to see my work in print."*³¹

Tuchman was right that "[r]esearch is endlessly seductive."³² Legal research, however, serves a mission different from the mission served by research that provides historians with raw material for engaging narratives. Lawyers' writing sometimes tells a story, but usually only for a greater purpose.

This greater purpose is to establish or maintain someone's status, rights and obligations under the law. This "someone" is usually the client or the public agency that engages the lawyer. Legal research may involve a maze of binding and persuasive judicial decisions, statutes, administrative rules and decisions, court rules, and such unofficial sources as treatises, restatements, and law review articles. In legal matters worth writing about and disputes worth taking to formal resolution, these sources may point in different directions without initial harmony.

Lawyers too must "know when to stop," but different missions call for different conclusions about when that time comes. Court deadlines and other filing obligations directly or indirectly constrain lawyers who, for the client's sake, must "see their work

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Writing

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in print.” The lawyer exercising professional judgment must sense when to turn primary attention from efficient, thorough research of fact and law to the process of writing. At some point, the lawyer determines that the salient arguments or advice can be delivered thoroughly and effectively, and that further research might diminish opportunity for translating research into effective writing.

Quality legal research does not necessarily showcase the lawyer’s ability to plumb every nook and cranny. Legal writing usually fulfills its mission best when readers remember the message, though not necessarily the messenger. “People,” said Tuchman, “are always saying to me in awed tones, ‘Think of all the research you must have done!’ as if this were the hard part. It is not; writing, being a creative process, is much harder and takes twice as long.”³³

*“The writer . . . must do the preliminary work for the reader, assemble the information, make sense of it, select the essential, discard the irrelevant . . . What it requires is simply the courage and self-confidence to make choices and, above all, to leave things out.”*³⁴

In addition to time constraints imposed by court deadlines and other filing obligations, lawyers commonly encounter space constraints. The latter may be direct (when imposed by page and font restrictions in court rules, for example), or indirect (when imposed by the likely attention spans of busy readers). Taken together, constraints of time and space summon the cardinal rule of writing: The writer should finish before the readers do.

“Structure is chiefly a problem of selection,” Tuchman said, “an agonizing business because there is always more material than one can use.”³⁵ Lawyers without the courage, wisdom and self-confidence to “make choices” can easily clutter the final product with string citations, distracting footnotes, extraneous commentary and similar underbrush that disorient readers without illuminating the status, rights and obligations that underlie the writing itself.

*Words are seductive and dangerous material, to be used with caution. . . . “[C]areless use of words can leave a false impression one had not intended.”*³⁶

Lawyers know what Tuchman was talking about. When a person reads personal messages or newspaper columns by writers friendly to our point of view, the reader sometimes recasts inartful words or sentences to help cure imprecision. “I know what they really meant to say,” the reader thinks silently, even if the words on the page do not quite say it.

Readers normally do not throw lawyers such lifelines. Legal writers typically face a “hostile audience” that “will do its best to find the weaknesses in the prose, even perhaps to find ways of turning the words against their intended meaning.”³⁷ Judges and law clerks dissect briefs to test arguments, but only after opponents have tried to make the arguments mean something the writers did not intend. Advocates strain to distinguish language that complicates an appeal or creates a troublesome precedent. Parties seeking to evade contractual obligations seek loopholes left by a paragraph, a clause or even a single word.³⁸

Guy de Maupassant, France’s greatest short-story writer, was no

lawyer, but his advice can help guide lawyers who seek precision in their writing. “Whatever you want to say,” he asserted, “there is only one word to express it, only one verb to give it movement, only one adjective to qualify it. You must search for that word, that verb, that adjective, and never be content with an approximation, never resort to tricks, even clever ones, and never have recourse to verbal sleight-of-hand to avoid a difficulty.”³⁹

Maupassant sets the bar high, indeed perhaps too high because some imprecision is inescapable in language. Justice Felix Frankfurter, a prolific writer as a Harvard law professor before joining the Supreme Court, was right that “[a]nything that is written may present a problem of meaning” because words “seldom attain[] more than approximate precision.”⁴⁰

Imprecise tools though words may sometimes be, they remain tools nonetheless because (as Professor David Mellinkoff put it) “[t]he law is a profession of words.”⁴¹ Tuchman stated a universal truism when she flagged seduction, danger and caution; achieving the greatest possible precision the first time remains a legal writer’s goal.

*“[S]hort words are always preferable to long ones; the fewer syllables the better, and monosyllables, beautiful and pure . . . , are the best of all.”*⁴²

Novelists William Faulkner and Ernest Hemingway went back and forth about the virtues of simplicity in writing. Faulkner once criticized Hemingway, who he said “had no courage, never been known to use a word that might send the reader to the dictionary.” “Poor Faulkner,” Hemingway responded, “Does he really think big emotions come from big words? He thinks I don’t know the ten-dollar words. I know them all right. But there are older and simpler and better words, and those are the ones I use.”⁴³

Humorist Will Rogers wrote more than 4,000 nationally syndicated newspaper columns, and his wisdom about language resembled Hemingway’s.⁴⁴ “[T]here is always a short word for it,” Rogers said. “I love words but I don’t like strange ones. You don’t understand them, and they don’t understand you. Old words is like old friends — you know ‘em the minute you see ‘em.”⁴⁵

In a letter to a 12-year-old boy, Mark Twain praised his young correspondent for “us[ing] plain, simple language, short words and brief sentences. That is the way to write English — it is the modern way and the best way. Stick to it; don’t let fluff and flowers and verbosity creep in.”⁴⁶

“Use the smallest word that does the job,” advised essayist and journalist E. B. White.⁴⁷ “One of the really bad things you can do to your writing,” novelist Stephen King said, “is to dress up the vocabulary, looking for long words because you’re maybe a little bit ashamed of your short ones.”⁴⁸

“Broadly speaking, the short words are the best, and the old words when short are best of all,” attested former British Prime Minister Winston Churchill, who also knew a thing or two about writing.⁴⁹

*“[I]t is a pleasure to achieve, if one can, a clear running prose This does not just happen. It requires skill, hard work. . . . It is laborious, slow, often painful, sometimes agony. It means rearrangement, revision, adding, cutting, rewriting.”*⁵⁰

From years at the bench and bar, Justice Louis D. Brandeis instructed lawyers that “there is no such thing as good writing. There is only good rewriting.”⁵¹ Literary giants often make writing look easy, but they have said the same thing about what needs to happen behind the scenes before their work ever reaches readers.

"I'm not a very good writer, but I'm an excellent rewriter," reported James A. Michener, who could not "recall anything of mine that's ever been printed in less than three drafts."⁵² To be a writer," attested Pulitzer Prize winner John Hersey, "is to throw away a great deal, not to be satisfied, to type again, and then again and once more, and over and over."⁵³ Hemingway believed that "easy writing makes hard reading,"⁵⁴ and he made no secret that he rewrote the last page of "A Farewell to Arms" 39 times before he signed off on the novel.⁵⁵ "The wastepaper basket," said Isaac Bashevis Singer, "is a writer's best friend."⁵⁶

Conclusion

Dean William L. Prosser called law "one of the principal literary professions," and he estimated that "the average lawyer in the course of a lifetime does more writing than a novelist."⁵⁷ More perhaps than many historians too, but Barbara W. Tuchman was one of the 20th century's best. Her advice about the art of writing can help guide lawyers who remain committed to excellence in their everyday practices.

*** Douglas E. Abrams, a University of Missouri law professor, has written or co-authored five books. Four U.S. Supreme Court decisions have cited his law review articles.**

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- 56 Michael D'Antonio, *Sneer When You Say 'Journalist'*, L.A. TIMES MAG., Aug. 24, 2003, at 20 (quoting Singer).
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Frequently Asked Questions page about personal representatives and minors on the U.S. Department of Health & Human Services website (found at http://www.hhs.gov/ocr/privacy/hipaa/faq/personal_representatives_and_minors/index.html) is a good first step.

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Endnotes

- 1 The HIPAA Privacy Rule applies to "covered entities," which include: "(1) health plans, (2) healthcare clearing-houses, and (3) health care providers who transmit any health information in electronic form in connection with a transaction covered by this subchapter." 45 CFR §§ 160.102 & 160.103
- 2 45 CFR § 164.502(g)(3)(i)
- 3 45 CFR § 164.502(g)(3)(i)(A)
- 4 45 CFR § 164.502(g)(3)(i)(B)

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Understanding the regulations governing alcohol producers

Note: This is the first of three articles on Montana alcoholic beverage licensing laws. The next installment will focus on breweries.

By Antoinette Tease

Drive through downtown Billings, and the profusion of micro-breweries and distilleries is apparent. New York City it is not (some would say for the better), but Billings does have its own unique and evolving culture, which includes a thriving and innovative brewery/winery/distillery industry. Our firm represents these businesses, which are located throughout Montana, Wyoming and the Northwest. Some — like Merry Cellars and Red Lodge Ales — have already won awards. Others — like Bozeman Spirits Distillery and Triple Divide Spirits of Helena — are making their presence known through their unique brands. RoughStock Distillery of Bozeman, in business since 2008, was one of the pioneers in Montana's modern distillery industry. Prairie Fire Brewing Company of Gillette, Wyoming, is a creative and focused company with an intentional branding strategy. Uberbrew, with a retail establishment in Billings and a brewing facility in Fort Collins, Wyoming, is a resourceful company with huge brand interest. Glemma Wine, a nascent Billings-based wine business and forward-thinking company, has already taken steps to protect its brand internationally.

What all of these businesses have in common is a recognition that branding is an important facet of the success of their business. These companies also need to understand the permutations of the various licensing requirements that govern their respective businesses. This article is one of a three-part series that will address, with respect to Montana only, the statutory licensing requirements for wineries, distilleries and breweries located or doing business in Montana. This first article will address licensing requirements as they pertain to wineries and those who do business with wineries.

Only licensed wineries may manufacture wine in Montana or distribute wine to retailers located in Montana. Mont. Code Ann. § 16-4-107. In addition to obtaining a state license, wineries located in Montana must also hold a basic permit from the U.S. Department of the Treasury. Wineries located outside of Montana (and shipping wine to retailers located in Montana) must be licensed both in Montana and in the state in which the wine is made, and they too must have a basic

permit from the federal government. Mont. Code Ann. § 16-3-411 sets forth certain requirements for doing business as a Montana-license winery; for example, there are provisions governing contracts with common carriers and the labeling of boxes for delivery to retail licensees.

Those who distribute wine in Montana must be licensed under Mont. Code Ann. § 16-4-108. Mont. Code Ann. § 16-3-403 provides that a licensed distributor may sell wine to another licensed distributor, a retailer or common carrier, or an agency liquor store. A distributor may not allow wine to be consumed on its premises, nor may a distributor provide wine to the public. A licensed distributor must have a written distributorship agreement in place with the supplier of the wine, and Montana law requires that certain provisions be included in that agreement. Mont. Code Ann. § 16-3-416 and -417. In addition, licensed distributors must keep records of all wine on hand, sold and distributed. Mont. Code Ann. § 16-3-402. Any wine that has been shipped into Montana in violation of these requirements may be confiscated by the state.

Wine retailers must be licensed under Mont. Code Ann. § 16-4-115. If the premises where the wine is being sold are shared with another business, that business must be a pharmacy or grocery store. All applicants for a license to sell wine at a retail establishment are subject to investigation by the Montana Department of Justice. The physical space where the wine is sold must be a stand-alone building or part of a building that is separated from the rest of the building by permanent walls. Mont. Code Ann. § 16-3-311.

The "direct shipment endorsement," which was enacted by the Montana Legislature in 2013, allows licensed wineries to ship up to 18 cases of wine annually to a consumer in Montana who is at least 21 years old. Mont. Code Ann. § 16-3-411(1)(a)(i). The wine must be for personal use and not for resale, and the recipient must sign an acknowledging receipt. The wine must be shipped by common carrier and conspicuously labeled with the words: "Contains Alcohol: Signature of Person Age 21 or Older Required for Delivery." Records of all shipments under the direct shipment endorsement must be kept for three years and are subject to audit by the Montana Department of Revenue.

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

Wineries, breweries and distilleries need to understand the permutations of the various licensing requirements that govern their respective businesses.

Prosecuting Medicaid fraud offenses

By Debrah Fosket and Chris McConnell

The Montana Medicaid Fraud Control Unit (MFCU) was created by the 1995 legislative session and became operational in May 1996. Currently, 49 states, the District of Columbia, and Puerto Rico have MFCUs. The unit's activities are subject to the oversight of the Office of Inspector General, U.S. Department of Health and Human Services, which must recertify the unit annually. Organizationally, the MFCU is a unit of the Division of Criminal Investigation under the aegis of the Attorney General's Office.

The MFCU investigates and prosecutes offenses committed by Medicaid providers, alone or in a conspiracy with recipients. Medicaid fraud is defined in Mont. Code Ann. § 45-6-313. The MFCU does not investigate stand-alone allegations of fraud by Medicaid recipients. Such cases, which could constitute recipient welfare fraud, might be investigated by the Montana Department of Public Health and Human Services.

Medicaid fraud may include the filing of false claims. See Mont. Code Ann. § 45-7-210. Examples of Medicaid fraud or false claims may include provider claims for double billing, up-coding, fictitious services, unnecessary services, billing for services not provided, and billing contrary to established rules and policies. Medicaid fraud may also include the acceptance or payment of kickbacks for furnishing services or items under the Medicaid program.

The MFCU can investigate and prosecute alleged offenses that are committed by Medicaid program personnel when such crimes affect the administration of the program. The MFCU can also investigate alleged Medicare fraud and fraud in any federal health care program in connection with a Medicaid investigation.

In addition to the preceding situations, the MFCU is authorized to investigate and prosecute patient abuse, patient neglect

and elder exploitation within Medicaid-funded facilities, which may involve physical violence, sexual abuse or financial exploitation. The MFCU can investigate abuse in any health care facility, even if the alleged victim is not a Medicaid recipient. A facility is basically any enterprise that cares for two or more clients, including board and care homes and personal care homes.

The Montana MFCU works with the National Association of Medicaid Fraud Control Units and the U.S. Department of Justice to investigate national companies for fraud. Additionally, we work with health care professionals and other law enforcement agencies in the Montana Health Care Task Force, a group headed by assistant U.S. attorneys who prosecute health care fraud. The group is made up of federal and state prosecutors and investigators, as well as health care professionals and investigators employed by private organizations.

The MFCU works closely with the Montana Department of Public Health and Human Services, Surveillance Utilization and Review Section (SURS). Clear and open communication between the MFCU and SURS regarding possible provider fraud, referrals and audits enables the more efficient use of state investigative resources. For example, SURS may assess possible problem billing and then refer to the MFCU those providers whose billing patterns indicate fraud being perpetrated against the state's Medicaid system. Not every case that is investigated by the MFCU leads to prosecution and conviction. The investigations must meet a stringent review by the MFCU prosecutor before charges are filed.

The Montana Department of Justice maintains a hotline for citizens to report Medicaid-provider fraud or elder abuse. Please call the Medicaid Fraud hotline at 800-376-1115.

Debrah Fosket is director of the Montana Medicaid Fraud Control Unit. Chris McConnell is an assistant Montana attorney general.

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to and exclusive for claims that legislative enactments of the Tribal Council are unlawful and for removal of judges. Title IA, effective Oct. 27, 1997, was enacted to "reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers." Section 1A-2-2. The Code contains separate titles for Civil Procedure (Title IV) and Criminal Procedure (Title V). Title VI is entitled "Rules of Evidence Code" and comprises 38 rules beginning with "Purpose, Scope and Construction" and ending with "Authentication of Writings." Rule 1 indicates that the Rules of Evidence apply "in **all** proceedings in all courts of the Northern Cheyenne Reservation." (Emphasis added).

Some significant aspects of the Northern Cheyenne Rules of Evidence are that:

judicial notice may be taken of both law and fact (Rule 12);

instead of several specific hearsay exceptions, there is a single general exception allowing the Court to admit hearsay "which is deserving, needed, and otherwise admissible, and the [opponent] has had fair notice" (Rule 17);

privileges include: self-incrimination;

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Continuing Legal Education

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. 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.

St. Patrick's Day CLE at Fairmont Hot Springs focusing on Technology and Litigation

The State Bar of Montana Continuing Legal Education Institute is having its annual St. Patrick's Day CLE March 13 at Fairmont Hot Springs near Anaconda.

The CLE will focus on Technology and Litigation. It is approved for 6.25 Montana CLE credits.

Technology occupies a central role in contemporary litigation, whether in the form of eDiscovery or securing client information. This seminar brings together an experienced group of professionals to help you better understand the role of technology in your practice.

Faculty presenters and their presentations are:

- Randy Cox, Boone Karlberg in Bozeman, "Making Your Record for Appeal," and "eDiscovery in the Rules of Civil Procedure";
- Susan Mayer, Litigation Abstract Inc. in Missoula, "You Can Do It; They Can Help: Document Review Tools";
- Ryan Phelan, P. Mars Scott Law Offices in Missoula, "30 Apps in 60 Minutes";
- Sherri Davidoff, LMG Security in Missoula, Cloud Cybersecurity & eDiscovery";
- Hon. David Carter, Yellowstone County Justice of the Peace, "Legal Update: Discovery, Courts and the Practice of Law"; and
- Brendan O'Connor, Leviathan Security Group in Seattle, "Information Governance: Security, Not Fear."

Upcoming State Bar of Montana Live CLE Events

March

Friday, March 13: Annual St. Patrick's CLE, Fairmont Hot Springs Resort

April

Friday, April 10: Criminal Law – Prosecution and Defense, Great Falls

Friday, April 24: Family Law, Billings

May

Friday, May 1: Judicial Relations Committee's Bench-Bar Conference, Bozeman

Wednesday, May 8: Mediation, Helena

Wednesday, May 13: Technology CLE presented by Paul Unger (topics to be determined), Helena



Friday, May 15: Technology CLE presented by Paul Unger (topics to be determined), Billings

Friday, May 22: Indian Law CLE, Great Falls

June

Saturday, June 6: New Lawyers Workshop & Road Show, Bozeman

Tuesday, June 16: Internet for Lawyers, Billings

Thursday, June 18: Internet for Lawyers, Great Falls

August

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

September

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

October

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

Friday, Oct. 9: Dispute Resolution Committee, Bozeman

Friday, Oct. 9: Dispute Resolution Committee, Bozeman

Friday, Oct. 23: Family Law Section, Missoula

Friday, Oct. 30: eDiscovery Through Trial – A Practical Approach, Missoula (Rescheduled)

Save the Date

State Bar of Montana's Annual Meeting — Missoula Sept. 9-11



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

We invite you to participate in the Modest Means program {which the State Bar sponsors}.

If you aren't familiar with Modest Means, it's a reduced-fee civil representation program. When Montana Legal Services is unable to serve a client due to a conflict of interest, a lack of available assistance, or if client income is slightly above Montana Legal Services Association guidelines, they refer that person to the State Bar. We will then refer them to attorneys like you.

What are the benefits of joining Modest Means?

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 or Erin Farris at 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

Name: _____

Address: _____

City, State: _____

Email: _____

Michael Whalen

ANAMOSA, Iowa — Michael John Whalen, 92, died Monday, Feb. 16, 2015, at his boyhood home outside of Anamosa, on the Buffalo River Road, in the presence of two of his daughters, Becky Jean Bostwick and Bridget Alice Lane.

His funeral Mass was Tuesday, Feb. 24, at Saint Joseph Catholic Church in Stone City, Iowa, the same church where he received his First Holy Communion 85 years ago.

Michael John was born April 22, 1922, to William Patrick Whalen and Vona Kathryn (Vaughan) Whalen in Towanda, Kan. In 1925, William moved the family to Anamosa, to the small farm where Michael resided at the time of his death.

In December of 1941, while he was living in Brookfield, Ill., Michael, like many young Americans listening to the radio, heard the reports of the Japanese attack on Pearl Harbor. Anxious to join in the war effort, he enrolled in the Aviation Cadet Program.

He served as part of the 44th Bomb group, known as the Flying Eight Balls of the 14th Wing, in the 2nd Division of the 8th Air Force, they began flying missions over Europe. They continued bombing missions until the surrender by Germany in May 1945.

After the war, Michael attended the University of Iowa and the University of Michigan Law School at Ann Arbor through the GI bill and obtained his law degree. After passing the Iowa State Bar, Michael began the practice of law in Anamosa.



Whalen

On Sept. 27, 1952, Michael married the love of his life, Mary Florence Ament, also of Anamosa, at Saint Patrick's Catholic Church in Anamosa.

A year later, Michael moved with Mary Flo and their daughter Annie Laurie to Billings. In true Irish fashion he was admitted to the Montana Bar on March 17, 1954.

After passing the Bar, Michael established a private law office in Billings and practiced law for the next 40 years. During that time, Michael garnered a reputation as one of the top trial lawyers in the state. He could easily be distinguished on the streets of Billings wearing his pearl "Open Road" Stetson, which he rarely went without.

The Honorable Russell C. Fagg, of the District Court of Yellowstone County, said of Michael, "He always took the roll of the underdog and would help those people who needed it most but might not be able to afford it." The Honorable Michael Moses of the 13th Judicial District for the State of Montana in Yellowstone County, who knew Michael personally, said "He was a great lawyer and a bulldog and was well respected by his peers. His two devotions were his family and the practice of law."

In 1996, he returned to the farm outside of Anamosa where he was raised. He spent his retirement working on the farm and spending time with his daughters and grandchildren, who lived nearby.

On June 9, 2012, his beloved spouse, Mary Flo, passed away by his side on the farm. In addition to Mary Flo, he is preceded in death by his brothers John and Jerry and their spouses, Jean (Knight) Whalen and Ruth (Wassen) Whalen respectively; and his brother-in-law Donald Micks.



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

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Larry L. Baer

Larry L. Baer passed away on Feb. 5, 2015, at the age of 70. Larry was a man full of passion and love, dedicating himself to his family and friends.

He is survived by his wife, Shirley; his mother, Adelaide; his three children, Samuel, Carin and Charles; and his two grandchildren, Lauren and Vaughan.

He was born in Chicago, lived in many states, but loved Montana and was happy to call it "home."



Baer

Though his family always came first, his life was filled with many professional accomplishments: Navy hospital corpsman, policeman, business owner/entrepreneur, published author, artisan, attorney and Montana state senator.

A funeral Mass was held on Feb. 12 at St. John Paul II Catholic Church in Bigfork. Preceding the Mass will be a rosary at 10 a.m.

Memorial donations can be made in his honor to the Creston and Bigfork Volunteer Fire Departments.

James Edward Congdon III

MISSOULA – James Edward Congdon III quietly passed away Wednesday, Jan. 28, of natural causes. He was born Aug. 13, 1925, in Ottawa, Ill., to James E. Congdon Jr. and Erma Benson. James was raised in Walworth, Wis., and grew up sailing on Lake Geneva. He attended Park College in Parkville, Mo., where he met and married Opal J. Ringen. He went on to the University of Wisconsin Law School where he received his LL.B.

Jim joined the Air Force in 1952 as a JAG Corps officer and served for 18 months before being discharged. From there he attended John Marshall Law School receiving his LL.M. For health reasons, he and Opal headed west and settled in Missoula in 1961. Deciding he wasn't finished with his education, they returned east, living in New Jersey while he attended New York Law School where he received his SJD. They couldn't get out of New Jersey fast enough and returned to Missoula for good in 1964.

Jim joined the Air Force Reserve, again in the JAG Corps

and stayed for 21 years until he retired in 1980 at the rank of lieutenant colonel. He practiced law in Missoula from 1964 until his retirement in 2008. He also served as city attorney for Superior for many years.

Jim was a member of the East Missoula Lions Club and the Missoula Mendelssohn Club. He served on the board of directors of the Marshall and Mary Brondum Special Assistance Foundation. One of his passions was sailing and he loved spending time at Flathead Lake in the summers doing just that.

His parents; his sister, Mabel Louise; and his twin brother, Floyd; preceded James in death. He is survived by his wife of 66 years, Opal of Missoula; daughter, Christine and husband David Howe of Florence; son, Walter and wife Ann of Missoula; granddaughters, Amber Bass, Elizabeth Bass and Ona Congdon; and grandson, Sam Congdon.

Graveside services with full military honors were held Monday, Feb. 9, at the Western Montana State Veterans Cemetery. Condolences may be left for the family at dalyleachchapel.com.

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advocate-client; spousal testimonial (not just communications); clergy-penitent; physician-patient; and public officer, for "official information communicated to him in an official confidence" (Rules 18-26).

It is very difficult to find any published opinions to augment interpretation and application of the Tribal Code, including the Rules of Evidence. The Northern Cheyenne Tribal Court official website does not contain any published appellate opinions, nor are there any on the Montana Indian Law portal. NILL shows that Northern Cheyenne opinions are "At Indian Law Reporter (not available online). Coverage includes 1985-1988 Abbreviations: N. Chy. Tr. Ct." The University of Washington Indian Law Guide's²⁴ very handy table confirms that two Northern Cheyenne cases were published by the Indian Law Reporter, one in 1985 and one in 1988.²⁵ (The Westlaw database

does not contain any entry for Northern Cheyenne.) However, neither of these Northern Cheyenne cases appears in the topic search of the NILL for "Evidence" or "Rules of Evidence," so I assume²⁶ that neither of these deals with my topic for today: Evidence in Tribal Courts in Montana.

CONCLUSION

The tribal courts are important partners in the administration of justice, civil and criminal, in Montana. Because they are components of sovereign nations located within the state, they are entirely free to develop and apply their own rules of evidence.²⁷ Some tribes have chosen to follow, closely or not, state or federal rules; others have markedly different principles of admissibility. I hope that this two-part series will give you a starting point for your research into the applicable statutory and judicial evidence law for any case you may bring or defend in a particular tribal court.

²⁶ Yes, I know what this makes me but I am OK with that for this column. If I were being paid to represent someone where this assumption would matter, of course I would obtain and analyze both cases.

²⁷ And, don't forget, admission to their bars. Your federal or state license may work in some of the tribal court systems, but others require passage of a tribal bar examination. So, before you even begin to research evidence law in a particular tribal court, make sure you can practice there.

²⁴ <https://lib.law.washington.edu/content/guides/TribalCt>

²⁵ As I indicated last month, the Indian Law Reporter is not available online, but you can get to these cases by searching the NARF/NILL website for the citations and then calling the Jameson Law Library, which will print, scan and email the actual cases to you.

2015 Nomination Petition

State Bar President, Secretary/Treasurer and Trustee Election

I, _____, residing at _____, am a candidate for the office of () President-Elect; () Secretary/Treasurer; () Area E Trustee; () Area F Trustee; () Area H Trustee at the election to be held on June 5, 2015. I am a resident of Montana and an active member of the State Bar of Montana. I request my name be placed on the ballot. The term of office of the President-Elect is one year. The term of office of the Secretary/Treasurer and of the Trustee is two years.

Signature _____

The following are signatures of active members of the State Bar of Montana supporting my candidacy. Trustee candidates include the area of residence. No fewer than 10 signatures must be provided for a Trustee; and no fewer than 25 signatures for a President-Elect or Secretary/Treasurer candidates.

NAME

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Return this petition to State Bar of Montana, PO Box 577, Helena MT 59624, postmarked no later than April 6, 2015.

Ballots will be mailed to Bar members on May 6, 2015, and must be returned to the Bar by May 26, 2015.

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ASSOCIATE ATTORNEY: Parker, Heitz & Cosgrove, PLLC, a Billings litigation firm, is seeking an associate attorney for a litigation position. Applicants must demonstrate excellent research, writing and communication skills. Competitive salary and benefits. Please submit your cover letter and resume in confidence to Parker, Heitz & Cosgrove, PLLC, Attn: Mark D. Parker, P.O. Box 7212, Billings, MT 59103-7212, or via email to markdparker@gmail.com.

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

MEDIATION

MEDIATION SERVICES: Effective Jan. 1, 2015, Stuart Kellner will provide mediation services under the name Kellner Mediations. He plans to operate primarily electronically regarding scheduling, engagement letters, receipt of mediation memos and billing at kellnermediations@montana.com. Any necessary mailings may be sent to P.O.Box 1166, Helena, MT 59624. His business cellphone is 406-431-1027.

MEDIATIONS & ARBITRATIONS: As former executive vice president and chief counsel of ninth largest private employer in the U.S. and with over 45 years legal experience, my practice focuses on mediation and arbitration. Available as a neutral resource for complex commercial, class-action, ERISA and governmental agency disputes. Detail of experience, professional associations and cases provided on request. Francis J. (Hank) Raucci, 406-442-8560 or www.gsjw.com.

AVAILABLE FOR MEDIATION AND ARBITRATION: Brent Cromley, Of Counsel to Moulton Bellingham P.C., Billings, 406-248-7731, or email at brent.cromley@moultonbellingham.com.

INVESTIGATORS

PRIVATE INVESTIGATOR: Accurate Private Investigator for civil or criminal cases. Licensed in Montana for over 30 years. Zack Belcher, 541 Avenue C, Billings, Montana, 59102. Phone:1-406-248-2652.

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

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