

MONTANA LAWYER

State Bar
— of —
Montana

April 2016 | Vol. 41, No. 6

Law Day 2016

MIRANDA more than words

**ABA MARKING 50th ANNIVERSARY OF LANDMARK DECISION
WITH LAW DAY THEME FOCUSING ON RIGHTS OF ACCUSED
PAGE 12**

Also in this edition:

- > Nominations open now for annual Bar Awards
- > Judicial Redistricting Commission to consider proposals at April 6 meeting
- > Montana Justice Foundation grant applications open for 2016 cycle
- > Misappropriation of client funds historically treated with harshest discipline, disbarment

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OCTOBER 2016						
Sun	Mon	Tue	Wed	Thurs	Fri	Sat
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	20 PM	21	22	23	24	
	27	28 PM	29	30	31	

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If you would like to submit an announcement in Member and Montana News, email it to jmenden@montanabar.org. Articles are subject to editing for style, length and grammar. For photos, high-resolution JPEG images are preferred (at least 200 ppi).

Molloy joins as a partner of Gallik and Bremer

The Bozeman law firm of Gallik and Bremer, P.C., announces that James P. Molloy has joined the firm as a partner.

Molloy received his undergraduate degree in political science and social work with high honors from the University of Montana. He graduated summa cum laude from the University of Notre Dame Law School, where he was a Kiley Fellow, and an Associate Editor of the Notre Dame Law Review. Following law school, he served as a law clerk to the late Honorable Edward Allen Tamm on the United States Court of Appeals for the District of Columbia Circuit in Washington, D.C.

Molloy was a partner in a Portland, Oregon, law firm, before returning to Montana with his family in 1995. He had a successful civil litigation practice in Helena from 1995 to 2009, and then spent six years in public service as chief of consumer protection for Montana Attorney General Steve Bullock, and then senior policy adviser to Gov. Bullock from 2013 to early 2016, before joining Gallik, Bremer & Molloy, P.C.

Molloy has extensive experience in complex civil litigation, including constitutional issues. He has also successfully handled several significant cases before the Montana Supreme Court.

Molloy will be working primarily out of the firm's Helena office, but will also be in Bozeman.

Tranel joins Silverman Law Office in Helena

Silverman Law Office PLLC has announced that Monica Tranel has joined the firm.

Tranel graduated from Gonzaga University and Rutgers University School of Law. She has worked at the Montana Public Service Commission and the Montana Consumer Counsel, focusing on regulatory

matters including communications and energy issues.

For over a decade, Tranel has been in private practice specializing in regulatory work, water law, land use and property rights, general administrative law, general business matters and civil litigation.



Tranel

Outside of the practice of law, she competed in rowing in the 1996 Olympics in the women's eight, and rowed the single for the United States in the 2000 Olympics in Sydney. Monica won World Championship gold in 1995 in Tampere, Finland, and is the only woman to represent the United States in the eight and the single in the Olympic Games.

She has two daughters who have inherited her energy and drive. She can be reached at 406 449-4829 or mtranel@mttaxlaw.com.

Butte firm welcomes Johnston as associate

The law firm of Joyce & MacDonald, PLLP, in Butte has announced that Saidee M. Johnston has joined the firm.

Johnston was born and raised in Butte and graduated from Butte Central High School. She continued her education at the University of Montana where she graduated with honors in 2012. She went on to study at the University of Montana School of Law where she received her law degree in May 2015. She is admitted to practice in all state and federal courts throughout Montana.



Johnston

Johnston's areas of practice include representing injured persons in claims involving automobile collisions, workplace accidents, disability and insurance. She looks forward to serving the legal interests of clients throughout Montana.

She can be contacted at saidee@joyce-macdonald.com or 406-723-8700.

Sack Law Firm opens civil litigation practice

Sack Law PLLC announces the opening of its new law firm located in downtown

Bozeman. Sack Law handles civil litigation and contract transactions, specializing in commercial and construction law.

Owner Matthew Sack is an experienced trial attorney who formerly practiced in Philadelphia for litigation firms both large and small. Sack is a graduate of Delaware Law School and in addition to Montana, is licensed in Pennsylvania and New Jersey.



Sack

You can contact him at: Matthew I. Sack, 225 E. Mendenhall, Bozeman, MT 59715; phone: 406-587-3736; fax: 406-587-9752; www.sacklawpllc.com.

Varela joins Billings firm Harris and Gannett

The Billings firm formerly known as Harris & Associates, PLLC, is pleased to announce the addition of attorney Liz Varela. The firm, now named Harris, Gannett & Varela, PLLC, adds Varela's experience on a wide range of land use issues to their litigation practice.



Varela

In addition to decades of experience with insurance, business, and personal injury litigation, the firm has expanded its practice areas to include land use and property litigation. Ms. Varela handles cases involving boundary disputes, easements, water rights, mineral interests, zoning, permitting, utilities, condemnation, construction disputes, and property damage. The firm's attorneys are:

■ Don Harris – Recognized in Super Lawyers and Best Lawyers in America, Past President, American Board of Trial Advocates, Board Member, Montana Trial Lawyers Association, Certified as a Civil Trial Advocate by the National Board of Trial Advocacy, and recipient of the MTLA's Trial Lawyer of the Year Award and the Montana Civil Rights Protection & Advocacy System's Courage Award. Mr. Harris focuses on business and insurance disputes.

■ Tucker Gannett – Recognized as a top attorney by the National Association of Personal Injury Attorneys, Gannett focuses

on commercial and governmental litigation, personal injury, and insurance coverage disputes. He is a graduate of the University of Montana School of Law, is a member of the Montana Trial Lawyers Association and the American Bar Association's Litigation Section.

■ **Liz Varela** – Focuses on civil litigation with emphasis on property and land use law. Varela is admitted to practice in Montana, North Dakota, and Wyoming. She graduated from the Gonzaga University School of Law and is a member of the Montana Trial Lawyers Association, the American Bar Association, and the Yellowstone County Bar Association.

Moulton Bellingham welcomes 3 attorneys

The law firm of Moulton Bellingham PC has announced that Joseph Soueidi, Cole Derks, and Jordan FitzGerald have joined the firm.

Soueidi practices primarily in the areas of bankruptcy, banking and commercial transactions, oil and gas, and commercial litigation. Born and raised in Billings, he attended Montana State University in Bozeman and graduated with a degree in business administration. Upon graduation, Soueidi began a career with First Interstate Bank working in credit analysis, commercial lending, and commercial real estate lending. He graduated with



Soueidi

his Juris Doctorate from the University of Wyoming College of Law in 2014. While in law school, he participated in an externship with the United States Bankruptcy Court for the District of Wyoming. He also worked for the College of Law's Estate Planning Clinic and was a teaching assistant for the Legal Writing Department. He can be reached at 406-248-7731 or joe.soueidi@moultonbellingham.com.



Derks

Derks practices primarily in the areas of banking law, business formation and planning, commercial transactions, construction law, estate planning, insurance and captive matters, land use law, and natural resource law. He is a fifth-generation Montanan and grew up in Denton. He attended Montana State University in Bozeman, earning a Bachelor of Science in business with a concentration in finance. Upon graduation, Derks worked for Stockman Bank as a credit review officer reviewing and assessing loan portfolios. Derks attended the University of North Dakota School of Law in Grand Forks, graduating cum laude in May of 2015. While attending law school, he worked as a law clerk for general counsel at Advanced Engineering and Environmental Services



FitzGerald

and served as a legislative intern for the Senate Committee for Finance & Taxation and Transportation. He can be reached at 406-248-7731 or cole.derks@moultonbellingham.com.

FitzGerald practices primarily in the areas of civil litigation, natural resource, water, and environmental law. FitzGerald was born and raised in Forsyth. He attended the University of Montana where he graduated in 2012 with high honors, earning a Bachelor of Arts degree in history and political science. He then attended the University of Montana School of Law where he earned his

Juris Doctorate degree in 2015 with honors. While in law school, FitzGerald competed in the National Moot Court Competition, participating in its regional competition in Seattle in 2014. He also acted as the secretary and president of the Rural Advocacy League and held membership in the law school's Land Use and Natural Resources Clinic. He can be reached at 406-248-7731 or jordan.fitzgerald@moultonbellingham.com.

4 attorneys join Garlington, Lohn & Robinson

Garlington, Lohn & Robinson, PLLP has announced the addition of four attorneys.

Robert J. Phillips joins the firm as a partner in the firm's insurance defense practice. Phillips began his practice in 1978, and now practices statewide in general civil defense, including insurance law and defense, coverage, and bad faith. He has tried numerous jury and non-jury cases in areas including automobile, products liability, premises liability, lien foreclosure, construction and insurance bad faith. In addition to trials in state, federal and tribal courts, he has been lead counsel before the Montana Supreme Court, the U.S. Claims Court, the 9th and Federal U.S. Circuit Court of Appeals, and the U.S. Supreme Court. Bob was president of the State Bar of Montana in 1994-1995. He is a member of the Ethics Committee

Member News, next page



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Member and Montana News

of the State Bar. He has been president of the Montana Chapter and National Board Member of the American Board of Trial Advocates. He now chairs the Board of Trustees of the Missoula Community Hospital Legacy Foundation, one of the region's largest health care foundations.

J. Andrew Person joins the firm as an associate working on civil and commercial litigation matters, with a special focus on water rights, oil and gas interests, wind energy, and regulatory compliance. After receiving his undergraduate degree from Gonzaga, he was commissioned as a lieutenant in the U.S. Army. His service included Airborne and Ranger School as well as deployments to Iraq and Afghanistan. After leaving the military, Person earned a Master of Science in Foreign Service at Georgetown University in Washington, D.C., and was a legislative assistant to U.S. Sen. Max Baucus from 2007 to 2012. He was awarded the Distinguished



Phillips



Person



Mediak



Wecker

Patriot Medal by the Montana National Guard for his work in the Senate supporting Montana veterans. Person received his Juris Doctorate with high honors from the University of Montana School of Law in 2014.

Emma Mediak joins the firm as an associate in the civil litigation practice. She graduated with distinction from Stanford University in 2009 with a bachelor degree in Political Science.

She graduated from Stanford Law School in 2012. While in law school, she served as editor-in-chief on the Stanford Environmental Law Journal. She spent her summers working in the Yahoo! Legal Department, drafting hydropower legislation in Kathmandu, Nepal, and working for the United States Attorney's office in Missoula. She clerked for the Honorable Brian Morris both on the Montana Supreme Court and, after a year working in the Beaverhead County

Attorney's Office, returning when Morris was confirmed as a U.S. District Court judge. She is admitted to practice in all Montana state courts, in the U.S. District Court for the District of Montana, and in the 9th Circuit Court of Appeals.

Ross Wecker joins the firm as an associate specializing in tort and business litigation, construction law and risk management, and real estate related litigation. Before becoming a lawyer, Wecker obtained a civil engineering/construction management degree from Montana State University and worked as a project engineer for a large general contractor. Wecker spent several years practicing in Boston, where he was recognized by Massachusetts Super Lawyers as a Rising Star for Construction Litigation in 2015. That designation is awarded to the top 2.5 percent of lawyers under age 40. He represents a wide range of construction industry clients including owners, architects, engineers, general contractors, subcontractors, and insurance carriers. He also advises clients concerning risk mitigation, insurance coverage, contract negotiation, commercial real estate, and other transactional matters.

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Recognize genius among us: Nominate a deserving peer for a State Bar award

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

— Arthur Conan Doyle ("The Valley of Fear")

State Bar of Montana Past Presidents Committee

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

- The George L. Bousliman Professionalism Award (recognizing a reputation for and tradition of professionalism as defined by Dean Roscoe Pound: "Pursuit of a learned art as a common calling in the spirit of public service.");

- and the William J. Jameson Award (recognizing an attorney with the State Bar's highest award for attorney excellence).

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

We all know an attorney who is worthy of at least one of the above awards. If you don't, think harder! Take a moment

to appreciate your profession and the people who work within it. Surely you have experienced a moment of grace given by an adversary, an encouraging word or act, mentorship by a veteran attorney, or help when you desperately needed it. This is your opportunity to highlight that conduct.

And so that your nomination receives favorable review by the Past Presidents Committee (the reviewing body), let us suggest what makes a good nomination package:

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

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

Nominations for Bar awards open now

The State Bar of Montana is now taking nominations for its 2016 awards.

Nomination forms for the William J. Jameson Award, George L. Bousliman Professionalism Award, the Neil Haight Pro Bono Award, and the Karl M. Gray Equal Justice Award are on pages 22-25 of this issue. The forms are also available online at montanabar.org.

The deadline for nominations for all four awards is May 16.

Fee deadline was April 1

The State Bar of Montana mailed annual fee statements to attorneys on

March 1. Payments for all fees were due April 1. If you haven't paid your dues yet, be sure to do so immediately.

Fees can be paid by check or online with a credit card at montanabar.org.

Election judge training in Helena scheduled

Election judge training for elections in 2016-2017 is scheduled for Wednesday, April 13, at the City-County Building in Helena.

Training is required for all new and returning election judges. There are three sessions available for training:

- 9 a.m. to noon
- 1 to 4 p.m.
- 6:30 to 9 p.m.

Those who are unable to make any of these times and are still interested in serving as an election judge, should contact Audrey at 406-447-8338 or adufrechou@lccountymt.gov.

Training will be held in the Lewis and Clark County Commission Chambers, second floor of the City-County Building.

Parking at the City-County Building is limited during daytime hours. If you attend the 9 a.m. or 1 p.m. sessions, you may park in the 6th Avenue Garage located across from the City-County building on the corner of 6th and Park Avenues. You will receive a parking ticket stub which can be validated at the information desk for free parking. Those attending the 6:30 p.m. session, should park in the lot behind the City-County Building, accessible from Clark Street.

MJF online grant application open for 2016 cycle

Montana Justice Foundation has announced that its online grant application system is now open for the 2016 Grant Cycle.

In furtherance of its mission to achieve equal access to justice for all Montanans, MJF awards grants to non-profit organizations to:

- Support and encourage the availability of legal services to vulnerable and underserved populations;
- Increase public understanding of the law and the legal system through education;
- Promote the effective administration of justice;

■ Raise public awareness of and access to alternative dispute resolution.

Three types of grants are available:

■ Program Grants provide general operating support for well-established programs that have a strong history of success in meeting the MJF's charitable objectives;

■ Special Project Grants support discrete, innovative projects targeting specific areas of need;

■ Law Related Education Mini-Grants, not to exceed \$2,000, are made throughout the year to support projects that promote a knowledge and awareness of the law

Applications for 2016 Program Grants and Special Project Grants are due Friday, April 15. Applications for Law Related Education Grants may be submitted year-round.

Applicants should reviewed MJF's Grants Program Policy at mtjustice.org/programs-2 to determine whether your proposal matches our funding priorities, please follow the instructions at the online grant application system to create a new account and log-in to the application process.

For additional information, please contact MJF at 406-523-3920 or mjf@mtjustice.org.

CLE transcripts to be mailed to attorneys not in compliance

Attorneys not yet compliant with CLE requirements for the reporting year ending March 31, 2016, will receive a transcript in the mail later this month detailing their current CLE record. Compliant attorneys will be notified by email.

CLE records may be accessed online by following a 2-step process to create an account at mtcle.org. Attorneys will be asked to provide their year of admission to the State Bar of Montana, Bar number, and email address.

Important Note: Attorneys may earn and report CLE credits up until May 15 without penalty. After that date, a \$50

late fee will be assessed.

The Montana Supreme Court requires all active attorneys to complete a minimum of 15 CLE credits per year. Of this total, two credits must be on the topic of legal ethics or professional conduct.

For more information please see the Frequently Asked Questions section of the CLE website at mtcle.org.

Modest Means

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

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

What are the benefits of joining Modest Means?

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

You are covered by the Montana Legal Services malpractice insurance, 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. **Please email** amartinez@montanabar.org with questions. You can also call us at 406-442-7660.

Juneau to speak at Women's Law Section Spring Dinner

State Superintendent of Public Instruction Denise Juneau will be the guest speaker at the Women's Law Section's Annual Spring Dinner to celebrate and honor women in the legal profession on Friday, April 22.



Juneau
The section will announce the winners of the Fran Elge Scholarship and the Margery Hunter Brown Assistantship at the dinner.

The dinner will be in the Bonnie Heavyrunner Gathering Place in the Payne Family Native American Center at the University of Montana in Missoula. The center is located on the oval of the UM campus, next to the Grizzly statue. A reception will begin at 6 p.m., with dinner at 7.

Juneau, a Democrat, was elected OPI superintendent in 2008. She is running in 2016 for the U.S. House of Representatives. She is the first American

Indian woman to be elected. She has also been reported to be Montana's first openly gay candidate for federal office. An attorney, she is a 2004 graduate of the University of Montana School of Law.

There will be a full dinner, including appetizers and dessert for \$35/per person. The menu will also include vegetarian and gluten-free options.

RSVP to Cathy Tutty at tuttylaw-group@gmail.com or by phone at 406-498-5411 by 5 p.m. on Friday, April 15.

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Commission to weigh judicial redistricting proposals

The Montana Legislature's Judicial Redistricting Commission will consider several proposals to address how the caseload burden is distributed across the state's 22 judicial districts. at its April 6 meeting.

Rep. Nate McConnell, an attorney legislator from Missoula who sits on the commission, submitted three of the redistricting proposals. But McConnell stressed in a phone interview in March that any solution for relieving the overburdened judicial system will require funding for more judges from the Montana Legislature.

According to a 2016 District Court Council review of judicial workload demands, several of the most populous districts are severely overburdened, while many of the rural districts have appropriate workloads, or in some cases have more judges than they need. The review found that the 13th Judicial District needs six additional judges, while the 1st, 4th, 8th, and 11th Judicial Districts require an additional two to three judges each.

"Montana needs more judges,"

McConnell said. "The Legislature needs to take that very seriously in the next session."

■ A proposal by McConnell would create a new single-judge 23rd Judicial District by removing Mineral County from the 4th Judicial District and removing Sanders County and one judge from the 20th Judicial District. Missoula County would comprise the entire four-judge 4th Judicial District, and Lake County would comprise the one-judge 20th Judicial District.

■ Another proposal by McConnell would combine Meagher, Wheatland, Golden Valley, Park and Sweetgrass counties into one two-judge district. In this proposal, Big Horn County would move from the 22nd District to join seven other counties in eastern Montana's one-judge 16th Judicial District.

■ A third proposal by McConnell would rearrange the counties in the 10th, 12th, 15th, 16th and 17th Judicial districts, eliminating one of the districts to allow one judge position to shift to another district after 2018.

■ Sen. Kristin Hansen proposes to revise four judicial district boundaries. Hansen's plan would move three counties — Garfield, Rosebud and Treasure — from eastern Montana's 16th Judicial District, and move one of the district's two judge positions to Yellowstone County. Garfield County would move to the 10th Judicial District and Treasure and Rosebud would move to the 14th Judicial District. Meagher County in turn would move from the 14th to the 6th Judicial District.

■ District Court Judge Greg Todd of Billings, the commission's chair, proposes moving Broadwater County from the 1st to the 14th Judicial District, leaving only Lewis and Clark County in the four-judge 1st Judicial District.

■ Judge Todd has a separate proposal to eliminate the 14th Judicial District by moving Musselshell and Golden Valley counties to the 10th Judicial District and moving Wheatland and Meagher counties to the 6th, leaving one judge position available to shift to another district after 2018.

Alexander Blewett III

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Court rules against debt consolidation plan

The Montana Supreme Court in March ruled in favor of a Butte woman seeking a trial against a company she says defrauded her with promises of debt relief.

Susan Ossello enrolled in a debt reduction program and signed a contract with Global Client Solutions, facing more than \$40,000 in unsecured debt that she owed to Discover Bank and other banks. The agreement called for an automatic monthly withdrawal from Ossello's account to be used to pay her debt. Ossello stopped making payments on her credit card debt, and Discover Bank brought a collection action against her.

Ossello filed a third-party complaint against Global, alleging that Global used deceptive and fraudulent practices to solicit her participation in the plan. Global filed a motion to compel arbitration and to dismiss the third-party complaint for lack of jurisdiction. The district court concluded that the arbitration clause in Global's contract was unconscionable and not unenforceable and therefore denied Global's motion to dismiss and to compel arbitration.

The Supreme Court ruled that the district court did not err in allowing itself to determine arbitrability, and that the arbitration provision was unconscionable and therefore not enforceable.

Ossello's attorney, Clifford Edwards of Billings, told Butte's Montana Standard newspaper that the decision was "one of the most significant decisions for Montana consumers that we've seen from the Montana Supreme Court."

Chief Justice Mike McGrath wrote the majority opinion in the 5-2 decision. Justice Laurie McKinnon dissented, joined by Justice Jim Rice.

Westchester Surplus v. Keller Transport

The Montana Supreme Court in January ruled that an insurance company owes an additional \$4 million in coverage over what it already had paid for a gasoline spill that damaged several homeowners

Keller Transport Inc. leased a tanker truck from Wagner Enterprises, LLC to transport gasoline. The truck's trailer overturned and spilled 6,380 gallons of gasoline, which flooded several homeowners' properties.

The court heard oral argument in the case at the State Bar of Montana's Annual Meeting in Missoula in September 2015.

Keller and Wagner were both insured under a commercial transportation policy. Westchester Surplus Lines Insurance Company insured both Keller and Wagner under an excess liability policy. The homeowners sued Keller and Wagner. Westchester defended the suit on behalf of Kohler and Wagner pursuant to a reservation of rights and defended Keller and Wagner until it claimed the limit of its excess coverage had been exhausted.

Westchester sought a declaration that the limit under its excess policy was \$4 million in total and that the limit had been exhausted. The district court granted summary judgment against Westchester.

The Supreme Court affirmed in part and reversed in part, holding that the district court was correct in determining that Westchester's policy was ambiguous and that it provided an additional \$4 million in coverage under the "general aggregate" limit. But the ruling said the district court was wrong to hold that Westchester breached its duty to defend the insureds under its policy.

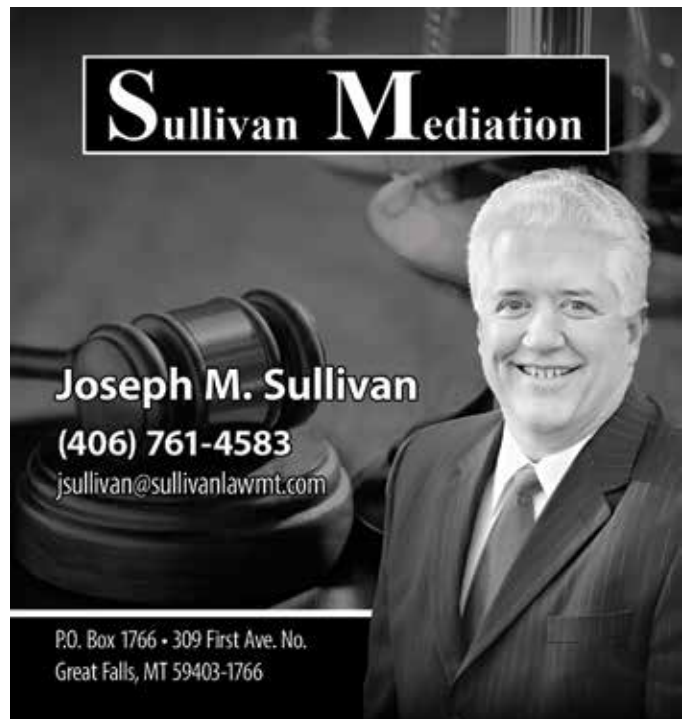
Oral Argument Calendar

MMIA v. City of Bozeman: Wednesday, April 6, 9:30 a.m., in the Courtroom of the Supreme Court, Helena. The argument is on the question of whether federal law pre-empts a Montana statute that generally prohibits arbitration clauses in insurance policies.

Missoula v. Mountain Water: Friday, April 22, George Dinnison Theater, University of Montana, Missoula. The Court has limited oral argument to the question of whether the District Court correctly applied the law as set forth in Montana statute and *Missoula v. Mountain Water Co.*, 228 Mont. 404, 743 P.2d 590 (1987).

Krakauer v. Montana: Wednesday, April 27, Strand Union Building, Ballroom A on Montana State University Bozeman campus. Montana Commissioner of Higher Education appeals 1st Judicial District ruling that journalist Krakauer is entitled to disciplinary records of a University of Montana student. Commissioner appeals, arguing disclosure of the records is prohibited under federal and state law and the student's right to privacy under the Montana Constitution.

Clark Fork Coalition v. Montana DNRC: May 18, 9:30 a.m., Courtroom of the Montana Supreme Court, Helena.



Sullivan Mediation

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A wooden chair is centered in a dark, textured room. A single spotlight from a black pendant lamp above it illuminates the chair and the handcuffs resting on its seat. The background is dark and mottled.

Miranda: More than Words

Law Day Theme looks at famed ruling,
what it means, and how it's evolved

2016 theme aims to shed light on rights of the accused, other criminal justice issues

By Montana Lawyer staff

This year marks the 50th anniversary of the U.S. Supreme Court's landmark *Miranda v. Arizona* decision. In the past 50 years, the case has worked its way into public consciousness perhaps more than any other Supreme Court case, with the Miranda Warning becoming ubiquitous in film and television cop shows.

But while most Americans may recognize that they have a right to remain silent, many do not truly understand what the protection against self-incrimination means.

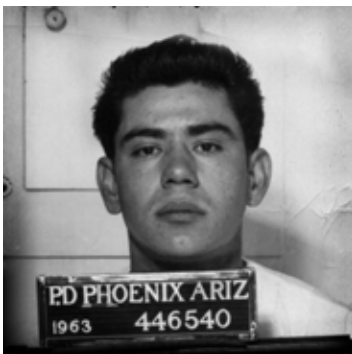
The ABA hopes to deepen that understanding as it has designated this year's Law Day theme "Miranda: More than Words."

America has celebrated Law Day on May 1 every year since 1961, when Congress designated it as the official date for the celebration. On or around May 1, bar associations, attorneys and other organizations present programs designed to help people better understand how our legal system strives to achieve justice.

The Miranda Decision

The Miranda decision was a consolidation of four different cases presenting the same legal question to the U.S. Supreme Court: Should interrogation be judged on a case-by-case basis for evidence of police coercion, or should there be special procedural protections to ensure that confessions are voluntary?

In the Miranda case, an 18-year-old woman was kidnapped and raped near Phoenix in 1963. Ten days later, the police arrested



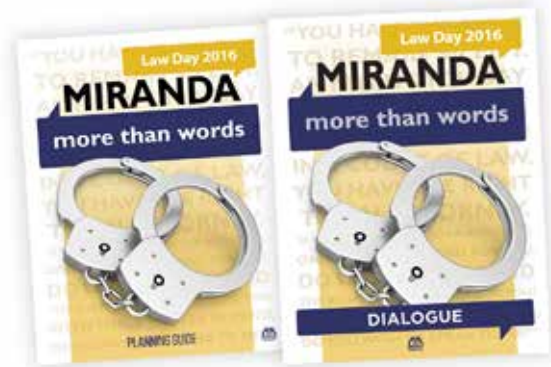
Ernesto Miranda

Ernesto Miranda and took him in for questioning. Miranda was 23 years old, poor, and had a ninth grade education. At the station, the victim identified Miranda from a lineup as her attacker. The police took Miranda to another room where two officers interrogated him in isolation.

The police did not use force, threats, or promises to elicit the confession, but they also did not advise Miranda of his right to have a lawyer present during the interrogation. After two hours,

the police emerged with a signed written confession. Miranda's confession was admitted at his trial, and he was convicted and sentenced to prison.

In its ruling the Supreme Court acknowledged that Miranda's statements were voluntary, but the court emphasized that officers did not "undertake to afford appropriate safeguards at the outset of interrogation to insure that the statements were truly the product of free choice."



Law Day planning resources

The ABA has many resources available for local bars, attorneys and other organizations that would like to put on Law Day educational programs, including the 36-page Law Day 2016 Planning Guide and a Dialogue Booklet designed to help lawyers, judges, teachers and others conduct discussions in the classroom and with community groups. Find links to these and more resources at lawday.org, or look for links at montanabar.org.

Montana Law Day events

Among events planned by Montana groups this year:

The U.S. District Court District of Montana has an essay and video civics contest for high school students offering cash prizes of \$2,000, \$1,000 and \$500 in each category. Entry deadline is **April 15**. Complete information is at www.ca9.uscourts.gov/civicscontest.

The Montana Attorney General's Office will have attorneys presenting to government classes at Helena's Capital High School all day on **Tuesday, May 3**.

The State Law Library is sponsoring a free Law Day CLE, "Miranda in Montana," on **Monday, May 2**, from noon to 1 p.m. in the Montana Supreme Court Courtroom in Helena. An attorney from the Office of Public Defender will present the CLE.

The Gallatin County Bar Association, in conjunction with the 18th Judicial District, has Law Day events planned in conjunction with the Montana Supreme Court oral argument in Bozeman on **April 27**. A high school senior will be chosen as a scholarship winner in a GCBA essay contest.

If you know of any other lawyers, local bars or organizations putting on events, please contact Joe Menden at 406-447-2200 or jmenden@montanabar.org.

'Miranda: More than Words presents a unique public educational opportunity to use something highly familiar (the Miranda Warning) to delve into points that are often missed. Yes, most people know they have the right to remain silent, but what does protection against self-incrimination really mean? Yes, they have the right to counsel, but who is entitled to an attorney and why?'

ABA President Paulette Brown from the Law Day 2016 Planning Guide



"The Supreme Court thus pivoted in Miranda from a rule that merely prohibits its coercive police conduct to a rule that requires the police to prevent coercion by giving a suspect specific legal warnings," wrote Brooks Holland, a professor at Gonzaga University School of Law, in an article in the ABA's Winter 2015 Insights on Law & Society. "This is the significance of Miranda. No longer were confessions admissible solely because the police abstained from bad behavior in securing the confession. Now, the police must affirmatively warn suspects of their right to remain silent and to have a lawyer. If the police do not give these warnings, a court will presume, solely from the lack of Miranda warnings, that the statement was involuntary and exclude it from trial."

Law Day Planning Guide

The ABA has a 36-page Law Day 2016 Planning Guide to help attorneys, judges, teachers and other organizations put on a successful Law Day program. The guide is available at lawday.org.

The guide is packed with information on putting together a successful Law Day event. It includes background on the underlying case in *Miranda* and a summary of the Supreme Court decision. It also provides talking points on other criminal justice issues, including access to legal representation; incarceration statistics for different demographic groups; recent criminal justice reform efforts; and myths and misunderstandings about the Miranda Warning.

Also in the guide:

- Timeline of the ebb and flow in decisions on protections against self-incrimination, *Miranda* and related cases that followed it: *Greenwald v. Wisconsin* (1968), *Oregon v. Mathiason* (1977), *Rhode Island v. Innis* (1980), *New York v. Quarles* (1984), *Dickerson v. United States* (2000), *Maryland v. Shatzer* (2010), *Howes v. Fields* (2011), and *Salinas v. Texas* (2013);

- Dozens of ideas for programming events, including events geared toward

THE MIRANDA WARNING	
1	YOU HAVE THE RIGHT TO REMAIN SILENT.
2	ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3	YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE THE LAWYER PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4	IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5	YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.
6	DO YOU UNDERSTAND EACH OF THESE RIGHTS AS I HAVE EXPLAINED THEM TO YOU?
7	HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

K-12 schools, college and university students, law students, the legal community, and the general public;

- Tips for publicizing a Law Day event;
- Grade-level-appropriate lesson plans;
- Suggested resources, including books, videos, , and more.

The ABA also has a dialogue guide that provides three different sample dialogues to engage students in discussions related to Miranda.

In one of the dialogues, participants read the Miranda warning and compare it to an excerpt from the U.S. Supreme

Court's Miranda decision. Participants will then discuss the constitutional principles that the decision, the Fifth Amendment, and the Miranda warning all share.

A second dialogue is on judicial decision-making and just punishments. A hypothetical sentencing scenario is presented, and participants are asked to apply mitigating and aggravating factors to a sentencing table.

In a third dialogue, participants analyze a political cartoon to engage in a discussion about police practices in communities across the country.

GONE BUT NOT FORGOTTEN

Historically, misappropriation of funds by Montana attorneys usually results in disbarment

A Three-Part Series
By Shaun R. Thompson
Office of Disciplinary Counsel

In lawyer disciplinary proceedings, misappropriation of funds usually results in disbarment.¹ Disbarment, of course, is the most severe form of discipline.

The purpose of this article is to review some of the more prominent Montana disciplinary cases involving misappropriation wherein the lawyer was disbarred. “Misappropriation” within the context of this article is restricted to situations where a lawyer has taken for his own purposes monies in the lawyer’s possession belonging to a client or others. The term, as used here, does not include all cases of fraud or theft.

¹ But not always. See e.g. *In re Yoder*, Case No. 02-753 (by Order filed April 22, 2003, lawyer suspended indefinitely for a term of not less than four years for, among other things, misappropriating funds); *In re Grorud*, 84 Mont. 221, 275 P. 1098 (1929) (lawyer suspended for at least one year for taking money given to him to purchase mining claims on behalf of a client); Order of Discipline (filed Sept. 3, 2014), *In re Laedeke*, Case No. PR. 13-0321 (lawyer suspended indefinitely for a minimum of one year for misappropriating proceeds from a personal injury settlement).

Further, this is not intended to be a comprehensive list of all Montana cases involving misappropriation. Indeed, it would be difficult to make such a list. The Commission on Practice (COP) was created by the Montana Supreme Court in 1965. After the COP was created, the court has usually issued a final order of discipline, as opposed to a published opinion. Between 1965 and 1992, the COP's records are incomplete. Further, neither the COP nor the Clerk of the Montana Supreme Court has kept all its files.

This article will be run in three parts. The first article will cover the cases handled before the COP's creation.

CASE SUMMARIES

The subheadings used below reference the lawyer's name and year of disbarment.

B. S. Thresher (1906)²

G. R. Nickey, a former client of Thresher, brought the matter before the Court.³ Prior to the creation of the COP, the Court sometimes conducted its own evidentiary hearing. It did so in this case, but Thresher did not show up for the hearing.⁴ The Court said "... it appears that the accused was attending to his ordinary duties in the courts of Silver Bow county, and seemed indifferent as to whether or not the court proceeded to the hearing or as to what the result might be."⁵

Nickey's attorney offered evidence against Thresher.

Nickey had given Thresher a check for \$49.60 payable to the Justice of the Peace in lieu of an undertaking for an appeal from Justice Court.⁶ Thresher forged the check and kept the money for himself.⁷

In another matter, Thresher represented Ruth Burton in an action filed against Henry Kipp in District Court.⁸ Burton deposited \$490 with the Court to tender to Kipp.⁹ Using false pretenses,

Thresher obtained an order allowing him to receive the money on Burton's behalf.¹⁰ Thresher received \$414.90 (the initial \$490 was reduced for taxes) from the Clerk of Court. He misappropriated the money.¹¹

Thresher also induced Burton to give him \$65 for expenses he did not incur.¹²

The Court concluded "... that the accused is wholly destitute of that degree of honesty and integrity..."¹³

The monies Thresher stole would be worth about \$14,000 today.¹⁴

Thresher was reinstated by the Court in 1909.¹⁵

John L. Waddell (1918)¹⁶

The Court appointed a referee to conduct a hearing of the charges against Waddell and make a report to the Court.¹⁷ Waddell was disbarred for his misconduct in two matters.

Travers Daniel, Jr., retained Waddell to pursue a lawsuit against a Mr. Moncure. Daniel paid Waddell \$50 for costs and expenses.¹⁸ Waddell failed to file suit, and Daniel terminated his services and hired another attorney who filed suit.¹⁹ Not only did Waddell not return the \$50, he accepted \$200 from Moncure to defend him in the lawsuit.²⁰

The second matter involved collection cases that Waddell handled on behalf of Oliver Chilled Plow Works ("Oliver").²¹ Waddell compromised a \$325.36 judgment against one debtor without the knowledge or authority of Oliver and failed to promptly turn over Oliver's share of the money.²² In another case, Waddell collected \$210.60 from a debtor and did not timely report it to Oliver.²³

The Court concluded: "Such conduct

cannot fail to bring reproach upon the legal profession and alienate the favorable opinion which the public should entertain for it."²⁴

E. M. Niles (1924)²⁵

Niles converted for his own use \$2,000 belonging to a client, Hattie Murphy.²⁶ Niles also took \$500 belonging to Clara Clow, another client, and lied to her about it.²⁷

Niles received \$2,673.45 belonging to an estate he was handling.²⁸ He paid over \$1,250 of the funds and misappropriated the rest.²⁹

As a bankruptcy trustee, Niles stole \$114.80 belonging to a bank.³⁰

Nellie Bates gave Niles \$1,300 to be invested on her behalf.³¹ Niles told Bates the money was invested in 320 acres in Park County, subject to a mortgage of \$2,000.³² In fact, Niles had his daughter deed to Bates an undivided half interest in 320 acres worth about \$4,000 that was subject to three mortgages totaling \$3,850.³³

Jess H. Stevens (1932)³⁴

Stevens represented Chisholm Oil Company (Chisholm) in two lawsuits against Adams Company. He obtained a judgment against Adams Company for \$1,064.24.³⁵ The judgment was satisfied, but Stevens failed to account for the money.³⁶

In the second case, Stevens collected \$124 from Adams Company and had the case dismissed.³⁷ He again failed to account for the money.³⁸

DISCIPLINE, page 26

2 *In re Thresher*, 33 Mont. 441, 84 P. 876 (1906).

3 *Thresher*, 33 Mont. at 442, 84 P. at 876.

4 *Id.*

5 *Thresher*, 33 Mont. at 442-443, 84 P. at 876.

6 *Thresher*, 33 Mont. at 443, 84 P. at 877.

7 *Id.*

8 *Thresher*, 33 Mont. at 443-444, 84 P. at 877.

9 *Thresher*, 33 Mont. at 444, 84 P. at 877.

10 *Thresher*, 33 Mont. at 444, 84 P. at 877-878.

11 *Id.*

12 *Thresher*, 33 Mont. at 447, 84 P. at 878.

13 *Id.* (Obviously, B. S.' name fit him.)

14 <http://www.davemanuel.com/inflation-calculator.php> (accessed January 25, 2016).

15 *In re Application of Thresher*, 38 Mont. 609, 104 P. 1135 (1909).

16 *In re Waddell*, 54 Mont. 597, 172 P. 1036 (1918).

17 *Waddell*, 54 Mont. at 598, 172 P. at 1036.

18 *Id.*

19 *Waddell*, 54 Mont. at 599, 172 P. at 1037.

20 *Id.*

21 *Waddell*, 54 Mont. at 600-601, 172 P. at 1037.

22 *Id.*

23 *Id.*

24 *Waddell*, 54 Mont. at 601, 172 P. at 1037.

25 *In re Niles*, 70 Mont. 249, 224 P. 861 (1924).

26 *In re Niles*, 70 Mont. at 250, 224 P. at 861.

27 *Id.*

28 *Id.*

29 *Id.*

30 *In re Niles*, 70 Mont. at 251, 224 P. at 861-862.

31 *In re Niles*, 70 Mont. at 251, 224 P. at 862.

32 *Id.*

33 *Id.*

34 *In re Stevens*, 92 Mont. 549, 16 P.2d 410 (1932).

35 *In re Stevens*, 92 Mont. at 550, 16 P.2d at 410.

36 *Id.*

37 *Id.*

38 *Id.*

Not accurately recording your time can impact your paycheck and your reputation

By Rick Bassingthwaite
mbass@alpsnet.com

This post is directed toward those of you who fail to accurately record your time on a consistent basis throughout the day, day after day. I know it can be a hassle but there are really good reasons why this should be a priority. Now I could start lecturing and talk about the studies that confirm lawyers tend to under-bill by 10–15 percent if they wait until the end of each day to record their time. In fact, for those who procrastinate even more, the under-billing numbers get worse.

The reason for this is you simply don't remember everything you did or how long it took if you fail to record your time contemporaneously. Trust me, over the course of a year, the income being lost as a result of under-billing can be real money; but I digress. Truth be told, I've found this lecture approach tends not to motivate people to change. So this time I'm going to share a story, a story that exemplifies how being lazy with your time-keeping can cost you much more than you think.

Jack and Diane were divorcing. Jack hired an attorney at a new local firm, a firm that had a lower profile because it was new. Diane went with more of a hired gun, one of those high-powered lawyers at a big-name firm in town. You know the type. Thankfully the lawyers were able to do their jobs well. The matter settled on the eve of trial, the high costs of which had been successfully avoided. In fact, Diane's lawyer even commented to Diane's father that he did not bother to prep for the trial because he knew it would settle. Everyone was happy, at least for now.

Throughout the course of representation, Jack's lawyer kept meticulous time records. His final bill was detailed and reviewed for accuracy prior to being sent. The final bill Diane received was higher than anticipated and no detail was provided. Diane's happiness about avoiding the high costs of trial proved to be short lived.

At this point Jack stepped in and asked his lawyer for another copy of his bill. He stated that Diane was concerned about the bill she received due to the lack of detail. Her bill simply read "Dissolution — \$18,000." Jack provided Diane a copy of his bill so she could review it. She suspected Jack's bill would be lower by perhaps a third due to her awareness of the rate each lawyer had charged. Once she got it however, she was shocked to find that Jack's bill was close to two-thirds less. This is when Diane decided to contact her lawyer and ask for a detailed line item breakout of her entire bill.

Diane was given a bill with the requested information. Immediately her attention was drawn to a line item that

stated eight hours trial prep at \$350/hr. for a total of \$2,800. Apparently Diane's lawyer had forgotten about the comment he made to her father the day it all settled. Upon further review of both bills, Diane discovered additional discrepancies not only in deposition time but much more. In the end, Diane filed a formal grievance against her attorney and never paid her bill. Ouch.

While we'll never know what Diane's lawyer was thinking when he drafted his detailed bill, one can surmise that he had no contemporaneously made time records to refer to. Without a doubt he felt he needed to do all he could to justify his fee. Not only would estimates have to do, he would need to rely on his memory in order to detail the actual services delivered. Now, as tempting as it is not to, I'm going to give Diane's lawyer the benefit of the doubt and assume he actually did do eight hours of trial prep for a divorce. It just wasn't Diane's divorce. This doesn't surprise me in the least. I mean how could anyone accurately remember all that has happened in each and every open matter weeks or even months later, to include comments made to others in passing? When it comes to time and billing, memory doesn't cut it.

This story underscores the value of contemporaneously made time records; but time records aren't just about making sure you can legitimately bill out for all you do. They also enable you to comply with our ethical rules. Rules that mandate the fee be reasonable and the bill be truthful and accurate. But there's more. Let's even put the lost income and any fallout from the disciplinary matter of this story to the side. Referrals and repeat work are the bread and butter of most legal practices and that's tied to reputation. It can take years to build a solid reputation and minutes to destroy one. Jack and Diane will tell their story just as I have here. Unlike me, however, they will use real names and word will get out. The reputation of both lawyers and firms will be impacted, just in different ways. Remember what we're really talking about is your desire to place someone else's money in your hands. Play fast and loose in your effort to earn it and you risk having your client feel cheated; and when it comes to money, being cheated out of it leaves a really bad taste in one's mouth. I needn't say more.

ALPS Risk Manager Mark Bassingthwaite, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Check out Mark's recent seminars to assist you with your solo practice by visiting our on-demand CLE library at alps.inreachce.com. Mark can be contacted at: mbass@alpsnet.com.

Encrypting sensitive emails now a no-brainer

Editor's note: To see a version of this article with figures illustrating the steps for encrypting emails in various services visit www.montanabar.org/news.

Sharon D. Nelson and John W. Simek
Sensei Enterprises, Inc.

The most used method of electronically communicating today is via email. Some may argue that text messaging is the number one method and that may be true for the younger generation, but businesses are generally communicating with some sort of email service. The issue that we need to tackle is whether our electronic communications are secure (or need to be) and how to securely communicate when needed.

Attorneys have an ethical duty to protect the confidentiality of client information. It's not just the written word and paper documents. The duty extends to electronic communications as well. Sending a simple email message potentially exposes the contents to interception by the bad guys if not our own government. Encryption can protect the electronic communications thereby preserving the confidentiality of the information. In addition, digitally signing communications helps ensure the authenticity of the sender. **Real Estate attorneys in particular** will benefit from encrypting email and attachments, especially since they deal with a lot of financial and personally identifiable information.

Since 47 states, including Montana, now have data-breach notification laws, you don't want your law firm to need to comply with your state law because you didn't realize that email encryption is now cheap, easy — and may start to be ethically required as a matter of competence. Using email encryption when transmitting sensitive data has become a no-brainer.

Microsoft Exchange Server

By default, Exchange is configured automatically to attempt to communicate with other servers using TLS (transport layer security), which is the successor to SSL. This means that the server-to-server communications travel in an encrypted state. You can also configure Exchange so that communication between two domains is required to be encrypted using TLS. If the same encryption level does not exist between the two domains, the messages are returned and a non-delivery report (NDR) is generated. Obviously, this would be a very secure configuration and something that may be considered for use between the firm and specific clients. However, implementing such configurations is best left to the technology professionals. We are pretty sure we won't see any attorneys attempting to do this on their own.

Exchange can also be configured to require TLS encryption for the accessing computers. This means that any software (e.g. Outlook) must use TLS in order to access a mailbox. Again, your IT person is probably better equipped to configure the TLS requirement for client computers.



Email Encryption

This topic can be complicated and confusing for most lawyers. We'll try to simplify how to encrypt messages (and any attachments). The data flow is the same as if you were encrypting a file. Instead the "file" is an email message.

The sender starts by composing their email message in plain text. When they transmit the message the recipient's public key is used to encrypt the message with the output being unreadable ciphertext. The ciphertext (encrypted data) is sent along its merry way destined for the recipient. The recipient then uses their private key to decrypt the ciphertext into readable plaintext. The encryption applies to the message contents as well as any attachments.

As you can see, it is extremely important for the sender to have a copy of the recipient's public key in order to make this work. Key exchange and management is one of the challenges when trying to encrypt email messages. Since the recipient is the only one with their private key (they better be the only one), that is used in decrypting the data, confidentiality is maintained.

Outlook Messages

Since the majority of attorneys use Outlook as their email client, we'll describe the requirements and steps to encrypt a message when using Outlook. The first requirement is to have a digital ID, also known as a digital certificate. The digital ID helps prove your identity and includes the public and private keys needed for encryption. How do you get a digital ID? Just

follow the steps below from Outlook:

Click on the **File** tab

Click **Options**

Click **Trust Center**

Under **Microsoft Outlook Trust Center**, click **Trust Center Settings ...**

On the **Email Security** tab, under **Digital IDs (Certificates)**, click **Get a Digital ID ...**

You will then open a browser window where you will have a choice to select a Digital ID provider. Once you have selected a provider and obtained your digital ID, follow the providers instructions on how to install the digital certificate to your computer.

Once you have installed your digital ID, you can begin the process of sending an encrypted message from Outlook. Create your message and include any attachments you want to send along. Once you are ready to send the message, select the **Options** tab from the Ribbon and then the **More Options** symbol.

After selecting the **More Options** symbol, a **Properties** dialog box will be presented with additional options. Click on the **Security Settings ...** button to display the **Security Properties** dialog box. Check the box for **Encrypt message contents and attachments** to encrypt the email.

Remember we said previously that you need the public key of the recipient(s) in order to encrypt the message? If there is a problem with the certificate, therefore the key, you have the option of sending the message unencrypted by just clicking the **Send Unencrypted** button.

Secure Email Services

There are many providers of secure email. Just do a Google search and all sorts of results will be returned. How do they work and what features are important? We can't possibly cover all the solutions. ProtonMail (<https://protonmail.ch/>) gets high marks and good reviews. It is a complete end-to-end encrypted messaging system that does not require any installation. Other highly rated providers include 4SecureMail.com, ShazzleMail.com and StartMail.com. See if the vendor offers a trial period and if their system can integrate in your current email environment with ease.

Hushmail

It would be impossible to discuss all the possible options for sending encrypted communications. One very popular service is called Hushmail. They have plans for Individuals, Business and HIPAA compliance. Hushmail is a web-based email service that provides encrypted communications between parties. While Hushmail encrypts email, it is not a totally secure solution. The servers are located in British Columbia, Canada, and will comply with any lawful request to access the data. Under normal circumstances they do not store the passphrase that is used for encryption/decryption. However, it may be required to store a passphrase for an account identified in an order enforceable in British Columbia, Canada. Like the encrypted services of some cloud storage vendors, you need to understand that Hushmail does have the ability to access messages even though

they are encrypted.

ZixCorp

Another service that is worth considering are the email encryption services of Zix Corporation. ZixCorp is the only email encryption provider with SOC3/SysTrust certification, SOC2 accreditation and PCI Level 1, DSS V2.0 certification. The encryption service is easy to install and very simple to use.

Most attorneys will subscribe to the ZixCorp service through a reseller. The reseller will set up the mail flow so that messages in and out are routed through the ZixCorp servers. This is similar to many spam and anti-virus services. The user installs an Outlook add-in that provides for one-button-click encryption. Compose your message and just click the button to encrypt. Simple, right? The message is then sent to the ZixCorp servers.

If the recipient can receive messages via a TLS connection, the message is delivered to directly to their Inbox and is opened it in Outlook with no further processing. If they do not have the ability to receive email via TLS, they receive a link to the message on the ZixCorp servers. The recipient will have to create a login ID or login to their account if they have already created one. They then retrieve the message. In other words, a non-TLS enabled user will be viewing the decrypted messages via a web browser once they have logged in. It couldn't be easier.

If the message is delivered directly to the recipient's inbox, the recipient knows that the message was secured throughout its journey by the insertion of the ZixCorp graphic at the end of the message. This footer message is inserted by Zix for the email that is delivered via a TLS connection. In addition, you have the option to set policies where the messages will automatically get encrypted based on message content. As an example, you can have a "financial policy," where Zix scans the email for the inclusion of any financial data such as bank account numbers, credit card numbers, routing numbers, etc. If financial data exists then Zix will automatically encrypt the email without the user clicking any buttons. You can override any policy by clicking on the Send Unencrypted button in the Outlook toolbar.

Would you use this all the time? Possibly, especially where there are a communications involving a real estate transaction. Items such as credit reports, deed transfers, closing documents, etc. could all be transmitted by email if the attorney has encryption available.

Final Words

Encrypting email is a very powerful tool for an attorney. Not only will encrypting email fulfil your ethical duties to protect confidential client information, but it can save you money too. No more taking time to meet with clients to obtain signatures or pay courier fees to deliver closing documents. Pack the files as attachments to an email message and encrypt away. Easy peasy. And cheap too.

Sharon D. Nelson and John W. Simek are the president and vice president of Sensei Enterprises, Inc., a legal technology, information security and digital forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com

For more information about upcoming State Bar CLEs, contact Meagan Caprara at mcaprara@montanabar.org. You can also find more info and register at www.montanabar.org. Just click in the Calendar on the upper left of the home page to find links to registration for CLE events.

Bench-Bar Conference features judges from federal, state, Supreme Court

To put together the outline for this year's Bench and Bar Conference, we asked Montana's lawyers what they wanted to hear and who they wanted to hear it from.

The packed schedule for the Friday, May 13, seminar in Missoula is the result. The seminar is approved for 7.5 CLE credits, including 2.0 Ethics.

Topics include New Federal Rules and Trends; Candid Insights about the Montana Supreme Court; Discovery, Abuse and Sanctions; Expert Reports in State Courts (it's not hide and seek); What to do when the Court won't issue an order; How to deal with your frustrations with a court and other hot topics. The seminar is moderated by Eric Nord and the Judicial Relations Committee.

The faculty consists of 14 judges representing Montana District Courts, Federal Courts and the Montana Supreme Court, including a mix of new, experienced and recently retired judges: Chief Judge Dana Christensen and Magistrate Judge Jeremiah C. Lynch of the U.S. District Court, District of Montana; District Judge John Brown, Great Falls District Judge Dirk Sandefur, Anaconda District Judge Ray Dayton, Billings District Judge Greg Todd, Polson District Judge Jim Manley, Kalispell District Judge Amy Eddy, Missoula District Judge Brenda Gilbert, Billings District Judge Rod Souza; retired District Judge Jeffrey Sherlock, retired District Judge Ed McLean; and Supreme Court Justice Mike Wheat.

If you appear in court in Montana, you won't want to miss this. Approved for 7.5 CLE credits, including 2.0 Ethics.

Indian Wills CLE

Due to the complexity of drafting Indian wills, there is a limited pool of legal professionals in Montana who have



the expertise to assist Native Americans. This Friday, April 15, CLE in Missoula will give you the knowledge to provide estate planning services to Native Americans with Indian trust assets and the roles of the federal agencies and tribal programs in the probate process. It is approved for 7.0 CLE credits, including 1.0 Ethics.

New Lawyers Section's Annual Toolkit CLE

This Friday, April 22, seminar is approved for 4.5 CLE, including 1.0 Ethics, with topics relevant to all attorneys, not just young lawyers: Oral Argument, Procedural Review and Appellate Skills, presented by Justice Patricia Cotter, Justice James Shea and Justice Laurie McKinnon; Tax Issues for the General Practitioner; Lawyers and Nonprofit Boards: Opportunities and Challenges;

Deposition Preparation, Planning and Execution; Value Based Lawyering; Concepts to Create a Healthier Firm Environment and Increase Revenue.

Registration is only \$25 for section members and \$30 for nonmembers. It will be held at the University of Montana's Blewett III School of Law.

Family Law Toolkit CLE

This seminar will provide an overview of issues practitioners face in litigating family law cases. Specifically, it will provide a practical toolkit for new and experienced practitioners to use in handling all aspects of a family law case, from a dissolution of marriage involving a self-employed party, to establishing a parenting plan or compelling discovery. After completing the seminar attendees will be able to take what they have learned and immediately apply it in

their practice. It is approved for 6.0 CLE, including 1.0 Ethics.

2 webinar CLE offered in April

Cybersecurity in the Law Firm and the Effect of Cyber Crime on Attorneys—Wednesday, April 6: If you missed this when it originally aired in February, you have another chance to learn about this important topic for every attorney. You'll get a basic understanding of cybersecurity, cyber threats to law firms and the effect of cyber crime on attorneys and their clients, including attorneys' ethical and legal obligations related to these topics. 1 Ethics CLE credit.

Demystifying Reference Based Pricing and Determining Whether it Will Work for Your Client: Tuesday, April 12: Referenced Based Pricing (RBP) is a hot topic in today's health insurance market and one that is increasingly being considered-and adopted- by plans and employers as a cost-containment mechanism. Despite its growing popularity, RBP generally is not fully understood. The speakers for this webinar will address these issues to demystify RBP, offer practical considerations for determining whether RBP can work for

your clients.

Recorded CLE catalog

The State Bar of Montana's online recorded CLE catalog offers a convenient way to earn credits on your own time.

The recorded webinars in the State Bar's catalog are considered self-study CLE credits. State Bar of Montana attorneys can earn up to five self-study CLE credits per year.

The bar's recorded CLE content is updated continually.

To access the catalog, go to montana.inreach.com, or visit montanabar.org and select "On-Demand CLE" from the pull-down menu "Store."

Upcoming CLE schedule

April 1 — Great Falls — Managing a Law Practice, 6.0 CLE credits, including 1.0 Ethics

April 6 — Wednesday Webinar: Cybersecurity in the Law Firm and the Effect of Cyber Crime on Attorneys

April 8 — Great Falls — MTLA Spring CLE

April 12 — Webinar — Demystifying Reference Based Pricing and Determining Whether it Will Work for Your Client, presented by the Health Care Law Section's Steve Kreitner

April 15 — Missoula — Indian Wills CLE, 7.0 CLE, including 1.0 Ethics

April 22 — Bozeman — Family Law, General Practice

April 22 — Missoula, Alexander Blewett III School of Law — New Lawyers Section CLE

May 6 — Helena — TBD

May 13 — Missoula — Bench Bar Conference

June 3 — Conrad—9th Judicial District Annual Meeting CLE/Shootout

June 8 — Helena — Montana Bankers Association CLE

June 23 — Missoula— Domestic Violence CLE presented by the State Bar's Justice Initiative Committee

Aug. 4-5 — Missoula—Annual Seminar of the Masters—MTLA

Aug. 18-19 — Billings—Annual Bankruptcy Section CLE

Sept. 22-23 — Great Falls — Annual Meeting

Oct. 21 — Advanced Family Law — Cutting Edge Issues

Oct. TBD — Site TBD—Construction Law

Nov. TBD — Missoula —Montana Defense Trial Lawyers Association Fall CLE

Current Reporting Year Ends March 31

Been to any CLE lately?



Attorneys should report attendance information throughout the year as they attend CLE programming*

Please send attendance certificates or other documentation of CLE attendance to:

Montana Commission of CLE
P.O. Box 577
Helena, MT 59624

Or you may email documentation or any reporting questions to CLE@montanabar.org

* Not necessary for State Bar-sponsored CLE

William J. Jameson Award

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

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

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

Nominee: _____

Address: _____

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations and supporting documents will not be returned. Send them no later than May 16 to:

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

George L. Bousliman Professionalism Award

The award will recognize lawyers or law firms who have:

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

Nominee/individual or firm _____

Address _____

In a separate document, please describe the nominee's activity that you believe brings great credit to the legal profession. Please attach the description and other supporting documents to this nomination form.

Your signature _____ Print your name _____

Your address _____ Phone _____

Nominations and supporting documents will not be returned. **Send them no later than May 16 to:**

Bousliman Professionalism Award
State Bar Past Presidents Committee
P.O. Box 577
Helena MT 59624
or email to mailbox@montanabar.org

Neil Haight Pro Bono Award

This memorial award is named in honor of Neil Haight, the Executive Director of Montana Legal Services Association for more than 30 years.

Through Neil's leadership, MLSA survived numerous attacks during his many years at its helm. His effort left a solid foundation which eventually led to the current MLSA structure as a statewide law firm. His optimism carried MLSA staff through the darkest years when many thought all hope of civil legal assistance to the poor was lost. Despite numerous and endless attacks, Neil never lost faith in the vision and goal of MLSA.

After his retirement in 2002, Neil remained the icon of MLSA until his death in 2008. His passion for justice and his compassion for Montanans living in poverty was a model for many lawyers, both within and outside MLSA, in those early years of "legal aid" in Montana.

The Neil Haight Pro Bono Award recognizes a person who exemplifies Neil's legacy of providing outstanding legal services to Montanans living in poverty. The nominee is a lawyer, other individual or organization which has provided pro bono services to those in need in Montana. While the nominee may be a lawyer who has provided direct pro bono legal representation, he or she may also be a court employee, paralegal, psychologist, or social worker who has provided pro bono services in aid of direct pro bono legal representation in Montana.

Nominations are also accepted for law firms, teams of lawyers, and associations of Montana lawyers and pro bono programs receiving no form of compensation or academic credit for doing pro bono work and whose work was not a non-legal public service.

Attorney nominees must be admitted to practice in Montana. Nominees cannot be employees of organizations which provide free or low-cost services to the poor.

The Neil Haight Pro Bono Award is conferred periodically after review of all nominations, by the State Bar Justice Initiatives Committee. Individual or organizations which submit the nomination may submit more than one nominee.

In honoring Neil, the recipient of this award should demonstrate a combination of some or all of the following:

- a. *be a dedicated, committed leader instrumental in the delivery of civil legal services to Montanans living in poverty; or*
- b. *be a key person in the development of a pro bono program for a bar association or community organization; or*
- c. *contribute significant work toward creating new and innovative approaches to delivery of volunteer civil legal assistance through a new or existing pro bono program sponsored by a bar association; or*
- d. *perform significant and meaningful civil pro bono activity which resulted in satisfying previously unmet needs or extending services to underserved segments of the population; and/or*
- e. *Successfully litigated pro bono civil cases which favorably resulted in the provision of other services to Montanans living in poverty.*

Nominee Information:

Name: _____

Address: _____

Organization (if applicable) _____

Nominator Information:

Name: _____

Address: _____

Organization _____

Phone: _____

Email: _____

On separate pages, please answer the following:

- 1) Please describe the ways in which the nominee has provided outstanding pro bono services. This may include a compelling case that the nominee assisted with or litigated on a pro bono basis. Alternatively, this may include a history of dedication to the pro bono cause including expansion of pro bono effort in an under-served area, a willingness to continually accept pro bono work or difficult cases on a pro bono basis, or some other qualitative improvement to legal services for Montanans in need. If possible, please quantify the nominee's pro bono contribution by detailing the approximate number of hours donated or the number of cases in which he or she is or was involved. Please be comprehensive in your response, including details of the individual's or organization's work which mirrors Neil Haight's dedication to pro bono.
- 2) Please briefly describe the nominee's professional career including a history of dedication to serving the under-served in Montana.

Nominations and supporting documents will not be returned. **Send them no later than May 16 to:**

Neil Haight Pro Bono Award
Justice Initiatives Committee
PO Box 577
Helena, MT 59624
or email mailbox@montanabar.org

Karla M. Gray Equal Justice Award

This award honors a judge from any court who has demonstrated dedication to improving access to Montana courts. Consideration for this award will be given to nominees who demonstrate this dedication and commitment with a combination of some or all of the efforts described below:

- Personally done noteworthy and/or considerable work improving access of all individuals, regardless of income, to the Montana court system.
- Instrumental in local Access to Justice efforts, including program development, cooperative efforts between programs, and support for community outreach efforts to improve understanding of and access to the courts.
- Active support of citizen involvement in the judicial system.
- Active support and commitment to increasing involvement of volunteer attorneys in representing the indigent and those of limited means.
- Other significant efforts that exhibit a long-term commitment to improving access to the judicial system.

The Access to Justice Commission selects one award winner. Nomination materials will be retained and considered by the Access to Justice Commission for three years.

Nominee: _____

Address: _____

In a separate document, please describe how the nominee has demonstrated dedication to improving access to Montana courts. Please attach the description and other supporting documents to this nomination form.

Your signature: _____

Print your name: _____

Your address: _____

Your phone number: _____

Please mail the nomination by May 16 to:

Karla Gray Award
Justice Initiatives Committee
P.O. Box 577
Helena, MT 59624
or email to mailbox@montanabar.org

Chisholm filed a petition with the Montana Supreme Court asking that disciplinary proceedings be brought against Stevens.³⁹ The complaint was referred to the Attorney General, who in turn had a special prosecutor appointed.⁴⁰

Prior to the disciplinary hearing, Chisholm agreed to accept \$500 from Stevens to resolve the matter.⁴¹ Stevens, however, failed to pay the money.⁴² A hearing was held by a referee.⁴³ Stevens failed to appear.⁴⁴ The court followed the referee's recommendation and disbarred Stevens.⁴⁵

Wallace H. Harper (1963)⁴⁶

Harper was the attorney and executor of the estate of Nellie Enley.⁴⁷ Enley, by her will, left Cy Young Bryant money.⁴⁸ Bryant died two months after Enley.⁴⁹ Bryant's will named his widow, Blanche, as an heir.⁵⁰ Blanche was the executrix of her husband's estate, but died several months later.⁵¹ Harper had drafted the wills for both Enley and Bryant.⁵² Harper was named as a contingent heir in Enley's will.⁵³

Another attorney probated Blanche's estate.⁵⁴ It was discovered that Harper had misappropriated \$4,412.35 from Enley's estate to which Blanche's estate was entitled.⁵⁵ Harper claimed that Enley and Bryant had told him they did not want Blanche and her children to receive the money.⁵⁶

The Attorney General filed the disciplinary complaint against Harper.⁵⁷ After a hearing, the court disbarred Harper.⁵⁸

Charles L. O'Donnell (1963)⁵⁹

O'Donnell was named the executor of the Ramus Hansen estate.⁶⁰ O'Donnell opened a checking account for the estate.⁶¹ O'Donnell misappropriated \$3,794.60 from the account.⁶²

In his answer to the disciplinary complaint filed by the Attorney General, O'Donnell denied the allegations and requested an opportunity to be heard by the court.⁶³ The court

granted O'Donnell's request.⁶⁴ O'Donnell appeared before the Court and admitted misappropriating the money.⁶⁵

The court reinstated O'Donnell in 1969.⁶⁶

Donald A. Paddock (1967)⁶⁷

Clarence Daniels was the executor for the Estate of Charles Daniels.⁶⁸ Clarence was Charles' son.⁶⁹ Paddock was attorney for the estate.⁷⁰ He misappropriated \$10,348.04 from estate assets.⁷¹

Prior to the Attorney General bringing disciplinary proceedings against Paddock, Clarence Daniels filed a civil suit against Paddock.⁷² The District Court granted Clarence summary judgment.⁷³ Paddock appealed to the Montana Supreme Court.⁷⁴ The Court denied Paddock's appeal but modified the trebling of the damages.⁷⁵

In addition to converting estate funds, Paddock also gave false testimony in the civil case.⁷⁶

Two disciplinary cases against Paddock were consolidated. In addition to misappropriating money from the Daniels estate and giving false testimony, Paddock was found to have engaged in misconduct as counsel for the Montana Dairymen's Association.⁷⁷ While misrepresenting himself to be the treasurer of the association, he borrowed \$3,750.00 from a bank without authority to do so.⁷⁸

By order dated Jan. 5, 1965, the court created the Commission on Practice (COP) and procedural rules for dealing with complaints against lawyers.⁷⁹ In Paddock's case, the formal complaints were filed prior to the creation of the COP.⁸⁰ The hearing was before a referee, not the COP.⁸¹ Nonetheless, the court directed that the new procedural rules, to a limited extent, be used.⁸² Under Section X of the rules, a lawyer could terminate disciplinary proceedings by surrendering his license to practice law.

Paddock submitted his resignation as a practicing member of the law, but the court refused to accept it.⁸³

Shaun Thompson was appointed by the Montana Supreme Court as chief legal counsel of the Office of Disciplinary Counsel in 2005. ODC is responsible for the intake, investigation and prosecution of ethics complaints against lawyers.

39 *In re Stevens*, 92 Mont. at 549-550, 16 P.2d at 410.

40 *In re Stevens*, 92 Mont. at 550, 16 P.2d at 410.

41 *In re Stevens*, 92 Mont. at 551-552, 16 P.2d at 410.

42 *Id.*

43 *Id.*

44 *Id.*

45 *In re Stevens*, 92 Mont. at 552, 16 P.2d at 411.

46 *In re Harper*, 141 Mont. 483, 380 P.2d 663 (1963). (Prior to 1962, no disciplinary action had been taken against a Montana lawyer for over 20 years. Sam E. Had-don, *A History and Explanation of Montana Disciplinary Practices*, 25 Mont. L. Rev. (1963).

47 *In re Harper*, 141 Mont. at 484, 380 P.2d at 663.

48 *Id.*

49 *In re Harper*, 141 Mont. at 485, 380 P.2d at 664.

50 *Id.*

51 *Id.*

52 *In re Harper*, 141 Mont. at 484-485, 380 P.2d at 663-664.

53 *Id.*

54 *In re Harper*, 141 Mont. at 485, 380 P.2d at 664.

55 *In re Harper*, 141 Mont. at 484-485, 380 P.2d at 663-664.

56 *In re Harper*, 141 Mont. at 485, 380 P.2d at 664.

57 *In re Harper*, 141 Mont. at 484, 380 P.2d at 663.

58 *In re Harper*, 141 Mont. at 483, 486, 380 P.2d at 663-664.

59 *In re O'Donnell*, 143 Mont. 51, 387 P.2d 303 (1963).

60 *In re O'Donnell*, 143 Mont. at 51-52, 387 P.2d at 303.

61 *In re O'Donnell*, 143 Mont. at 52, 387 P.2d at 303.

62 *Id.*

63 *Id.*

64 *Id.*

65 *Id.*

66 *In re O'Donnell*, 153 Mont. 495, 458 P.2d 263.

67 *In re Paddock*, 150 Mont. 59, 430 P.2d 361 (1967).

68 *In re Paddock*, 150 Mont. at 63-64, 430 P.2d at 363.

69 *Id.*

70 *In re Paddock*, 150 Mont. at 60, 430 P.2d at 361.

71 *In re Paddock*, 150 Mont. at 63-64, 430 P.2d at 363.

72 *In re Paddock*, 150 Mont. at 60, 430 P.2d at 361.

73 *Daniels v. Paddock*, 145 Mont. 207, 208, 399 P.2d 740 (1965).

74 *Id.*

75 *Daniels*, 145 Mont. at 223, 399 P.2d at 748.

76 *In re Paddock*, 150 Mont. at 63-64, 430 P.2d at 363.

77 *In re Paddock*, 150 Mont. at 63, 64, 430 P.2d at 362-363.

78 *Id.*

79 *In the Matter of the Establishment of the Commission on Practice of the Supreme Court of the State of Montana*, No. 10910.

80 *In re Paddock*, 150 Mont. at 59-60, 430 P.2d at 361.

81 *In re Paddock*, 150 Mont. at 60, 430 P.2d at 361.

82 *In re Paddock*, 150 Mont. at 61, 430 P.2d at 362.

83 *Id.*



STATE BAR OF MONTANA

Attorney Emeritus

Attorneys in the State Bar's Emeritus program no longer maintain an active practice, but they still make a difference to those in need of legal help.

What is Emeritus status?

Emeritus Attorneys:

- Get State Bar dues waived
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- Neither ask for nor receive compensation of any kind
- Complete 10 CLE credits annually

Questions?

To learn more, contact
Ann Goldes-Sheahan:
agoldes@montanabar.org
or call the State Bar at
406-442-7600



Lester Rusoff

Lester Rich Rusoff, 97, died peacefully in his sleep Monday, Feb. 8, 2016, at Renaissance Stone Meadow Senior Care in Helena.

Lester was born June 17, 1918 in Anderson, Ind., to Samuel and Anne Rich Rusoff. His parents moved to Tiffin, Ohio, when he was very young, and he grew up there. He excelled in school, but also spent as much time as possible fishing in the nearby rivers. As a young man, Lester was active in Jewish traditions, and he was Bar Mitzvahed at age 12. His family always had a dog, which shaped his lifelong love for dogs.



Rusoff

Lester's mother died when he was 14, and his father later married Anna Hayden. His father and second wife, Anna Hayden, had a son, Robert, who resides in Texas with his wife, Judy.

Lester graduated with honors from Harvard Law School in 1943 and was admitted to the Massachusetts State Bar that same year. His first legal position was with the New England Regional Office of Price Administration in 1943. Later in 1943, he began working in the tax department for the Ropes, Gray, Best, Coolidge, and Rugg Law Firm in Boston, where he practiced law for three years. In 1946, he moved to New York City to work for the law firm of Weisman, Grant, Nova and Daskow, working on federal taxation issues. From late 1946 to 1947, he worked in Washington, D.C., as a clerk for the United States Tax Court.

In 1948, Lester began his teaching career as an assistant

professor of law at the University of Toledo Law School. Lester married Marilyn Reiling in Toledo in 1949. Lester received a master's degree in tax from the University of Michigan in 1952. Lester and Marilyn's children, Anne Christine Rusoff and David Michael Rusoff, were born in Toledo in 1950 and 1953.

In 1957, Lester took a position as associate professor of law at the University of Montana School of Law, and taught a variety of law classes and directed the annual Montana Tax Institute. In 1960, he became a full professor of law. Over the course of his teaching career, he taught law classes on contracts, legal ethics, personal property, federal taxation, property, wills, estate and gift taxation, trusts, environmental law and administrative law. He wrote and published numerous articles related to various tax issues and was admitted to the Montana State Bar in 1964. Lester worked on various legislative issues in Montana. He co-authored the legislation that became the Montana Clean Water Act in 1971 and drafted the law requiring hunter orange for big game hunters.

Lester married Doris Ann Mallory in Missoula in 1985. Lester and Doris took many trips together to Canada, the Oregon coast and the Southwest, and enjoyed ballroom dancing and outdoor pursuits. Doris died in 2013.

Lester enjoyed teaching law and enjoyed his students and colleagues at the law school. He often spoke fondly of former students, many of whom became prominent lawyers, judges or law school teachers.

Donations in Lester's memory can be made to any animal shelter or animal rescue organization.

Gary L. Henricks

Gary L. Henricks, 63, of Missoula, passed away Thursday, Feb. 25, 2016, at his home. Gary was born in Tomah, Wisconsin, on Nov. 15, 1952, to Edgar and Vivian Henricks. He was the second eldest of four sons.



Henricks

An avid outdoorsman, Gary moved from the farmlands of Wisconsin to the mountains of Montana in 1979 with his lifelong friend Dave Brummond and never looked back. He went to work as a lineman for Montana Power and spent every spare moment hiking, biking, fishing, skiing, and hunting in the beautiful Montana wilderness. After a motor vehicle accident in 1981 Gary used a wheelchair for the next 35 years.

Throughout those years, Gary served as a remarkable model of courage, resilience, and indomitable spirit to all of us privileged enough to know him. He was more self-reliant, independent, and "able" than many people are who have no disability.

Anyone who has tried to keep up with Gary in his chair as he sped along the sidewalks of Missoula would agree.

Gary refused to be defeated by the unexpected turn his life had taken. He enrolled at the University of Montana and graduated with a law degree in 1990. He first worked as an attorney for Missoula County, then worked for nearly 22 years as a senior deputy city attorney at the City Attorney's Office.

Gary married the love of his life, Linda Kure, in 2003. Their time together was far too brief as Linda died in 2009 of complications due to diabetes.

Gary's lifelong passion was hunting, and he did not let his disability interfere. He harvested record-book moose, as well as musk ox, bear, elk, antelope, mountain goats, and whitetail and mule deer.

In lieu of flowers, please donate in Gary's honor to the animal shelter of your choice or the Montana Office of the American Diabetes Association. Condolences for Gary's family may be left at www.missoulafuneralhomes.com.

Don Bjertness

Don Bjertness, longtime Billings municipal judge, died peacefully at his home on Saturday, Feb. 19, 2016. Don was born Nov. 25, 1930, in Hatton, N.D.



Bjertness

Don spent his early years in Hatton and entered the University of North Dakota at the age of 17, graduating with a Juris Doctor degree in 1957. His college was interrupted by serving in the Air Force for three years as a flight surgeon's surgical tech in the Korean War. After graduation Don was employed as a land man for Carter (Humble) Oil. He became Billings municipal judge and served for 24

years.

In September 2015, Don was honored for 50 years of service in

the State Bar of Montana.

He and Bernice Boylan were married after a brief courtship on July 2, 1961. They were married for 54 years. "Commitment" describes life and interactions with his family and friends. He was a gentle and loving man. He was known as being committed to his faith, family, friends and work. He loved music, he sang in choirs all his life beginning when he was 5 years old. He sang in the Billings Symphony Chorale for 32 years. He was passionate about his volunteerism. In later life he enjoyed volunteering at the Moss Mansion and as a Billings Clinic patient escort. Don was a skilled woodworker and made many beautiful gifts.

Don's dry and witty sense of humor will be missed.

Memorials can be made to King of Glory Lutheran Church, Billings Symphony Chorale or a charity of one's choice. Condolences may be left for the family at smithfuneralchapels.com.

Ilka Becker

Following a beautiful sunrise on the morning of Feb. 27, 2016, Ilka Becker passed away at St. Peter's Hospital in Helena. Surrounded by her family and caring staff, she finally escaped the agony of cancer. She was 47 years old.

Ilka Becker was born in Mettmann, Germany, on Nov. 28, 1968. She was the first child of Fritz and Roselies Becker. Her brother Tim Becker arrived in 1974, and the family spent the next 15 years as international travelers; moving between Germany and the United States.

After starting her undergraduate work at The University of Georgia and Georgia State University, Ilka and a good friend decided to take a road trip out West in the summer of 1991. Their final destination was to be Lake Tahoe, but — as Montana has a way of doing — they got to Missoula and never left. Ilka attended The University of Montana in the fall. She completed her BA in Political Science, and then went to work on her Master's Degree in German literature. There she met Paul Martin, who would be her companion for life.

Ilka enrolled at UM School of Law. After receiving her JD in the spring of 1999, she accepted a clerkship with Justice William

Leaphart on The Montana Supreme Court. After clerking, Ilka became an assistant attorney general. In December 2001, Philip Becker Martin was born, followed two years later by Hannah Becker Martin. After several advanced degrees Ilka had found her true calling — motherhood. She relished it, excelled at it, and those close to her knew she was never more content.

As the kids grew, Ilka became a Human Rights Investigator with Labor and Industry and found the occupation she was looking for: great co-workers, an honorable mission, the ability to do right and correct wrongs. She was happy.

Breast cancer entered the room in the fall of 2011. Ilka acknowledged it the only way she could — by researching everything known to humankind on the subject and fighting like hell.

Ilka Becker is survived by: her husband, Paul Martin, children, Philip Becker Martin and Hannah Becker Martin, parents Fritz and Roselies Becker, brother Tim Becker.

In lieu of flowers, those who would like to donate may contribute to a trust established for the education of Ilka and Paul's beloved children, Philip and Hannah Martin. Please make checks payable to: Philip & Hannah Education Trust, Care of: Helena Community Credit Union, P.O. Box 159, Helena MT 59601.



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ATTORNEYS

COUNTY ATTORNEY: The Liberty County Attorney is a ¾ time, elected position which represents both Liberty County and the State of Montana within Liberty County. This position is responsible for the prosecution of all felony crimes occurring in Liberty County, and all misdemeanor crimes occurring outside city limits of all cities within the county. Position is responsible for defending or prosecuting all civil claims involving the county. The position is also required to represent agencies of the State of Montana when required by law or as directed by the Attorney General. The Liberty County Attorney will be available to county officials on legal matters or the various county departments. This is a ¾ time position; and as such, may have a private practice, represent private clients, and give legal advice to private citizens. More info at <http://co.liberty.mt.us/employment/>

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.

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BANKRUPTCY JUDGE: Bankruptcy Judgeship Opportunity, US Courts-9th Circuit, District of Montana. \$186,852/year. Full Announcement and Application at judgeship.ce9.uscourts.gov or contact: personnel@ce9.uscourts.gov. Applications due 5 p.m. on 4/14/2016.

MONTANA DEPARTMENT OF JUSTICE: The Department of Justice seeks a senior staff attorney to work in the Child Protection Unit of the Prosecution Services Bureau, which provides to county attorneys across the state assistance with child abuse and neglect matters. The incumbent is responsible for independently handling all phases of simple and complex civil cases regarding child abuse and neglect in district courts and the Montana Supreme Court. This requires factual assessment of the case, legal research and writing, preparation of legal documents, and oral presentation of testimony and argument. The incumbent will work with a team of attorneys and support staff on cases, projects, and training. Salary range: \$31.29 to \$35.92 Read the full listing at the State of Montana Careers website.

CITY ATTORNEY SERVICES: Hardin City Council is requesting proposals for Professional City Attorney services. The City Attorney shall be responsible for prosecuting all violations within the city limits, including violations of state law and city ordinances on behalf of the City of Hardin. The city may also consider separate civil and criminal contracts. Please submit a letter of interest and proposal prior to March 21. Call 406-665-9293 with questions. Michelle Dyckman, Finance Officer/City Clerk, 406 N. Cheyenne Ave., Hardin MT 59034.

PARALEGALS/LEGAL ASSISTANTS

LEGAL ASSISTANT: Busy Great Falls litigation firm seeking legal assistant with excellent typing, computer, and communication skills. Civil legal experience required. Employer-funded health and disability insurance, paid vacation and 401(k). Competitive salary. Send cover letter and resume to Faure Holden Attorneys at Law, P.C., jfaure@faureholden.com, with subject line Legal Assistant Position.

REFERRALS

SOCIAL SECURITY APPELLATE ATTORNEY: Russell LaVigne is accepting referrals of Social Security claimants who have exhausted their administrative appeals and are seeking counsel to appeal to the United States District Court. He has practiced law since 1970. His practice has involved hundreds of administrative hearings, at least 100 administrative appeals to the Appeals Council and at least 20 federal suits.

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; (406) 457-5399.

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MEDIATION

THOMPSON MEDIATION: Curtis Thompson 34 years of diverse, varied and balanced litigation experience. Proven record of mediation. Pro Tem judicial experience. Reasonable rates. Email: curtismediations@gmail.com. Thompson Law, P.C., P.O. Box 2799, Great Falls, MT 59403-2799. Phone: 406-727-0500.

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CONSULTANTS & EXPERTS

RISK ASSESSMENT: Capital City Case Management, Inc. of Helena is a team of professionals with expertise in risk assessment, reporting, testifying in court & offering information & assistance. In business since 2000, CCCM specializes in providing fiduciary services to the elderly and disabled across Montana.

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PSYCHOLOGICAL EXAMINATION & EXPERT TESTIMONY: Montana licensed (#236) psychologist with 20+ years of experience in clinical, health, and forensic (civil & criminal) psychology. Services I can provide include case analysis to assess for malingering and pre-existing conditions, rebuttal testimony, independent psychological examination (IME), examination of: psychological damage, fitness to proceed, criminal responsibility, sentencing mitigation, parental capacity, post mortem testamentary capacity, & etc. Patrick Davis, Ph.D. pjd@dcpcmt.com. www.dcpcmt.com. 406-899-0522.

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