

# MONTANA LAWYER

State Bar  
— of —  
Montana

October 2015 | Vol. 41, No. 1

## BEWARE

### SCAMMERS TARGET MONTANA ATTORNEY TRUST ACCOUNTS

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#### Also in this edition

- > State Bar welcomes special guests, 200-plus attorneys for 41st Annual Meeting
- > Former Chief Justice Jean Turnage dies at 89
- > Legal writing column: Civility matters
- > Changes in IOLTA reporting on the way
- > President's Message: Practice is changing — embrace it
- > Law Library Highlights



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**“Some use hyperbole in describing the state of the legal profession in relation to the disruptive changes that have occurred in the Internet and technology revolution. But the sky is not falling.”**

State Bar of Montana President Matt Thiel is an attorney in Missoula whose practice focuses mostly on personal injury and labor law. He is an appointed member of the Montana Facility Finance Authority and the Montana Insurance Guarantee Association.

# Technology is changing the practice — embrace it

When considering the future of the practice of law, as I have been doing more the past several months while attending a number of conferences and meetings, it's important to remember that a two-year window is a long time in the life of technology and the speed at which attorneys must address technology changes depends on their business model. Some use hyperbole in describing the state of the legal profession in relation to the disruptive changes that have occurred in the Internet and technology revolution of the past decade. This is to be expected as these individuals are engaged in aggressive promotion of ideas and products and must keep their presentations compelling. But the sky is not falling. The resources and time are available for attorneys to take steps and invest in their practices. Access to and affordability of legal services have pushed consumers towards large non-lawyer owned corporations that are delivering low-cost legal services online. These multi-state companies are offering online legal services such as brief consultations, mediation, contract and document review, business organization, estate planning, real estate documents and legal research, including Google's free Legal Scholar. Most experts agree the commoditization of legal services via the Internet has not reached its limit and that the addition of artificial intelligence technologies to web-based platforms will expand the breadth and quality of the low-cost legal services that will eventually be available. LegalZoom, Avvo, FindLegal Forms, My Corporation, My Pocket Attorney are notable examples of companies filling the void by providing affordable, fast legal services to middle income consumers, but there are dozens of other non-lawyer owned companies engaging in multijurisdictional marketing of legal related services to consumers not inclined to hire lawyers. If something can be rated it will be; and if content can be put on the Internet for free it will be.

In response to decreased access to legal services caused by economic factors, unbundled or limited-scope representation will continue to gain momentum among smaller firms and is already visible in Montana in the areas of family and employment law and mediation.

Nevertheless, opportunities abound for lawyers to increase their own business reach and efficiency and otherwise remain relevant. Numerous online or cloud-based services, the giants among them, are designed for lawyers and allow attorneys to provide the process functions of practicing law at lower costs while freeing them from the confines of a physical office (Google Business, MyCase, Clio, Microsoft 365, and Fastcase). Payroll, timekeeping, billing, research, forms, drafting, storage, document management, collaboration and complete server replacement are all available and more cost-effective than many traditional practice models. Technology is dramatically increasing the efficiency, and lowering the cost, of practicing law. Lawyers can and should leverage these technologies to remain competitive and solve security issues. When it comes to learning and using technology, the technology of today is just so much smarter and easier to learn than that of 10 to 20 years ago. Knowing this, it is easier to start learning by doing, rather than letting an unreasonable fear prevent us from using new technology. This directly benefits the small firm attorney, the most prevalent practice model in Montana. The growth of the large Internet-based companies or mega firms that utilize Internet-based technology, should also result in expanding career opportunities for new and existing attorneys interested in specialized or virtual law practice models.

The lawyer as counselor at law is here to stay. Every expert addressing the above subjects acknowledges the human connection and common sense experience of the counselor at law, the strategy and advocacy of the legal planner and trial lawyer and the insights and communication of the legal researcher/writer will not, at any time in the foreseeable future, be replaced by artificial intelligence. Clients demand these services, but they seek efficiency and value. We already use the best approach to adapting our practices to changes in technology; read as much as time allows, seek second opinions from trusted colleagues, and consider the opinions and motives of the experts marketing the technology solutions. Make a decision and be prepared to change your direction if needed.

### Burke launches site honoring pioneering women lawyers

A new website, *mtwomenlawyers.org*, celebrates Montana's early women lawyers.

The website, launched this summer by Professor Bari Burke of the Alexander Blewett III School of Law at the University of Montana, contains profiles of trailblazing women in the law, going back to Ella Knowles Haskell, the first female lawyer in Montana in 1889. The site also contains women lawyers' news of the day, a variety of relevant lists, Montana legal milestones affecting women, and a bibliography with citations to books, articles, websites, and films.

Burke says the site is still in its early stages and is being updated daily.

### Peterson is new legal counsel for Montana State University

Kellie Peterson is the new legal counsel for Montana State University.

A native of Butte, Peterson is a 2003 graduate of the University of Montana School of Law. She was a partner in the law firm of Mangum, Wall, Stoops and Warden in Flagstaff, Arizona.



Peterson is a member of the State Bar of Montana, the State Bar of Arizona, the U.S. Court of Appeals for the Ninth Circuit, Hopi Tribal Courts, Navajo Tribal Courts and the Courts of the Gila River Indian Community.

### Browning, Kaleczyc, Berry and Hoven welcomes 2 attorneys

Browning, Kaleczyc, Berry and Hoven, P.C. (BKBH) is pleased to announce that Great Falls attorneys Michael L. Rausch and Steven J. Fitzpatrick have joined the BKBH team.

Mike Rausch has a litigation practice focused on representing individuals and businesses in cases involving personal injury and property damage. Mike also has a general practice focusing on probates, wills, and estates, family law, and business. Mike uses strategic litigation

planning and implementation to provide successful results to his clients.

Rausch has successfully resolved hundreds of cases in his 21-year career through trial, arbitration, and mediation. He graduated from the University of Montana School of Law in 1994. He obtained numerous felony jury trial convictions as a county prosecutor.



Rausch



Fitzpatrick

Fitzpatrick focuses his practice on litigation including commercial litigation, construction law, insurance coverage, and insurance defense. His litigation practice is diverse and includes litigation that is factually complex and highly technical. He is a 2001 graduate of Montana State University and a 2004 graduate of the Arizona State University College of Law.

Fitzpatrick is also a three-term member of the Montana House of Representatives representing areas of Great Falls. He has served as the primary sponsor or carrier for over 20 pieces of legislation that have become law. He has been a member of the Taxation, Business and Labor, Natural Resources, Local Government, Agriculture, Human Services, and Rules Committees.

### Green joins Poore, Roth & Robinson as new associate

Poore, Roth & Robinson P.C. has announced that Katie Green has joined the firm as a new associate. Katie grew up in Butte and graduated from Butte High in 1997. She received her Bachelor of Arts in English literature from the University of Montana in 2002 and earned her Juris Doctorate from Creighton University School of Law in 2005. She is admitted to practice in Montana.



Green

Prior to joining Poore, Roth & Robinson, Green worked as a staff attorney for the State of Montana Public Defender's Office in Missoula and as an associate at Manson Law Firm PC in Butte. Her area of practice is family law.

You can reach Green at Poore, Roth and Robinson P.C., 1341 Harrison Ave, Butte, MT 59701; [kcg@prrlaw.com](mailto:kcg@prrlaw.com); or 406-497-1200.

### Smith joins Doney Crowley as senior associate attorney

Doney Crowley P.C. announced that Mark "Mac" M. Smith has joined the firm as senior associate attorney.

Prior to joining Doney Crowley, Smith worked as an associate litigation attorney with the Great Falls law firm of Church, Harris, Johnson & Williams P.C.. He has also held the positions of legal intern with the Oregon Department of Justice and attorney with the Toledo, Ohio, law firm of Maloney, McHugh, and Kolodgy, Ltd.

Smith holds a Bachelor of Arts degree in English from Wake Forest University, and a Juris Doctorate from the University of Montana School of Law. While in law school, he served as the publication editor for the Public Land and Resources Law Review. He also holds a Master of Laws degree in Environmental and Natural Resources Law from Lewis and Clark Law School in Portland, Oregon.

His law practice with Doney Crowley will focus on water, natural resources, real property, and business litigation. He can be contacted at [msmith@doneylaw.com](mailto:msmith@doneylaw.com) or (406) 443-2211.

### Mason named to Best Lawyers in America list

Kirby Mason of HunterMaclean in Savannah, Georgia, has been named to "The Best Lawyers in America" for 2016.

Mason, a member of the State Bar of Montana, was cited for her work on behalf of defendants in medical malpractice law.

The Best Lawyers lists are compiled by an evaluation from professional peers, and lawyers are not permitted to pay a fee for inclusion.



Mason



# Jean Turnage, longtime senator, chief justice of Montana Supreme Court, dies at age 89

Jean Turnage, longtime chief justice of the Montana Supreme Court and a giant in Montana politics for nearly five decades, died on Sept. 27. He was 89.

According to The Lake Funeral Home and Crematory in Polson, Turnage died at St. Luke Extended Care in Ronan. A cause of death was not available.

Turnage graduated from the University of Montana School of Law in 1951. A year later, he began his career in elected office, winning a race for Lake County attorney.

Turnage was elected to the Montana House of Representatives in 1962, serving one term. In 1964, he won a seat in the Montana Senate, where he served until 1984, finishing his tenure as Senate president.

He was elected Supreme Court chief justice in 1984, serving from until his retirement in 2000.

Karla Gray, who served on Turnage's court for 10 years before succeeding him as chief justice in 2001, remembered him as a "genuinely wonderful human being."

"He served with integrity and fairness, for which he was well known in the court and in his political career," Gray said.

Justice Skeff Sheehy, who served on the Supreme Court from 1978-1991, remembered Turnage as being smart, loyal and dedicated to justice.

"He was one of the most affable people I ever knew," Sheehy said. "He was the kind of leader you wanted to please



Jean Turnage, who served as Supreme Court chief justice for 16 years and as a senator for 20 years, died on Sept. 27. He was 89.

rather than have to have him order you."

Sheehy said that Turnage's time as chief justice came during a period when the court's caseload was extremely backed up.

"We caught up in the time I was there and he was there," he said. "We went to work."

Sheehy said that in addition to being well liked by his colleagues on court, he was also highly regarded on a national level, at one time becoming head of the national association of chief justices.

"He rose to leadership wherever he went."

In 2006, Turnage spoke with Bob

Brown, his former colleague in the Montana Legislature, in an interview archived for the Bob Brown Oral History Project, part of the special collections of the Mansfield Library at the University of Montana.

A lifelong Republican, Turnage told Brown in that interview that he felt that for legislators to be successful, it was important for them to consider the other side of the aisle.

"An individual legislator is probably not going to be very successful in his bills either passing them or opposing the bills if he doesn't learn to cooperate with members of both sides of the aisle," he said. "They're not going to do it on their own. If you are fundamentally correct in what your argument is, you should be able to get some cooperation from both sides of the aisle, and usually do. I think that's important."

He also said that part of his judicial philosophy was to use restraint in deciding on issues that are covered by statute, but he stopped short of calling himself a strict constructionist.

"I think ... if a statute covers the issue, we're supposed to follow the statute," he said. "I don't know if you call that strict construction or following the law."

Turnage is survived by his wife, Eula Mae, a son and daughter, three grandchildren and three great-grandchildren. Funeral services were held Oct. 1 at Good Shepherd Lutheran Church in Polson.

## 406-683-6525

### Montana's Lawyers Assistance Program Hotline

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

## MJF says goodbye to longtime executive director

On Sept. 1, 2015, the Montana Justice Foundation bid farewell to its first full-time executive director, Amy Sings In The Timber. Sings In The Timber joined the MJF in January 2007 with a charge to maximize the Interest on Lawyers' Trust Accounts program and raise the visibility and outreach of the organization and its mission. Nearly nine years, and an extended interest rate recession, later the MJF is stronger than ever and poised for another era of growth.



Sings In The Timber

"For the past nine years I have had the

privilege to lead this great organization, working with bankers, lawyers, policy-makers and some of the finest legal aid providers in the country in furtherance of equitable and accessible justice for all Montanans," Sings In The Timber said. "My time with the MJF has been a brilliant and unforgettable experience, but it is time to begin a new chapter."

Sings In The Timber relocated to Illinois to join the Chicago Bar Foundation – an opportunity that will allow her to continue her professional and personal commitment to equal justice and bring her young family closer to extended family in the Midwest.

Over her tenure, Sings In The Timber helped MJF grow its programmatic reach, broaden its support base, and develop its leadership role in the greater equal justice movement both locally and nationally. Together, with the partnership of the Montana Supreme Court, the State Bar, the School of Law, Montana Legal Services Association and other service providers, MJF has forged new ground in the equal justice movement and become a forerunning advocate for equal and meaningful access to the civil justice system as a means for realizing greater social justice goals.

MJF's executive search is underway. During the transition, MJF Program Director, Kate Kuykendall is serving as interim director. Kuykendall, a graduate of the University of Montana School of Law, has been with the MJF for over three years.

Montana Supreme Court Justice and ex-officio MJF Board member Beth Baker, who is chairing the search committee, said that the Foundation hopes to have a new executive director named before the end of the year.

"Amy will be a difficult act to follow," Baker said, "but she leaves the Foundation well-organized and strongly positioned to move forward toward its mission of making our civil justice system equally available to all Montanans."

Baker said the position is open for applications until mid-October. Interested persons may obtain the position announcement through the Montana Lawyer classified section or by accessing the MJF website, <http://mtjustice.org>.

## 2016 Lawyers' Deskbook

3 ways to update your information:

**Email\*:**

[jdiveley@montanabar.org](mailto:jdiveley@montanabar.org)

**Update Online:**

Log in at [www.montanabar.org](http://www.montanabar.org) and Edit your Bio (under Manage Profile)

**Fax\*:**

(406) 442-7763

\* for verification purposes you MUST include your Bar number or Date of Birth

**Verify Your Listing!**  
All changes to your contact information for the next edition of the Deskbook & Directory are due by **October 16, 2015**

## Valuable Pro Bono Service in a low-key setting

First Judicial District Legal Aid Clinic

Thursday, October 15, 5-7 p.m.

State Law Library, Joseph P. Mazurek Justice Building  
215 N. Sanders St., Helena



# Montana Justice Foundation approves \$215K in grants for legal services and awareness

The Montana Justice Foundation (MJF) annually awards grants to nonprofit organizations that provide civil legal services to eligible persons; promote knowledge and awareness of the law; and/or facilitate the effective administration of justice. In June 2015, MJF approved \$215,000 in grant awards to 14 organizations for the award year ending in June 2016. Since 1986, MJF has given over \$5 million to Montana access to justice programs. Information about the grant process, application deadline, and MJF programs is available at [www.mtjustice.org](http://www.mtjustice.org).

## **ACLU of Montana**

\$5,000, Special Project

Caitlin Borgmann, Executive Director

ACLU of Montana works to defend, preserve, and advance civil liberties, envisioning a world where dignity, freedom and civil liberties are a reality for each individual. MJF funds will be used to support ACLU of Montana's Racial Justice Project, working to create web-based trainings for American Indian parents, school boards, and tribal leaders.

## **CASA-CAN of Cascade County**

\$6,000, operating

Lisa Goff, Executive Director

CASA-CAN provides highly trained volunteer guardians ad litem to speak on behalf of abused and neglected children involved in youth-in-need-of-care cases in the Eighth Judicial District Court.

## **CASA for Kids, Inc. Kalispell**

\$5,000, operating

Jamie C. Campbell, Executive Director

The CASA program in Flathead County is committed to ensuring that every child in need of an advocate to represent his or her best interests will have one. Their dedication to this goal is expressed by active recruitment and rigorous training for advocates.

## **CASA of Lake and Sanders Counties**

\$3,500, operating

Ann Marie McNeel, Executive Director

The CASA program of Lake and Sanders Counties is in its second year as a two-county program, providing trained volunteer advocates for neglected and abused children. A marketing initiative will raise community awareness and recruit new volunteers.

## **CASA of Missoula, Inc.**

\$3,500, operating

Jeri Delys, Executive Director

Through independent, trained volunteers, CASA of Missoula provides consistent, long-term advocacy for children who are at risk or have experienced abuse and neglect in Missoula and Mineral counties.

## **CASA of Yellowstone County**

\$6,000, operating

Cass Staton, Executive Director

CASA of Yellowstone County trains volunteers to provide a voice for abused and neglected children in the Yellowstone County court system. CASA volunteers promote children's best interests and advocate for safe, permanent homes.

## **Community Dispute Resolution Center of Missoula County**

\$1,500

Operating

Stephan Edwards, Executive Director

The CDRC educates, empowers, and supports low-income Missoula County community members in creating peaceful and collaborative solutions, providing low- and no-cost mediations. CDRC trains new mediators each year, and provides mediation services for cases in Missoula County courts.

## **Community Mediation Center**

\$6,500, operating

Connie Campbell, Executive Director

The CMC provides quality, affordable dispute resolution services and education using trained volunteer mediators. Its Low-income Family Mediation Program serves clients in the 18th and 6th judicial district courts.

## **Eastern Montana CASA/GAL Inc.**

\$9,500, operating

Cherie LeBlanc, Executive Director

Eastern Montana CASA/GAL serves twelve counties in Eastern Montana by providing the Seventh and Sixteenth judicial district courts with trained volunteers to represent the best interests of a child or children in neglect and abuse court proceedings.

## **HAVEN**

\$4,000, operating

Jennifer Bain, Co-Executive Director

Erica Aytes Coyle, Co-Executive Director

Through its Legal Advocacy Program, HAVEN assists victims of domestic or sexual violence in seeking Orders of Protection and provides information and referrals for other civil law matters.

## **Little Shell Tribe**

\$4,500, special project

Gerald Gray, Tribal Chairperson

The Little Shell Tribe will establish a legal aid clinic that operate during the Tribe's traditional quarterly gatherings. The clinic will provide an on-site attorney and support staff for case assessment, self-help assistance, and referrals to pro bono or reduced-fee practitioners for Little Shell Members.

## **Montana Fair Housing**

\$7,000, operating

Pam Bean, Executive Director

Montana Fair Housing offers a broad range of services to identify and combat discrimination in housing across Montana, including the state's most rural areas. Montana Fair Housing works to further fair housing through outreach, providing educational opportunities for housing providers and consumers, and pursuing meritorious claims to address discriminatory housing practices.

## **Montana Innocence Project**

\$3,000, operating

Joseph Bischof, Executive Director

MTIP provides legal assistance to indigent Montanans with credible, evidence-based claims of wrongful conviction. Legal assistance is provided through the Innocence Clinic, affiliated with the University of Montana Schools of Law and Journalism. Client services for post-conviction civil legal matters are provided through a small staff assisted by pro-bono attorneys and student interns.

## **Montana Legal Services Assn.**

\$150,000, operating

Alison Paul, Executive Director

MLSA provides statewide free legal services to low-income Montanans in the areas of family, housing, consumer, and public benefits law. In addition to direct representation, MLSA provides community legal education, coordination and support for pro bono resources, and legal advice and referrals.

# IOLTA reporting is coming soon...

The system used for reporting IOLTA will change this year. During this year's reporting period, EVERY active member will need to create an account in the new system. In order to do so, members will need to know their bar number and have a current email address. In addition to these two items, attorneys will need to create a strong password with at least eight characters and contain both letters and numbers. More information on the new system will be included in the November edition of the Montana Lawyer.

## Modest Means

### **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.

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### **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, will receive recognition in the Montana Lawyer and, when you spend 50 hours on Modest Means and / or Pro Bono work, you will receive a free CLE certificate entitling you 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.

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### **Questions?**

**Please email:** Kathie Lynch at [klynch@montanabar.org](mailto:klynch@montanabar.org). You can also call us at 442-7660.



# Three resolutions passed at Annual Meeting

State Bar of Montana members approved three resolutions at the bar's Annual Meeting in Missoula.

One of the resolutions, calling on the bar to provide assistance to county election administrators in need of volunteers to act as election judges — was proposed by the bar's Board of Trustees at the request of Bob Phillips of Missoula.

In addition to calling on the bar to encourage members to act as election judges, the resolution asks that the bar:

- seek to establish that volunteer services as an election judge shall be deemed to satisfy, in whole or in part, the aspirational goal for pro bono services by members of the State Bar of Montana; and

- seek to obtain approval from the Continuing Legal Education Commission that the training required by MCA §13-4-203 shall constitute hours to be considered in satisfaction of the CLE requirements for its members.

## Federal funding for Legal Services

Members passed a resolution calling on the bar to strongly urge the U.S. Congress to increase federal funding for legal services programs nationwide, especially this year when the need is even greater; and strongly urge all members of the State Bar of Montana to participate in pro bono programs established by the State Bar, local bar associations, Montana Legal Services Association and various other entities to assist in providing legal services for those unable to pay.

## Thank you to Western Montana Bar Association

Members also passed a resolution thanking members of the Western Montana Bar Association, without whose generous contributions of time and talent the 41<sup>st</sup> Annual Meeting would

not have been possible.

"The State Bar of Montana does hereby express its deepest appreciation to the attorneys and judges of the Western Montana Bar Association and, in particular, to the following members of the Annual Meeting Committee: Beth Brennan, Leslie Halligan, Mark Parker, Katie Ranta, Liesel Shoquist, David Steele and Matt Thiel," the resolution reads.

A copy of the three resolutions is posted on the bar's website at [www.montanabar.org](http://www.montanabar.org).

## Haffeman selected as new State Bar trustee

The Board of Trustees of the State Bar of Montana selected Paul Haffeman as the new trustee from Area D during the Annual Meeting in Missoula Sept. 10.



Haffeman

Haffeman takes over the term of Jason Holden, who resigned to take the position of Secretary-Treasurer of the bar. He was among three people the board interviewed for the trustee position.

"'Listen and learn' is going to be my mantra in the short term," Haffeman said when asked about his goals for his term as a trustee. "After that, it will depend on what issues have been shown to be of special importance to the members of the Bar."

Haffeman is a partner with Davis, Hatley, Haffeman & Tighe in Great Falls. He is the current president of the both Montana Defense Trial Lawyers Association and the Cascade County Law Clinic boards. He is immediate past president of the Cascade County Bar Association.

Area D covers Cascade, Teton, Pondera, Toole and Glacier Counties. The term ends in September 2016.

## Supreme Court Oral Arguments

# Court to consider medical cannabis ruling

**DA 15-0055 -- Montana Cannabis Industry Association v. State of Montana; Nov. 4, 9:30 a.m.**

The Montana Supreme Court will hear an oral argument on Nov. 4 in the state of Montana's battle with the Montana Cannabis Industry Association over the state's medical cannabis laws.

The state is appealing Helena District Court Judge James Reynolds' order permanently enjoining portions of Montana's medical marijuana rules. The state says Reynolds was wrong to strike the law's "commercial prohibition," saying he incorrectly assumed its purpose is to "insure access" to marijuana. The state also says

the judge ignored flagrant abuses under the old law when he enjoined the 25-patient review trigger for physicians. Finally, the state argues that Reynolds was wrong in determining that the law's advertising ban unconstitutionally infringes free speech.

Montana Cannabis Industry Association cross-appeals on two issues: First, does a blanket ban on probationers' use of medical marijuana violate equal protection; and second, do the law's warrantless search provisions violate constitutional privacy protections?

Hon. Robert G. Olson, Shelby District Court judge, will sit as a member of the

court in place of Justice Patricia Cotter, who has recused herself.

The argument will take place at 9:30 a.m. in the Courtroom of the Montana Supreme Court, in the Joseph P. Mazurek Justice Building at 215 N. Sanders in Helena. Oral argument times will be 40 minutes for the appellant and 30 minutes for the appellees.

**DA 14-0181-- Montana v. James Morris Colburn; Dec. 2, 9:30 a.m.**

The Montana Supreme Court will hear an oral argument on Dec. 2 in a Stevensville man's appeal of his conviction and 100-years in total sentences on incest and sexual intercourse without consent charges.



Montana Gov. Steve Bullock talks with, from left, State Bar Past President Robert Sullivan; Bar Counsel Betsy Brandborg; and Past President Pam Bailey before Bullock's CLE presentation Sept. 10 at the Annual Meeting in Missoula.

## A marvelous time in Missoula

The State Bar of Montana welcomed more than 200 Montana attorneys along with special guests Montana Gov. Steve Bullock, Dean Paul Kirgis of the University of Montana law school, and ABA President Paulette Brown for its 41st Annual Meeting in Missoula Sept. 9-11.

President Brown also participated in a CLE presentation at the Annual Meeting with Dean Kirgis sharing their perspectives on the legal practice. Mark Parker, immediate past president of the State Bar, moderated the discussion.

During the wide-ranging CLE talk, Brown said she has had an overwhelmingly positive response to the Main Street ABA program she launched as president. As part of the program, she said she plans to visit at least two states every month to talk to and hear from attorneys across the country.

"I want to visit as many locations as I can to be in touch with ABA members and lawyers in general, and connect with lawyers as much as possible," she said. "In so many places, they're longing to see leadership."

Brown invited people to follow her on Twitter (@Brown4Lawyers) as she continues her outreach.

Parker noted that Brown, who is the first woman of color to be ABA president, has a long list of awards and

accolades to her name. Parker said it became clear to him as he got to know her over the week why she got all those awards.

Brown, who was still in her first month as ABA president, had a short but very busy visit to Missoula. In addition to the many Annual Meeting activities she took part in, she addressed law students; talked with children from the Boys and Girls Club of Missoula; and attended the naming ceremony for the Alexander Blewett III School of Law at the University of Montana.

Brown even made time to hike up to the "M" on Mount Sentinel with a group of lawyers.

Another highlight of the meeting was a Supreme Court oral argument in a multimillion-dollar insurance dispute over a more than 6,000-gallon gasoline spill near Polson in 2008.

After the argument, Chief Justice Mike McGrath and Justices James Shea and Laurie McKinnon visited with Missoula high school students who were on hand to observe the argument. The justices explained the Supreme Court appeal process with the students and answered questions from the students before the students participated in a discussion about the case.



ABA President Paulette Brown kept a busy schedule during her visit as a guest of the State Bar of Montana at the Annual Meeting. Above, Brown is shown speaking with children from the Missoula Boys and Girls Club. Below, Brown participates in a CLE presentation with Dean Paul Kirgis of the Alexander Blewett III School of Law at the University of Montana..





# STATE BAR AWARD WINNERS



**Above,** Damon Gannett, center, receives the William J. Jameson Award from State Bar Past President Mark Parker and ABA President Paulette Brown. **Below left,** Hon. Kenneth Neill receives his honor for 50 years of service as an attorney in Montana from Brown. Neill also received the Karla M. Gray Equal Justice Award at the Annual Meeting. Below right, Professor Hillary Wandler receives the Neil Haight Pro Bono Award from Montana Gov. Steve Bullock.



# STATE BAR AWARD WINNERS



Past President Randy Snyder receives a Distinguished Service Award from Immediate Past President Mark Parker.



Twelve attorneys were honored at the Annual Meeting for 50 years of service to the Montana Bar. Pictured are, seated, from left, Bradley Dugdale, Diana Dowling, R. William Walsh, Hon. John Whelan, Hon. Kenneth Neill; standing, David Jackson, Thomas Boone, Donald Bjertness, Floyd Brower, Francis Raucci, Doug Wold and Milt Datsopoulos. Eight others received 50-year pins this year: Hon. Sam Haddon, L. Neil Axtell, Robert Baxter, J. Allen Bradshaw, Horton Koessler, Frederick Rathert, and W. Gene Theroux.



# Incivility in legal writing can be costly to client and to attorney

*This article first appeared in Precedent, The Missouri Bar's quarterly magazine. It is being reprinted with permission.*

By Douglas E. Abrams

A few years ago, American Bar Association President Stephen N. Zack decried the legal profession's "continuing slide into the gutter of incivility."<sup>1</sup> An ABA resolution affirmed "the principle of civility as a foundation for democracy and the rule of law, and urge[d] lawyers to set a high standard for civil discourse."<sup>2</sup>

The ABA initiative echoes federal and state courts that call civility "a linchpin of our legal system,"<sup>3</sup> a "bedrock principle,"<sup>4</sup> and "a hallmark of professionalism."<sup>5</sup> Justice Anthony M. Kennedy says that civility "defines our common cause in advancing the rule of law."<sup>6</sup> Chief Justice Warren E. Burger called civility a "lubricant[] that prevent[s] lawsuits from turning into combat."<sup>7</sup> "Courtesy is an essential element of effective advocacy," agrees Justice John Paul Stevens.<sup>8</sup>

The adversary system's pressures can strain the tone and tenor of a lawyer's oral speech, but the strain on civility can be especially great when lawyers write. Words on paper arrive without the facial expression, tone of voice, body language, and contemporaneous opportunity for explanation that can soothe face-to-face communication. Writing appears cold on the page, dependent not necessarily on what the writer intends or implies, but on what readers infer.

This article is in three parts. Part I describes two manifestations of incivility, a lawyer's written derision of an opponent, and a lawyer's written disrespect of the court. Part II describes how either manifestation can weaken the client's cause. Part III describes how incivility in writing can also compromise both the lawyer's own personal enrichment and the lawyer's professional standing among the bench and bar.

## Part I.

"[C]ivility is not a sign of weakness," President John F. Kennedy assured Americans in his Inaugural Address in 1961 as he anticipated four years of faceoffs with the Soviets.<sup>9</sup> "Civility assumes that we will disagree," says Yale law professor Stephen L. Carter, "It requires us not to mask our differences but to resolve them respectfully."<sup>10</sup> The advice prevails, regardless of whether incivility pits lawyer on lawyer, or whether it pits lawyer against the court. Each of the two manifestations of incivility warrants a representative example here.

### Lawyer-On-Lawyer Incivility

When Chief U.S. Bankruptcy Judge Terrence L. Michael

(N.D. Okla.) recently considered whether to approve a compromise in *In re Gordon*, the contending lawyers in the Chapter 7 proceeding detoured into written lawyer-on-lawyer invective.<sup>11</sup>

In a filing to support its motion to compel discovery from the bankruptcy trustee in *Gordon*, the lawyer for creditor Commerce Bank charged that the trustee and the United States had engaged in "a pattern . . . to avoid any meaningful examination of the legal validity of the litigation plan they have concocted to bring . . . a series of baseless claims."<sup>12</sup>

"[T]hey know," the bank's lawyer continued, "that a careful examination of the process will show the several fatal procedural flaws that will prevent these claims from being asserted."<sup>13</sup> "Only by sweeping these issues under the rug will the trustee be able to play his end game strategy of asserting wild claims . . . in hopes of coercing Commerce Bank into a settlement (which the Trustee hopes will generate significant contingency fees for himself)."<sup>14</sup>

The trustee charged that the bank's lawyer had impugned his character with accusations that he had compromised his fiduciary obligations for personal gain. Judge Michael denied the trustee's sanctions motion on procedural grounds, but he chastised the bank's lawyer because "personal and vitriolic accusations have no place as part of a litigation strategy."<sup>15</sup> The court instructed the parties to "leave the venom at home"<sup>16</sup> because "[w]hether you like (or get along well with) your opposition has little to do with the merits of a particular case."<sup>17</sup>

Some courts have moved beyond instruction. In the exercise of inherent authority, these courts have sanctioned lawyers, or have denied attorneys' fees, for incivility.<sup>18</sup> Some courts have even sanctioned the client who, having retained the lawyer, bears some responsibility for the lawyer's conduct.<sup>19</sup>

### Lawyer-on-Court Incivility

*Gordon's* written recriminations pitted counsel against counsel, but lawyers sometimes venture into incivility that disrespects judges and the court. Every appeal involves at least one party who believes that the lower court reached an incorrect outcome, but few judges deserve criticism for incompetence. Lawyers for aggrieved parties are more likely to receive a serious hearing (and more likely to perform their roles as officers of the court) by firmly, forcefully, but respectfully arguing a judge's good faith misapplication of the law to the facts, rather than by resorting to insinuations about the judge.

Insinuations surfaced during the federal district court's review of the magistrate judge's report and recommendation in *In re Photochromic Lens Antitrust Litigation*.<sup>20</sup> A party's lawyer contended that the magistrate judge was "misled" concerning

relevant legal standards, and that the judge made her recommendation without “any reference to the voluminous underlying record.” The lawyer further contended that she “conducted no analysis, much less a ‘rigorous analysis,’” and decided “based on no evidence, a superficial misreading of the evidence, or highly misleading evidence.”<sup>21</sup>

The district court approved the magistrate judge’s recommendation and report in significant part, but did not stop there. The court also publicly reprimanded the lawyer for crossing the line: “It is disrespectful and unbecoming of a lawyer to resort to such language, particularly when directed toward a judicial officer. Its use connotes arrogance, and reflects an unprofessional, if not immature litigation strategy of casting angry aspersions rather than addressing the merits . . . in a dignified and respectful manner.”<sup>22</sup>

## Part II.

### Incivility’s Costs to the Client

Lawyers whose writing descends into incivility risk weakening the client’s cause, perhaps irreparably. The Chief Justice of the Maine Supreme Court confides that “[a]s soon as I see an attack of any kind on the other party, opposing counsel, or the trial judge, I begin to discount the merits of the argument.”<sup>23</sup> As they determine the parties’ rights and obligations by applying fact to law, perhaps judges sometimes react this way because civility projects strength and incivility projects weakness. “Rudeness is the weak man’s imitation of strength,” said philosopher Eric Hoffer.<sup>24</sup>

The lawyer’s first step toward civility may be an early candid talk with the client, who may feel grievously wronged and may believe that the surest path to vindication is representation by a junkyard dog waiting to be unleashed. The client’s instincts may stem from movies and television dramas, whose portrayals of lawyers sometimes sacrifice realism for entertainment.

Without this early talk, the client may mistake the lawyer’s civility for meekness, and courtesy for concession. The client needs to understand that a take-no-prisoners strategy can disgust any decision maker who shares the sensibilities expressed by the justices and judges quoted above. One Illinois trial judge recently had this advice for lawyers: “No judge has ever been heard to endorse or encourage the use [of mean-spirited] writing. Not one. You may feel better writing it and your client may feel better reading it, but your audience is the judge, and judges abhor it.”<sup>25</sup> Judicial abhorrence scores the client no points.

Justice Sandra Day O’Connor says that, “It is enough for the ideas and positions of the parties to clash; the lawyers don’t have to.”<sup>26</sup> “It isn’t necessary to say anything nasty about your adversary or to make deriding comments about the opposing brief,” adds Justice Ruth Bader Ginsburg, who says that such comments “are just distractions. You should aim to persuade the judge by the power of *your* reasoning and not by denigrating the opposing side. . . . If the other side is truly bad, the judges are smart enough to understand that; they don’t need the lawyer’s aid.”<sup>27</sup>

Judges are not alone in advancing civility for projecting strength. John W. Davis, perhaps the 20th century’s greatest

Supreme Court advocate, understood his judicial audience. “Controversies between counsel,” he wrote, “impose on the court the wholly unnecessary burden and annoyance of preserving order and maintaining the decorum of its proceedings. Such things can irritate; they can never persuade.”<sup>28</sup>

## Part III.

### Incivility’s Costs to the Lawyer

Aside from compromising the client’s interests, incivility can damage the lawyer’s own personal enrichment and professional standing. Incivility “takes the fun from the practice of law,” says Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit.<sup>29</sup> “Being a lawyer can be pleasant or unpleasant,” explains Judge William J. Bauer of the U.S. Court of Appeals for the Seventh Circuit, who adds that “[w]hen we treat each other and those with whom we have professional contact with civility, patience and even kindness, the job becomes more pleasant and easier.”<sup>30</sup>

Moving from the lawyer’s personal enrichment to professional standing, the Preamble to the ABA Model Rules of Professional Conduct recites “the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.”<sup>31</sup> Model Rule 8.4(d) operates against “conduct that is prejudicial to the administration of justice.”<sup>32</sup>

The Model Rules’ spotlight on professional obligation is fortified by commands for civility in federal and state court rules;<sup>33</sup> state admissions oaths;<sup>34</sup> and unofficial codes that some professional organizations maintain for their member lawyers.<sup>35</sup> The ABA Model Code of Judicial Conduct imposes reciprocal obligations of civility on judges in the performance of their official duties.<sup>36</sup>

These professional commands and expectations mean that descent into incivility can damage the lawyer’s reputation with judges and other lawyers. The damage seems greatest when the court’s opinion calls out the offending lawyer publicly, either by name or by leaving the lawyer readily identifiable from the appearances listed atop the opinion. In the two decisions featured in Part I of this article, the offenders may have had belated second thoughts when the court shined the spotlight.

“Just as lawyers gossip about judges and most litigators have a ‘book’ on the performances of trial judges, we judges keep our own book on litigators who practice before us,” confides one federal district judge.<sup>37</sup> During my judicial clerkship, I learned early that when many judges pick up a brief or other submission, they look first for the writer’s name. A writer with a track record for civil, candid, forceful advocacy gets a head start; a writer who has fallen short must make up lost ground.

Incivility brings tarnish, but civility brings luster. Justice Kennedy calls civility “the mark of an accomplished and superb professional.”<sup>38</sup> A veteran federal district judge concurs: “The lawyers who are the most skillful tend to be reasonably civil lawyers because they project an image of self-confidence. They don’t have to stoop to the level of acrimony.”<sup>39</sup>

Even without public rebuke or other disdain from the



New members of the State Bar of Montana take their oath at the swearing-in ceremony at the

# New attorneys take oath

On Sept. 22, 54 of the newest members of the State Bar of Montana attended a swearing-in ceremony at the House Chambers in the Montana Capitol presided over by Chief Justice Mike McGrath of the Montana Supreme Court.

State Bar of Montana President Matt Thiel addressed the new bar members. Thiel told them the state has a collegial bar with many members they can turn to for mentorship and advice. He also encouraged them to help improve the practice by volunteering with one of the bar's many committees and programs.

Also addressing the new members was Paul Kirgis, the new dean of the Alexander Blewett III School of Law at the University of Montana. Kirgis told them that as attorneys many of them will do well and some will be well off, but they also have the opportunity to do good.



State Bar of Montana member Tom Boland of Florence addresses the court as he petitions for his son-in-law, Samir Faerevik Aarab, on Sept. 22. Boland also addressed the court on behalf of his daughter, Caitlin Boland Aarab. Samir and Caitlin are both 2015 graduates of the University of Montana School of Law.



Attendees share a laugh during the swearing-in ceremony. Fifty-four new members of the State Bar heard advice from Chief Justice Mike McGrath, State Bar President Matt Thiel and Dean of the Alexander Blewett III School of Law at the University of Montana Paul Kirgis.



A new member of the State Bar of Montana shows his daughter the view of the Capitol Rotunda after the swearing-in ceremony on Sept. 22.



# Be on the lookout: Sophisticated scams target Montana attorneys

By Joe Menden

Read more online

Montana attorneys should be on the alert for a scam that has repeatedly targeted attorney trust accounts in recent months.

At least three Montana firms have been targeted by variations of what is commonly called a “spearphishing” scam — the most recent attempt coming in late September. To date, no one has reported losing any funds to the scam. And if attorneys take the proper precautions about handling their trust accounts, there is no reason they should.

Here’s how the scam works: A person claims to be from a company needing representation on a transaction or civil action. The contact person uses real names of real businesses purportedly involved in the transaction and provides details about the transaction and the parties involved. A check is sent to be deposited into the firm’s trust account. Shortly after the check is sent, the scammer pressures the firm that the money needs to be disbursed immediately or the deal will fall through. The check will return as fictitious, and the firm will lose any money paid out from the account.

In the most recent case reported to the State Bar of Montana, grammar and spelling errors in the client’s email immediately raised the attorney’s suspicions, as did the appearance of a nearly \$300,000 cashier’s check. After the check was deposited into the firm’s trust account, the firm contacted its

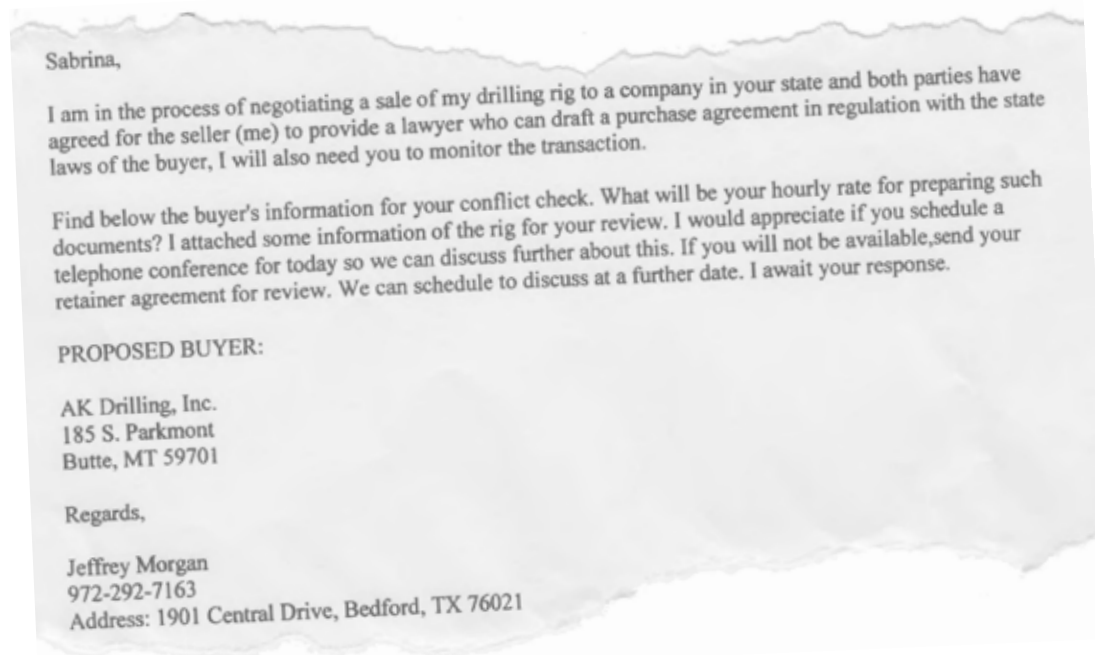
Visit the Montana LawdIT blog — [mtlawdit.blogspot.com](http://mtlawdit.blogspot.com) — to read a detailed account of the “phishing” scam attempt on Luxan & Murfitt, with links to the email correspondence between the scammers and the firm.

bank about its suspicions, which confirmed that the deposit had been returned as fictitious. Fortunately, the scammer was headed off before the scammer could strike.

In August, Candace Payne, managing partner of Luxan & Murfitt in Helena, came to the bar with a story of an attempt on their firm. A paralegal at the firm had been contacted by a man claiming to be Jeffrey Morgan of SBM Offshore Drilling looking for assistance with the sale of some oil rig equipment. SBM is a real company and the contact came from an authentic-looking email address.

In fact, much about the deal looked authentic. There were detailed invoices. The purported seller was in contact by phone — complete with a big Texas accent, according to Payne.

But days after the \$99,400 check was deposited into the bank’s trust, purported Texan was on the phone with a crisis, pressuring the firm to complete the sale by sending the money to the buyer immediately or the deal would be off.





Payne said the firm's strict adherence to its policies regarding its trust account — never disburse funds until the check has cleared — prevented a big loss. And she credits the firm's bookkeeper, Martha Teague, who has been with the firm for 30 years, for making sure the policies are enforced.

"We refer to her as Sarge, because she keeps us in line as far as our billing and our trust account," Payne said of Teague.

Payne said it is no different from what anyone should do with their personal accounts — you wouldn't buy a new car based on a getting a big check from someone without verifying that the check cleared, she said. She added that Luxan & Murfitt's policy is exactly as written in the Client Trust Account Manual — Lawyers Fund for Client Protection of the State Bar of Montana.

Payne wouldn't necessarily handle anything differently than she did if confronted with a similar situation in the future. She has done deals before without meeting a client in the past. The important thing, she said, is to never let a client pressure you into skirting the rules.

"Stick to the rules. That's what you have to do," Payne said. "If you cut corners, you can live to regret it. If you have a rule, and you abide by the rule, it will protect you."

According to Betsy Brandborg, legal counsel for the State Bar of Montana, some attorneys targeted by these scams have been reluctant to contact law enforcement, fearing that doing so would breach attorney-client confidentiality. But confidentiality is one thing that scam victims don't need to worry about, Brandborg said.

"There is no duty of confidentiality owed to people whose identity is false," Brandborg said.

Do contact law enforcement, she said. Do contact the real companies the fraudsters claim to represent and the real entities to alert them that their names are being used in the scam.

Thankfully, none of these scams resulted in damage beyond the wasted time of attorneys and staff. But oftentimes there are warning signs can prevent a scam from going as far as these ones did. Here are some things to think about that could tip you off to a scammer:

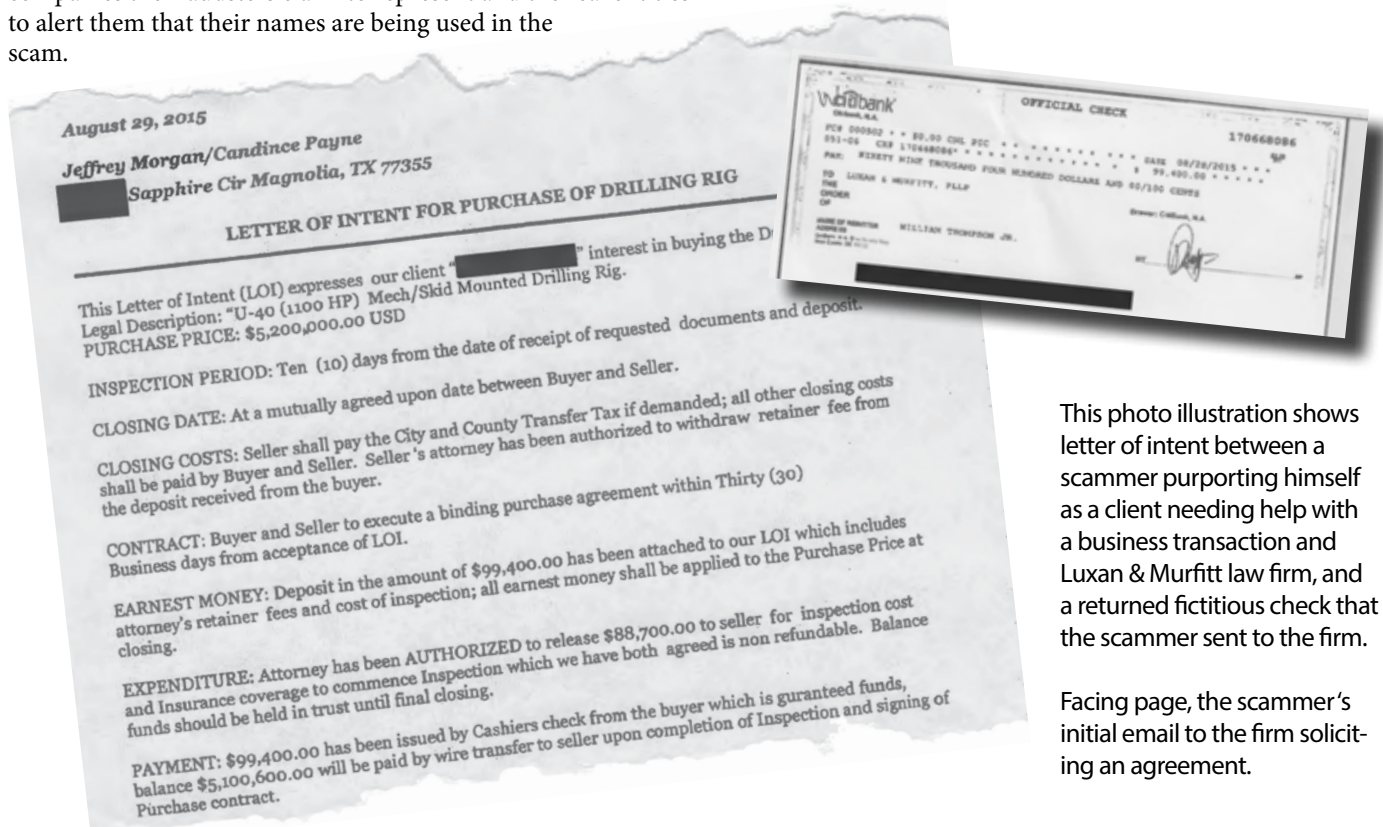
- Though the scams used the names of real businesses, none of the parties used real contact information for those businesses. Check to see if the business addresses and names of the people you are doing business with show up in a Google search. Often, the same business names and email addresses are used in multiple versions of the scam. A Google of the email addresses can reveal that.

- Look up the business in the phone book and call them. Verify that the people you are representing or are dealing with are employed by the company or representing the company and that the company's mailing address and email domain match.

- Look for inconsistencies. In at least one case, the "client" used different spellings of his name and different variations of an email address.

- Note spelling and grammar mistakes. In several of these cases, email correspondence contained spelling errors of common words. An email with bad grammar certainly doesn't indicate a fraudster, but glaring mistakes in an otherwise legitimate-looking deal can raise red flags, evoking the mythical Nigerian prince needing an immediate wire transfer.

- Remain vigilant. The scammers have spellcheck too. In some cases, the reason the scam got as far as it did was the all-around appearance of legitimacy. Confirm the identity of your clients. Just because you're paranoid doesn't mean they're not out to get you.



This photo illustration shows letter of intent between a scammer purporting himself as a client needing help with a business transaction and Luxan & Murfitt law firm, and a returned fictitious check that the scammer sent to the firm.

Facing page, the scammer's initial email to the firm soliciting an agreement.

# PIONEERING WOMEN

## Trailblazers in the Montana Legislature

By Rep. Kim Dudik

### Mrs. Maggie Smith Hathaway Democratic Candidate FOR STATE REPRESENTATIVE PRIMARY ELECTION AUGUST 29th.

#### Experience in Montana Legislative Work--

Clerk in House in 1913

Lobbyist for Montana  
Women's Organization  
in 1915 and deserves  
credit for passage of  
Mother's Pension and  
Equal Guardianship  
Laws.



"Embrace Women  
Plead for Vote."

"Mrs. Hathaway's Manner  
Is Clear and Convincing"  
---Helena Independent, July 28, 1914.

"A Logical Speaker."  
---Lewistown Democrat, 1914.

To Women Voters---  
She helped to get you the Vote.  
Why not send her to the Leg-  
islature?

Financially Interested in  
a Ravalli County Ranch

For Prohibition, a Workable Farm Loan Law  
Child Welfare, Efficiency, Economy, and Protec-  
tion of Home Industry.

Paid for by M. S. Hathaway  
Printed by Tribune, November 1916



Top left, a 1916 campaign flier touts Maggie Smith Hathaway's credentials and experience in legislative work. Smith and Emma Ingalls, top right, were elected to the 15th legislative session, becoming Montana's first two female legislators.

At right, Geraldine Travis was Montana's first, and still only, African American to serve in the Montana Legislature. Travis is pictured with Gov. Thomas Judge, seated, and other politicians as Judge signs her first bill into law.



# A brief history of women legislators

**H**istorically, Montanans are trailblazers in the area of women's rights. From the first female representative in Congress to granting women the right to vote before ratification of the 19th Amendment, Montana is a leader in promoting gender equality. Reflecting this, women's presence in the Montana Legislature has grown over the past century. This has caused changes in different aspects of the Legislature as the number of women has increased. Having women serve in the Legislature is important for equality purposes but also for practical reasons. As Jeanette Rankin said, "Men and women are like right and left hands; it doesn't make sense not to use both."

## LEGISLATIVE HISTORY

In 1889, Montana became the 41st state, consisting of 16 counties. On Oct. 1, 1889, Montana's first state Constitution was passed and 66 state legislators were elected. On Nov. 23, 1889, the first Legislature convened. No women served in this Legislature.

In 1913, Montana's 13th Legislature led the way in women's rights and passed a law giving Montanans the opportunity to ratify the 19th Amendment extending the right to vote to women. Six years before the 19th Amendment was ratified in 1920, Montana voters approved this measure by 52.2 percent (although Native American women did not gain the right to vote until 1924), making Montana the sixth state to enfranchise women with the right to vote. Soon, women would be serving in the Montana Legislature.

Montana led the way in the nation. In 1916, Jeanette Rankin was elected by Montana voters as the first woman to the U.S. Congress. This same year the first two women were elected to the Montana Legislature, sworn in for the 15th legislative session. Maggie Smith Hathaway was a Democrat from Stevensville and Emma Ingalls was a Republican from Kalispell. Thirty-five years later, in 1951, the first female senator was elected: Sen. B.M. Philips, a Democrat from Philips County, served in the 31st legislative session.

Women were pioneers breaking racial barriers in the Legislature. In 1933, Rep. Dolly Smith Cusker Akers, a Democrat from Poplar, was the first Native American to serve in the Montana Legislature. In 1975, in the 44th Legislature, Geraldine Travis, a Democrat from Great Falls, was the first and only African American to serve in the Montana Legislature. She served one term.

## FACTORS LEADING TO ELECTION OF MORE WOMEN

Different factors created an environment in which more female legislators were elected. Many changes in the Legislature and in public policy provided women with additional opportunity to serve.

In 1965, the impact of urban areas in the Legislature increased when Senate districts were apportioned by population instead of allowing every county to have one senator,

## About this article

This article was written to coincide with the CLE Montana Women and the Law: Past, Present and Future, held Oct. 1-2 at Chico Hot Springs.

as had previously been done. In the same year, Gov. Tim Babcock created the Commission on the Status of Women that provided many women with the opportunity to be engaged in public policy. Seven years later, in 1972, Montana held a Constitutional Convention leading to a new Constitution. This new Constitution changed the makeup of legislative districts further by limiting the number of senators to 50 and the number of representatives to 100. In this same time period, the women's liberation movement was growing.

Following these changes, the number of female legislators began to increase, although the impact of these changes is unclear. In addition, in 1992, the implementation of term limits forced more turnover of long-term legislators. This allowed new legislators, including many women, the opportunity to run and serve.

## WOMEN IN THE MONTANA LEGISLATURE

Although women represent approximately 50.8 percent of the U.S. population, no state legislature has gender parity. As of 2015, Montana is once again ahead of national rates: nationally approximately 1,800 women serve in the 50 state legislatures, representing 24.4 percent of the legislators. Colorado has the highest rate of female legislators (43 percent) and Oklahoma has the lowest (12.1 percent).

In 2015, 47 women (18 senators and 29 representatives) served in the 150-person Montana Legislature, making up 31.1 percent of the members. This was an increase, rising from 2013's rate of 28 percent. The percentage of women serving in the Montana Legislature has steadily increased, although not rapidly. In 1971, women made up 1.3 percent of the Legislature (one representative and one senator). Although still make up less than one-third of the Legislature, the increase is substantial. The number of Native American women has also risen to six female legislators in 2015 (four representatives and two senators). Women's numbers have especially grown in the Democratic caucus; females now represent a majority of the Democratic caucus in both the House and the Senate.

Women have also assumed legislative leadership positions. In 1979, 90 years after the first Montana Legislature convened, Ann Mary Dussault, a Democrat from Missoula, served as the first official female majority leader in the House of Representatives. In 1997, Rep. Vicki Cochiarella, a Democrat from Missoula, served as the first female minority leader in the House. In 2007, Carol Williams, a Democrat from Missoula, was elected the first female Senate majority leader. In 2009, Sen. Williams served as the first female Senate minority leader. In 2015, Debby Barrett, a Republican from Dillon, was elected as





**Being the president of the Montana Senate in the 2015 Legislative Session has been the greatest honor of my life. [It] was both awesome and terrifying at the same time.**

the first female Senate president. Barrett said in an interview last month that she viewed her leadership as a success, running the most uncontentious Senate session in recent history. “Being the president of the Montana Senate in the 2015 Legislative Session has been the greatest honor of my life,” she said. “[It] was both awesome and terrifying at the same time.”

The growing number of female legislators in Montana reflects societal changes. Not only has the number of women increased, but the demographics of these women has changed. The last decade has seen an increase in women taking office who have very young families, with children under three years of age. Until recently, women serving as legislators when they had young children was almost unheard of, although men with young children served.

Even though an increasing number of women are running for office, their numbers still lag behind their male counterparts. Reasons for this vary. Contrary to the popular belief that women do not run because of family or child-rearing duties, a 2014 study showed family situation and obligations did not impact women’s willingness to run. That decision was impacted instead by women’s perceptions of their own qualifications and by the systems for recruitment of candidates used by political parties.

## **CHANGES FROM WOMEN’S PRESENCE IN THE LEGISLATURE**

Women in the Montana Legislature bring a different perspective and, sometimes, different legislative priorities, focusing on promoting family, child, and female issues. This is in addition to women’s contributions as advocates for employment, business, environment, and financial issues.

Since women’s involvement in the Legislature, a more comprehensive and equal approach has occurred with public policy. In 1919, a separate reform facility for girls was created by a bill carried by Emma Ingalls. In 1994, after women played a larger role in our Legislature, a separate women’s prison was established in Billings. Since 1871, a men’s prison has been in existence. Women were previously housed with the men. Prior to the Billings women’s prison, the women were moved to an old unit of the state mental hospital in Warm Springs without comparable rehabilitative services to those offered for men. Another example of different priorities is implementation of all-day kindergarten. Prior to Carol Williams’ leadership in the Senate, championing all-day kindergarten for Montana’s children was not a legislative priority.

The inclusion of women in the Legislature brought other changes. Sen. Diane Sands, a four-term representative and current senator from Missoula, explained in a recent interview that on a basic level, female legislators did not have such simple



Debby Barrett, left, was the first female Senate president in 2015. Carol Williams was the first female Senate majority leader in 2007 and the first female Senate minority leader in 2009.

things as a legislative bathroom to use. This required female legislators to “run the gauntlet” of lobbyists who line the hallway to talk with legislators in order to use a public bathroom. In comparison, male legislators had a private hallway where they could talk and walk to the bathroom in privacy without having to talk to lobbyists when having to use the private legislative facilities.

The behavior of legislators also had to be more inclusive. In addition to the obvious standards of not sexually harassing female legislators, basic changes of what was said on the legislative floor had to change. One highly publicized example of this was a discussion where a male legislator compared pregnant women to pregnant cows, earning an official request for an apology from numerous female legislators for those comments.

A not-so-obvious way speech had to change was using gender-inclusive terminology when addressing legislators on the chamber floor and requesting support for a bill. Sands said an example of this was when in the earlier days of women serving, a bill was presented where the presenter assumed he already had the Democrat women’s vote. So when presenting his bill, he addressed his remarks and request for a vote solely to the “gentlemen” present. When the time to vote came, the female legislators stood up and left without voting. When confronted about their actions later and asked by the sponsor why they did not vote, the women calmly replied that the sponsor was obviously not talking to them when he presented his bill and asked for a vote because he was specifically speaking only to the “gentlemen.” Possibly a harsh action, but the point was made. Non-inclusive language was likely rarely used when advocating for a bill again.

## **CONCLUSION**

Montana women play an ever-increasing role in shaping Montana’s public policy through their increasing involvement in the Legislature. It is now not uncommon to see women legislators at the state and federal levels. However, the presence

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bench, word gets around. In cities, suburbs and outstate areas alike, the bench and bar usually remain bound by mutual relationships, word of mouth, recollections, and past experiences. Lawyers with sterling reputations for civility stand a better chance of receiving civility in return. Sooner or later, for example, a lawyer may need a stipulation, consent to a continuance, or similar accommodation from opposing counsel or the court. Like other people, lawyers get what they give.

In a challenging employment market, maintaining a reputation for civility can also enhance a lawyer's professional mobility. Lawyers sometimes receive appealing lateral job offers from a nearby public- or private-sector adversary who respects not only their competence, but also their professionalism. Being smart is not enough. Plenty of lawyers are smart, but fewer lawyers earn respect for genuine professionalism as they seek the best possible outcomes for their clients. Because few Americans (including few lawyers) spend their entire careers with their first employer, enhanced lateral mobility can be a significant reward for unswerving commitment to an honorable law practice.

As members of a largely self-governing profession devoted to the rule of law,<sup>40</sup> lawyers are judged by expectations sometimes higher than the expectations that judge other professionals. President Theodore Roosevelt said that “[c]ourtesy is as much a mark of a gentleman as courage.”<sup>41</sup> “The greater the man, the greater courtesy,” wrote British Poet Laureate Alfred, Lord Tennyson in his epic poem, *Idylls of the King*.<sup>42</sup>

The greater the lawyer too.

## Conclusion: The Will to Win

“All advocacy involves conflict and calls for the will to win,” said New Jersey Supreme Court Chief Justice Arthur T. Vanderbilt, but the will to win is only one ingredient of professionalism. Advocates, he added, also “must have character,” marked by “certain general standards of conduct, of manners, and of expression.”<sup>43</sup> One prime marker of an advocate's character is civility.

Civility in advocacy resembles sportsmanship in athletics. Sportsmanship presumes that each athlete wants to win within the rules of the game; a sportsmanlike athlete who does not care about winning should not play. Civility similarly presumes that each advocate wants to win within the rules of professionalism; a civil advocate who does not care about winning should not represent a client. Civility and forceful advocacy, like sportsmanship and forceful athleticism, define the total package.

**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.**

## Endnotes

- 1 James Podgers (ed.), *From Many Voices, a Call for Public Civility*, 97 A.B.A.J. 58, 58 (Sept. 2011) (quoting Zack).
- 2 Id.

- 3 Wilson v. Airtherm Prods., Inc., 436 F.3d 906, 912 n.5 (8th Cir. 2006).
- 4 Wescott Agri-Prods, Inc. v. Sterling State Bank, Inc., 682 F.3d 1091, 1096 (8th Cir. 2012).
- 5 Cardello v. Cardello, No. FA020088156S, 2002 WL 31875435 \* 1 (Conn. Super. Ct. Dec. 4, 2002).
- 6 Louis H. Pollak, *Professional Attitude*, 84 A.B.A.J. 66, 66 (Aug. 1998) (quoting Justice Kennedy).
- 7 Warren E. Burger, *The Necessity for Civility*, 52 F.R.D. 211, 214-15 (1971).
- 8 Marvin E. Aspen, *Let Us Be “Officers of the Court,”* 83 A.B.A.J. 94, 96 (July 1997) (quoting Justice Stevens).
- 9 Joint Congressional Comm. on Inaugural Ceremonies, Address by John F. Kennedy, 1961 (Jan. 20, 1961).
- 10 Stephen L. Carter, *Civility* 132 (1998).
- 11 484 B.R. 825 (N.D. Okla. 2013).
- 12 In re Gordon, 484 B.R. 825, 827 (N.D. Okla. 2013).
- 13 Id.
- 14 Id. at 827-28.
- 15 Id. at 828.
- 16 Id. at 830-31.
- 17 Id. at 830.
- 18 G.M. Filisko, *You’re OUT OF ORDER!*, 99 A.B.A.J. 32 (Jan. 2013); Wescott Agri-Prods, Inc., supra note 5, at 1095-96 (citation omitted).
- 19 See, e.g., Wescott Agri-Prods, Inc., supra note 4, at 1096 (citation omitted).
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- 26 Sandra Day O'Connor, *Professionalism*, 76 Wash. U. L.Q. 5, 9 (1998).
- 27 Interviews with United States Supreme Court Justices: Justice Ruth Bader Ginsburg, 13 Scribes J. Leg. Writing 133, 142 (2010) (quoting Justice Ginsburg) (italics in original).
- 28 John W. Davis, *The Argument of an Appeal*, 26 A.B.A.J. 895, 898 (1940).
- 29 Duane Benton, *Chief Justice's Address to Members of the Missouri Bar*, Sept. 24, 1998, 54 J. Mo. Bar 302, 302 (1998).
- 30 J. Timothy Eaton, *Civility, Judge Bauer and the CBA*, 28 CBA Record 8 (2014) (quoting Judge Bauer; citation omitted).
- 31 ABA Model Rules of Prof'l Conduct, Preamble [9] (2015).
- 32 Id., R. 8.4(d) (2015).
- 33 E.g., *Standards for Professional Conduct Within the Seventh Federal Judicial Circuit* 120-21, 123 (2013).
- 34 Filisko, supra note 18 (quoting S.C. oath).
- 35 See, e.g., Am. Bd. of Trial Advocates' Principles of Civility, Integrity, and Professionalism, <https://www.abota.org/index.cfm?pg=Civility>.
- 36 ABA Model Code of Judicial Conduct R. 2.8(B) (2015).
- 37 Aspen, supra note 8, at 96.
- 38 Louis H. Pollak, supra note 6 (quoting Justice Kennedy).
- 39 Laura Castro Trognitz, *Bench Talk*, 86 A.B.A.J. 56 (Mar. 2000) (quoting Judge John G. Koeltl, S.D.N.Y.).
- 40 ABA Model Rules of Prof'l Conduct, Preamble [10] (2015).
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- 42 Alfred, Lord Tennyson, *Idylls of the King, The Last Tournament* (1859-85).
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# Legislature acted on wide array of health care bills in 2015 session

## Medicaid was biggest, but far from only, issue tackled

By Aimee Grmoljez

Full Disclosure – I am passionate about health care legislation. I rely on the passion of my fellow partners Kiely Keane, Sarah Loble and Kristy Buckley for their knowledge of HIPAA and Health Insurance Legislation. I also am a biased participant in health care issues having grown up the daughter of a general, thoracic and vascular surgeon, practiced medical malpractice defense and lobbied for the Billings Clinic since 2007 and other health-care-focused clients, including Delta Dental and New West Health Insurance.

That being said, I need to start a summary of the 2015 Legislative Health Care Laws with one word — GRATITUDE. I have gratitude for the 150 legislators who every two years come to Helena as a citizen legislature. In 2015 the Legislature passed a budget, reviewed 1,187 introduced bills and passed 621 bills. I also have gratitude for the executive branch of government led by Gov. Steve Bullock and the legislative staff for their work during this “marathon” we call the biannual legislative session in Montana. It is important to remember the words of a great attorney who led Legislative Services for many years, Chief Legal Counsel Greg Petesch, “There is a someone in the legislature for everyone in Montana and representing a view that is held by more than one person”. You do not have to like the viewpoint, but we respect it. What I ask is that after reading this article, you think about whom you want to elect and the views you want to support for health care legislation in 2017 and in other areas of the law as well. If you feel passionate yourself, consider running for the Legislature.

First, the main headline in health care legislation in 2015 is undoubtedly Medicaid Expansion in Montana. The herculean efforts of Sen. Ed Buttery from Great Falls resulted in SB 405 passing. SB 405 provides Medicaid to adults between the ages of 19-64 and creates a new program to offer job training and readiness services to those receiving state welfare benefits. SB 405 was supported by business, nonprofit and health care groups, including hospitals and many physicians. SB 405, known as the HELP Act, was signed by Gov. Bullock on April 29 and includes unique provisions related to co-payments and premiums by those utilizing the program. The bill also changes the statute of limitations for medical malpractice claims from the current 3 years to 2 years and requires a plaintiff in a

### Health Care Legislative Update Webinar

The State Bar’s Health Care Law Section held a webinar in June on updates in health care law out of the 2015 Montana Legislature. This article is adapted from that presentation. The webinar is available on demand at [montana.inreach.com](http://montana.inreach.com) and is good for 2 self-study CLE credits.

medical malpractice action to accomplish service of the complaint within 6 months of filing. These reforms were effective upon the passage and signing of SB 405.

The extension of Medicaid to this new population, under SB 405, is effective once the federal waivers to the “straight Medicaid Expansion only” are approved by the federal government. The Montana Department of Public Health and Human Services and the governor’s office worked diligently on these federal waivers which were submitted and have worked on choosing a third party administrator for the program. HB 249 by Rep. Pat Noonan (D) attempted straight Medicaid Expansion and it died before SB 405 had a hearing. There were other bills that aimed to cover more lives with some expansion of health coverage including: HB 455 by Rep. Nancy Ballance (R) revising Medicaid laws, HB 544 by Rep. Art Wittich (R) encouraging enrollment in qualified health plans by eligible low-income persons, and HB 582 by Wittich establishing the Catastrophic Health Care Costs Act. None of these bills both passed the Legislature and were signed into law by Gov. Bullock.

Second, health care insurance bills of interest this session spanned a wide range. — SB 83 by Sen. Christine Kaufmann (D) and HB 119 by Rep. Tom Berry (R) laid the foundation for Montana insurance policies to be in compliance with National Accreditation of Insurance Commission (NAIC) standards. Both new laws represent significant and marked changes for issuers to follow, including new detailed claims appeals laws. HB 318 by Rep. Ellie Hill (D) becomes effective Jan. 1, 2016, and will require that health insurance include health care coverage for Down syndrome treatments. HB 318 is similar to the new autism health care treatment laws from a few years ago.

HB 118 by Rep. Bryce Bennett (D) changes the law on E-Delivery of health information. Those focused on cancer

legislation cheered the passage of SB 142 by Sen. Cary Smith (R), which permits experimental care of terminal cancer patients. HB 74 by Rep. Ryan Lynch (D), and requested by Attorney General Tim Fox, requires data breach notice to the attorney general and insurance commissioner. Finally, SB 99 by Sen. Jill Cohenour (D) revised Insure Montana small business health insurance laws to cover businesses with up to 25 employees (from nine) and intended to extend the Montana-specific small business health insurance credits under the “Insure Montana” program. The bill was vetoed by Gov. Bullock, and means the demise of the Insure Montana program, which began in 2005. Therefore, many small businesses in Montana should be evaluating whether it is advantageous to begin offering a small business health coverage option purchased from the insurance marketplace (called Small Business Health Options Program, or SHOP).

Third, there were major developments in mental health issues. The 2013-2014 Interim Children and Families Committee studied mental health services across Montana and introduced a number of bills to the 2015 Legislature. Four of these bills that were introduced and passed are highlighted below. Rep. Ron Ehli (R) led the charge on mental health issues in Montana with an additional \$5.4 million in community treatment and services funding in these bills. He carried HB 422, HB 33, HB 34 and HB 35. HB 422 focused on improving outcomes for youth in the children’s mental health system. HB 33 appropriated \$2 million for new or expanded mental health crisis intervention. HB 34 and 35 appropriated \$2.2 million for 14 days of voluntary short-term inpatient mental health treatment and for secure psychiatric detention beds. HB 47, by Rep. Carolyn Pease-Lopez (D), appropriated \$1.2 million for youth crisis diversion pilot projects. The 2015 Legislature also appropriated an additional \$9.35 million for community mental health services in the state budget, HB 2.

A melting pot of topics that have been debated and discussed for several sessions at the legislature include the following: SB 202 by Sen. Dick Barrett (D) established guidelines and immunities for physicians who provide end-of-life care (died in process); cigarette regulation in SB 66 by Sen. Diane Sands (D) prohibited access of e-cigs to minors (became law); SB 403 by Sen. Roger Webb (R), which required the Department of Labor and Industry to administer the Medical Marijuana Act (died in process); SB 291 by Sen. Brad Hamlett (D) revised laws on the use of seatbelts and child safety restraints (died in process); and HB 297 by Rep. Virginia Court (D) prohibited texting while driving statewide (died in process).

Other public health and economic bills that address Medicaid services, prescription drugs, and immunization have a wide impact on Montanans’ lives as follows: SB 216 by Rep. Webb revised Medicaid in home care services fraud prevention laws became law while his SB 276 which established a directory of Medicaid personal care services in Montana was vetoed. Immunization proponents cheered for HB 158 by Rep. Margaret McDonald (D), which revised and modernized immunization laws to include varicella and pertussis requirements related to schools. SB 7 and SB 8 by Rep. Webb, which revised and extended the prescription drug registry fee and allowed

electronic prescribing of controlled substances, both became law. HB 147 by Wittich allowed for a nurse licensure compact to expedite hiring nurses in Montana as well as HB 429 by Rep. Hill allowed Montana to participate in reciprocal agreements for physician licensing with other compact states.

What now, you say? The Children and Families Interim Committee will continue to work on health care issues in the following matters: SB 418 by Sen. Llew Jones reviews mental health investments and legislative intent regarding the implementation of SB 405, and HB 422 improves outcomes for youth in the children’s mental health system. The Economic Affairs Interim Committee will review HJ 29 by Rep. Andrea Olson (D) to study membership based health services, principally air ambulance. SB 405’s HELP Act has an oversight committee that will continue to work on the bill’s development and goals as the bill sunsets in four years. Finally, for those of you interested in who is looking at your information, follow HJ 21, Rep. Bennett’s interim study on ownership of personal information in the State Administration and Veterans Affairs Committee.

We in the Health Care Law Section are interested in your vision for health care law in Montana. What is your strategy and vision. Let us know - because we will not be “standing still” on these areas in 2017.

***Aimee Grmoljez is a partner at Crowley Fleck in Helena and a member of the State Bar of Montana’s Health Care Law Section.***



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# October is a frightfully good time to get acquainted with law library

By Lisa Mecklenberg Jackson

State Law Librarian and Director of the State Law Library  
It's the month of October and you know what that means... Things at the State Law Library are becoming even "livelier" than usual. I thought this would be a good time to share with you some ways that the State Law Library can be pretty darn...

**C**ard. If you don't yet have a library card from the State Law Library of Montana, there's no reason to wait. A **free library card** at the State Law Library is one of the best treats around for anyone in the Montana legal community. Lawyers, judges, law clerks, paralegals—we hope you all get a library card from the State Law Library. With that card, you have access to over 100,000 legal volumes from our ever-expanding law library collection.

**R**eports. As in Montana Reports and Federal Law Reports. We have access to these Montana-specific publications now at the State Law Library.

**E**llen Baumlér. This well-known Helena historian who excels at spinning scary tales is putting together a special Halloween CLE program for the State Law Library. "Statutory Spirits and Ghostly Jurisprudence" is the name of this eerie free CLE taking place Wednesday, Oct. 28, at 1 p.m. in the Montana Supreme Court Chambers. You'll hear about hanging trees, ghostly lawyers, and more freaky stuff. Be prepared to be frightened — and entertained!

**E**Books. Get a state law library card and access over 80 free legal eBooks right from your desktop. Titles include such greats as Moore's Federal Practice, Nichols on Eminent Domain, Powell on Real Property, Kuntz Law of Oil and Gas, and Larson's Workers Compensation Law.

**P**ro bono. Interested in doing some very valuable pro bono service in a low-key setting? Then please consider helping out at the monthly First Judicial District Legal Advice Clinic. The next clinic will be held Thursday, Oct. 15, from 5 to 7 p.m. at the State Law Library. Some examples of how you might assist include helping pro se clients with finding the correct paperwork, assisting them in completing documents, talking to them about court procedures, etc. New to the pro bono process? No worries. Veteran clinic volunteers are paired with new volunteers so there are two attorneys in each advice

## Contact the State Law Library

If you need research assistance or materials, contact the State Law Library by calling 444-3660 or e-mailing [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov).

session. These clinics are invaluable in providing direction to clients who are likely to proceed pro se because they cannot afford the services of an attorney. To learn more about the First Judicial Advice Clinic or to sign up to help, please contact August Swanson at Montana Legal Services, [aswanson@mtlsa.org](mailto:aswanson@mtlsa.org). Also of note the State Law Library also has a full complement of Nolo books and other self help resources at that you can check out to brush up on an area of law you might be less familiar with.

**Y**our State Law Library is an excellent source for free CLE—online and in CD, DVD, or audio tape form. You can search our collection of **free CLEs** on our website which can be used for five of attorneys' needed 15 annual audio/visual credits.

Not nearly as frightful but still worth a scream this month — check out these recent additions to the State Law Library collection:

- *The Economic Substance Doctrine*. Yoram Keinan, 2015.
- *Partnerships—Conceptual Overview*. Elliott Manning, 2015.
- *Sales and Use Taxes: The Machinery and Equipment Exemption*. Jordan Goodman, 2015.
- *Six Amendments: How and Why We Should Change the Constitution*. John Paul Stevens, 2014.
- *Toxic Torts in a Nutshell*, 5th ed. Jean Macchiaroli Eggen, 2015.
- *Unclaimed Property*. Ethan D. Millar, 2015.
- *Unfair. The New Science of Criminal Injustice*. Adam Benforado, 2015.

You can search for these items via the law library catalog and put them on hold right from your desktop! We'll even mail you the books if you're out of Helena!

So, a spooky October to you and remember if you are in need of any legal research assistance or materials, please do not hesitate to contact the State Law Library by calling 444-3660 or e-mailing [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov). We are YOUR law library and we are always happy to help.

Women, from page 22

of female legislators represents a cultural change and shift that is relatively recent and important. As Jeanette Rankin said, "Men and women are like right and left hands; it doesn't make sense not to use both."

**Kimberly Dudik is a Montana state representative serving in the Montana Legislature. She serves on the House Appropriations Committee; Rules Committee; Finance Committee; Joint Appropriations Subcommittee on Judicial Branch, Law Enforcement, and Justice; and the Office of Public Defender Task Force. She is also a member the Montana Supreme Court Access to Justice Commission and Montana Supreme Court Court Assessment Program Advisory Council. When not serving in the Legislature, she works as an attorney at the law firm Browning, Kaleczyc, Berry & Hoven, P.C.**

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# Thank you, pro bono attorneys

In honor of National Pro Bono Celebration week, I would like to express gratitude to all the Pro Bono attorneys who donate their time, resources and expertise to protect the civil legal rights of low-income Montanans. Despite the challenges that pro bono work may bring, these attorneys advocate zealously for low income Montanans who cannot otherwise afford representation. Their efforts have allowed veterans to improve their quality of life after service, helped women and children escape violence at home, and equipped pro se litigants with the tools to competently represent themselves.

Through full representation, limited scope services and participation in legal clinics, pro bono attorneys help MLSA provide access to justice to those who face the greatest economic and social barriers. In 2014 alone, 288 members of the Montana bar generously volunteered to help MLSA clients, providing much-needed legal services in 485 cases. Without those attorneys, 485 Montana families would have been left to navigate an often confusing and overwhelming legal system that was designed for those able to afford representation.

Pro bono attorneys recognize pro bono not as

a burden, but as a professional responsibility. For Montanans who cannot afford attorneys, the opportunity to have legal questions answered can improve their chances of navigating a justice system skewed heavily in favor of those with money. Through their pro bono commitments, these attorneys are working to ensure that the law is used to improve lives. For those clients that have been served, the stakes could not be higher: access to the legal system means access to safe housing, earned benefits, safety for their children, and consumer protections promised to all citizens.

On behalf of MLSA and the thousands of clients who benefit from pro bono services, thank you to all pro bono volunteers. You are appreciated not only during Pro Bono Celebration week, but year-round. You really are making a positive difference for people in your communities.

Sincerely,

Alison Paul  
Executive Director  
Montana Legal Services Association





# Commission accepting comment on applicants for 1st Judicial District judge

The Judicial Nomination Commission has received 11 applications for District Court judge for the 1st Judicial District (Lewis and Clark and Broadwater counties) and is now soliciting public comment on the applicants.

The applicants are vying to fill the seat to be vacated by Judge Jeffrey Sherlock effective Dec. 31.

The Commission received applications from the following attorneys:

- Christopher David Abbott
- Melissa Culpepper Broch
- Deborah Fern Butler
- Marc George Buyske
- DeeAnn Gribble Cooney
- Daniel Mark Guzynski
- Barbara Claassen Harris
- Donald Ford Jones
- Lisa Gae Leckie
- Michael F. McMahon
- Edmund F. Sheehy, Jr.

The applications may be viewed through a link available at the commission website. Comments will be accepted until **5 p.m. on Wednesday, Oct. 14.**

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 the governor. 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](mailto:mtsupremecourt@mt.gov).

The commission will forward the names of three to five nominees to the governor 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 Sherlock's term, which expires January 2019.

Judicial Nomination Commission members are District Judge Richard Simonton of Glendive; Mona Charles of Kalispell; Elizabeth Halverson of Billings; Hal Harper of Helena; Lane Larson of Billings; Ryan Rusche of Columbia Falls; and Nancy Zadick of Great Falls.

## Four to interview for Flathead County district judge seat

The Judicial Nomination Commission will interview four candidates for 11<sup>th</sup> Judicial District (Flathead County) judge on **Monday, Oct. 5.**

The four candidates who will interview are:

- Richard Patrick DeJana
- Amy Poehling Eddy
- Kay Lynn Lee
- Daniel Richard Wilson

Interviews will begin at 8:30 a.m. in Kalispell at the Justice Center, 920 S. Main St., in Courtroom 3 on the third floor. Deliberations will follow the last interview. Interviews and deliberations are open to the public. However, public comment will not be taken.

The commission will forward the names of three to five nominees to Gov. Steve Bullock for appointment. The person appointed by the governor is subject to election at the primary and general election in 2016. The candidate elected in 2016 will serve until January 2019.

## Court Orders

### New members appointed to Access to Justice Commission

The Montana Supreme Court on Tuesday appointed four new members to the Access to Justice Commission and reappointed three others to the commission.

Three of the appointees are replacing members whose terms expire on Sept. 30. Hon. Greg Pinski of the Eighth Judicial District will replace Hon. David M. Ortley; Paul F. Kirgis, dean of the Alexander Blewett III School of Law at the University of Montana, will replace Professor Andrew King-Ries; and Edward

F. Bartlett of Helena will replace Montana Assistant Attorney General Jon Bennion. Their terms will end Sept. 30, 2018.

In addition, Montana Rep. Kim Dudik of Missoula was appointed to fill the term of Rep. Chuck Hunter of Helena, who resigned from the commission. The term will end Sept. 30, 2017.

Reappointed to three-year terms were Matthew Dale, director of the Montana Attorney General's Office of Consumer Protection and Victim Services; Justice Beth Baker of the Montana Supreme Court; and Melanie Reynolds, health officer and department director of the Lewis and Clark County Public Health

Department. Their terms will end Sept. 30, 2018.

### Three reappointed to Commission of CLE

The Montana Supreme Court has reappointed three members of the Commission of Continuing Legal Education to three-year terms.

Darcy Crum, Steven Howard and Mary Moe's current terms expire on Sept. 30. They have all indicated their willingness to serve another term, and were appointed to terms expiring Sept. 30, 2018.



### Theodore "Ted" Cowan

Theodore "Ted" Cowan, 75, of Missoula, died on April 17, at Village Health Care. He passed away peacefully surrounded by loved ones.

Ted was born on Dec. 21, 1939, in Chinook to George and Edith Cowan. He served in the U.S. Navy for four years. After his honorable discharge, Ted proceeded with his college education



Cowan

graduating from the University of Montana School of Law with a Juris Doctor in 1969. He then had a successful career as an attorney. In that time he served as County Attorney in Sanders County, then moved to Missoula where he had a private practice. Ted's huge heart for people led him to offer many hours of pro-bono work as

well as a willingness to barter at times for his fees.

Ted was a member of St. Paul's Lutheran church and sang in the church choir for many years. He was a member of the Elks club, Lions club and the Rocky Mountainaires barbershop singing group.

Condolences and memories may be left for the family at [www.missoulafuneralhomes.com](http://www.missoulafuneralhomes.com).

### Steven A. Memovich

Steve Memovich passed away June 9 at his home in Vancouver at age 90.

He was born to Stephen and Alma Memovich in a one-room house on a dry-land farm near Buckingham, Colo. His family moved to Bonneville, Ore., in 1937.

After high school, he married the love of his life, Marilyn Burke, just a few months before Steve departed for the war in Europe. In September of 1944, while Steve and his



Memovich

crew were headed to Scotland by way of Iceland in a B-17, they were caught in a terrible blizzard and crash landed on a glacier, with their plane breaking in two and the engine catching fire. Miraculously, they all survived the crash. A couple days later they ultimately descended the glacier and straggled into a farm house where they spent the night before returning to the base, and continuing their journey to

England. Steve continued to serve as a navigator of a B-17 Flying Fortress of the 452nd Bombardment Group, completing his 35 missions in what was considered one of the toughest theaters of aerial warfare

After the war, Steve and Marilyn lived in Missoula, where Steve attended law school, graduating in the class of 1951. They finally settled in Vancouver in 1957 as Steve joined the firm of Robinson, Morse and Landerholm. He became a partner and practiced law in Vancouver for the next 35 years.

### Robert Meyer Peregoy

Robert Meyer Peregoy, former chief appellate judge for the Confederated Salish & Kootenai Tribes in Pablo and longtime administrator at Salish Kootenai College, died on Aug. 21.

Bob graduated from high school in Madera, Calif. He graduated with a B.A. in political science from the University of California-Santa Barbara in 1969. He completed his MPA in public administration from the University of California-Los Angeles in 1971. In 1979



Peregoy

he graduated with his Ed.D. from Montana State University in which he created the Native American studies program. He then attended law school full time and received his Juris Doctorate from the University of California-Berkeley.

From 1984 to 1999, Peregoy was senior staff attorney for the Native American Rights Fund (NARF), Boulder, Colo. His duties and responsibilities included managing attorney of NARF's

Washington, D.C., office; director of Legislative Affairs; and member of Litigation Management Committee. His practice involved litigation and advocacy on behalf of Indian tribes, organizations and individuals in judicial, legislative and executive branches of federal, state and tribal governments.

Peregoy served as chief appellate judge for the tribes from 1991-1996. He ran a solo practitioner firm from 1996-2001. He started his career at Salish Kootenai College in 2001, which he continued until his unexpected death.

### Scott L. Anderson

Scott L. Anderson passed away Aug. 8.

Scott was born May 5, 1968, in San Francisco to his young parents, Joe Desmidt and Sandy Spruance, of San Leandro, California. At the age of 3 months, Scott was adopted by Ann and Larry Anderson of Lawton, Oklahoma, and Fresno, California. His adoptive parents moved the family to the high desert of Southern California.

He met and married his college sweetheart, Jennifer, in 1989. Scott graduated cum laude with a Bachelor of Science



Anderson

degree in political science. After graduation, he and Jennifer moved to Salem, Oregon, where he attended Willamette University College of Law. Scott graduated in 1994 from Willamette and moved his wife and young daughter Samantha to Columbia Falls. As an attorney Scott helped many people over his 21 years of practice in the Flathead. He was also licensed in Oregon, Alaska and North Dakota.

Scott was a family man, loving husband, father, son, brother and friend.

Scott is survived by his former spouse, Jennifer Anderson; daughter, Samantha Anderson, 22; and sons, Scott Anderson, 12, and Andrew Anderson, 8, of Columbia Falls. He is also survived by adoptive parents, Ann and Larry Anderson of Ashland, Oregon; adoptive sister, Dawn Anderson, of Las Vegas; birth mother, Sandy Nelson, of Oregon City, Oregon; birth father, Joe Desmidt, of Sterling, Alaska; half sister, Annie Taylor, of Austin, Texas; half brothers, Joseph and Henry Desmidt, of Sterling, and Andrew Desmidt of Washington Court House, Ohio.

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

### ATTORNEYS

**ASSOCIATE ATTORNEY:** Six-member firm in Billings with a Statewide practice is looking for a new associate with at least 3 years of experience. Some interest in Trusts and Estates, Estate Planning, and Probate is preferred. However, much of the practice will involve litigation of all kinds. Please send application and to Towe, Ball, Mackey, Sommerfeld & Turner, P.O. Box 30457, Billings, MT 59107. 406-248-7337.

**DIRECTOR OF LITIGATION:** Montana Legal Services Association (MLSA) is looking for an experienced attorney to serve as its Director of Litigation. MLSA is the statewide provider of free civil legal services to low-income people in Montana. We primarily practice in the areas of housing, consumer, domestic violence, family law, public benefits and Indian law. The Director of Litigation will be the chief lawyer for the program, and oversee the development and coordination of MLSA's advocacy efforts, as well as provide lead and co-counseling on major litigation, carry a small case load, provide back-up of individual advocates and the training and coordination of MLSA's substantive practice groups. For more information and how to apply, visit <http://www.mtlsa.org/get-involved/careers/>.

**ESTATE PLANNING/BUSINESS PLANNING ATTORNEY:** Great Falls firm looking for a motivated, people-oriented attorney to join growing estate planning and business planning practice. Our practice is built on long-term relationships with our clients and their other advisers. We follow a fresh approach to the practice of law that emphasizes a realistic work-life balance. This is a great opportunity for a recent law graduate or lawyer with excellent communication skills who enjoys being part of a collaborative work environment. Please send cover letter and resume to Scott, Tokerud & McCarty, P.C., Attn: Jon S. McCarty, Eight 3rd Street N., Suite 507, Great Falls, MT 59401, or email to [JonM@MontanaEstateLawyer.com](mailto:JonM@MontanaEstateLawyer.com).

**DEPUTY COUNTY ATTORNEY:** Immediate vacancy. Full-time permanent Deputy County Attorney position with the Custer County Attorney's Office, Miles City. Juris Doctor degree from accredited law school, licensed to practice in Montana. Salary up to \$70,957.31 based on 40-hour work week, dependent on experience. Experience preferred. Excellent benefits. For job description and application form please contact Cindy Erickson at Job Service in Miles City at (406) 232-8349. Applications accepted until position filled. Request accommodation from Custer County Attorney Office, 1010 Main St., (406) 874-3310 or fax (406) 874-3450. ADA/EEO.

### PARALEGALS/LEGAL ASSISTANTS

**PARALEGAL/LEGAL ASSISTANT Bozeman:** Must be able to work in a fast-paced deadline driven environment with attention to detail; ability to manage multiple priorities. Candidate should have excellent communication skills, verbal and written; proficient with MSOffice. Duties include word processing; preparation of legal documents; editing; proofing; exhibit organization and all other attorney support as needed. Competitive pay and benefits. E-mail resume & cover letter to: [Clientservices@lawmt.com](mailto:Clientservices@lawmt.com). No phone calls, please.

### ATTORNEY SUPPORT/RESEARCH/WRITING

**DATA ANALYSIS / LITIGATION SUPPORT:** Extract, analyze, summarize large data sets; Independent attestation of data accuracy; Professional CPA presentation of data on behalf of counsel; Expert testimony regarding data collection and reporting methodology; Agreed upon procedures. 15 years financial experience including: Auditor for Deloitte & Touche (Seattle Office); Litigation Support Branch Chief; Work with KFLD, DoJ, and the Pentagon; Comptroller for the Montana Army National Guard; Contracting Officer (PCO); Controller for \$1B insurance company; Director of Financial Reporting for \$1B hospital; Operations Officer for \$3B government contracting group; Member of AICPA Information Management & Technology Assurance practice group; Member of the Montana State Society of CPAs; Level 3 DAWIA certification in government contracting; Data base developer for \$3B government financial services organization. DATA WORKS OF HELENA, P.C., 7 West 6th Avenue, #517, Helena MT 59601; [brad@dataworksofhelena.com](mailto:brad@dataworksofhelena.com); (406) 457-5399.

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**RESEARCH, WRITING, SUPPORT:** Experienced attorneys at Strickland & Baldwin, PLLP, offer legal research, writing, and support. Wilton Strickland focuses on civil litigation; Tim Baldwin focuses on criminal matters. We make practicing law easy, profitable, and enjoyable for you. To learn more, read legal articles, and obtain CLE credits, visit [www.mylegalwriting.com](http://www.mylegalwriting.com).

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### PROFESSIONAL POSITIONS

**EXECUTIVE DIRECTOR:** The Montana Justice Foundation seeks a dynamic leader with a strong commitment to access to justice and experience in volunteer engagement, resource development, and communications to be its Executive Director. MJF is the charitable arm of the Montana legal community, with a mission of achieving equal access to the civil justice system for all Montanans. Applications accepted until position filled. To receive full consideration, submit application materials by Oct. 16. Nonprofit or legal experience preferred. Submit materials electronically in MS Word to [meredithmcburney@msn.com](mailto:meredithmcburney@msn.com). Do not send hard copies. For full job listing, visit [mtjustice.org](http://mtjustice.org).

### OFFICE SPACE/SHARE

**STEVENSVILLE:** Professional office building downtown on Main Street available for sale or lease. Detached 1 story building with 10-car parking lot. Approx. 2,800 sq. ft. leasable space includes full first floor and basement. Ready to occupy modern offices, conference room and reception/waiting room. Central heat, a/c, lovely landscaping. Perfect for small firm or growing solo practitioner. Contact [helldorb@stjohns.edu](mailto:helldorb@stjohns.edu) or call 917-282-9023

**MODERN PROFESSIONAL SUITE OF OFFICES (HELENA):** Desirable Cottonwood Business Park (off McHugh & Custer). Turnkey second floor with 4 upscale roomy offices (1 has kitchenette & sink). First floor shared waiting area. Classy 2012 construction comes with free parking. Anne, [anne@am-counsel.com](mailto:anne@am-counsel.com). 406-594-1717.

### MEDIATION

**EXPERIENCED MEDIATOR AND ARBITRATOR:** J. Michael Young, retired Great Falls Attorney. Contact at 406-868-9666 or [myoung@gfmtlaw.com](mailto:myoung@gfmtlaw.com)

**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](http://www.gsjw.com).

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

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

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