

MONTANA LAWYER

State Bar
— of —
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Carlson wins 2016 Jameson Award

Butte attorney is candidate
for ABA President-Elect post

Also: Ed Higgins, Gary Bjelland
win 2016 Bousliman Awards
Shaun Thompson wins 2016
Haswell Award



Also in this edition:

- > MLSA using power of limited scope to bridge the access to justice gap in Montana
- > Water Court changes could impact a wide range of Montana practitioners

- > President-Elect's Message from Bruce Spencer
- > How do ABA Model Rules on technology apply to e-discovery? Calif. Bar gives guidance
- > Halligan selected as State Bar President-Elect; 5 new Board of Trustee members elected

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"It is not enough to assist in providing a smooth admissions and discipline process, and promote equal access to justice. I feel the State Bar needs to continue to offer extra services to its members, similar to your free Fastcase membership currently offered by the Bar."

State Bar of Montana President-Elect Bruce Spencer is a solo practitioner based in Helena. His practice focuses mostly on personal injury and labor law. His practice areas emphasize, governmental relations, creditors' rights, commercial law, automotive law, insurance law, and health care law. He will start his term as president in September at the Annual Meeting in Great Falls.

Adding value to your State Bar membership is focus of presidency

Welcome to the President-Elect's paragraph. Those who know me are aware I am judicious in my writing. So it's doubtful a long article will appear during my term.

I am honored and humbled to be taking over the presidency of the State Bar of Montana. My predecessor's hard work and dedication have made my upcoming job much easier. The State Bar of Montana bylaws require that the president-elect present to the Trustees a proposed plan of State Bar of Montana goals and objectives for the upcoming year. This article will serve that purpose.

I suppose the theme for the next year might be expressed as the value added year. I want each member of our Bar to feel the Bar adds value to your practice of law. As a mandatory bar I feel we have an extra responsibility to be relevant to our members. It is not enough to assist in providing a smooth admissions and discipline process, and promote equal access to justice. I feel the State Bar needs to continue to offer extra services to its members, similar to your free Fastcase membership currently offered by the Bar.

Following President Matt Thiel's excellent example I believe the State Bar should continue to focus on technological innovation.

It's a scary world out there. I propose the State Bar find an email encryption program that similar to Fastcase we can roll out as a benefit to our members. I will continue to shepherd through State Bar endorsements of practice management software in order to provide discounts for member use of these products. I believe the time has come for the State Bar to provide an online searchable database of members and to assist members in appearing on search engines.

I live in Helena and am fully aware that some of the most dedicated and skilled practitioners of law are public-sector lawyers. I want to make the State Bar relevant to these lawyers too. I pledge to work with public-sector attorneys to create value-added services relevant to their everyday work and life experience.

To assist access to justice and the court system I pledge to advocate for one set of pro bono forms statewide. I can see no legitimate reason for form variations between our 56 counties or 22 judicial districts. Standardization of forms will permit one online depository of forms and hopefully assist district courts in managing the ever-increasing volume of pro se litigants.

We are blessed to have an excellent working relationship with the Montana Supreme Court. It is my hope that this relationship continues and I will work my hardest to see that it does.

I am excited to start as president of your State Bar. Please feel free to contact me if you have ideas for a "value-added" State Bar of Montana.

Jackson elected to American Board of Trial Advocates

Kurt M. Jackson, an attorney with Hoyt & Blewett, was recently elected to membership in the American Board of Trial Advocates and the Montana Chapter of ABOTA. Election to ABOTA requires trying a minimum of 20 jury trials and evidence of high personal character, honorable reputation, and proficiency as a trial lawyer.

Jackson graduated cum laude from Gonzaga University in 1981. He has earned a Preeminent Peer Review rating by Martindale-Hubbell, the highest recognition possible in the legal industry, for his professionalism and ethics. Jackson is a member of the Montana Trial Lawyers Association (Trial Lawyer of the Year 2002-2003), chairman of MTLA's Amicus Committee, and MTLA State Delegate to the American Association for Justice.

Jackson is listed in Montana State Super Lawyers and Best Lawyers in America. He is also a fellow in the International Society of Barristers.

Papez, Smith announced as partners at Doney Crowley

Doney Crowley P.C. in Helena has announced that Jacqueline R. Papez and Mark "Mac" M. Smith are new partners with the firm.



Smith



Papez

Papez holds a Bachelor of Arts degree in Biology and Anthropology from the University of Montana and a Juris Doctorate from the University of Idaho College of Law. Papez, a fourth-generation Montanan, grew up on her family's ranch in Carbon County, and has been with Doney Crowley since 2009. Her practice focuses on environmental and natural resource litigation, real property litigation, solid waste issues, and regulatory practice before state agencies, in addition to water law. Papez also represents municipal

entities on civil matters. She works at the firm's Red Lodge office, and can be contacted at either jpapez@doneylaw.com or 406-443-2211.

Smith grew up in Toledo, Ohio. He holds a Bachelor of Arts degree in English from Wake Forest University; a Juris Doctorate from the University of Montana School of Law in 2008; and a Master of Laws degree in Environmental and Natural Resources Law from Lewis and Clark Law School in Portland, Oregon. A former associate attorney with the law firm of Church, Harris, Johnson & Williams in Great Falls, Smith has been a senior associate at Doney Crowley since September 2015. His law practice with Doney Crowley focuses primarily on environmental, real property, and business litigation. As such, he handles matters involving the remediation of contaminated properties; permitting issues before Montana DEQ, DNRC, and PSC; natural resources and mineral rights litigation; and water rights adjudication issues. He also litigates cases involving boundary and easement disputes; land use disputes; and business partnership and contract disputes.

Smith is currently the Chairman of the Montana State Bar's Natural Resource, Energy and Environmental Law Section. You can contact him at msmith@doneylaw.com or (406) 443-2211.

Myers wins Arizona Bar Disability Achievement Award

Edward L. Myers III was honored with the Honorable John R. Sticht Disability Achievement Award at the State Bar of Arizona in June.



Myers

The Sticht Award each year recognizes a person in the legal profession or a group, organization or employer, who or which furthers the goals of access to justice and the full participation for people with disabilities in the legal profession and justice system or a person with disability who has demonstrated exceptional depth of inner strength, courage in the face of adversity, and tenacity of purpose.

Myers is a former law clerk for the

Montana Supreme Court. He worked for the Montana Advocacy Program as a mental health and assistive technology attorney and for the Arizona Center for disability Law in similar positions.

He also worked as a policy and funding specialist for the Arizona Technology Access Program and as an adjunct professor for Northern Arizona University teaching Disability Law in Education and Advanced Disability Law.

Throughout the course of his career, Myers has represented people with disabilities in special education, employment, access to public goods and services. He was appointed to several governor-appointed boards by governors of both parties working on public policy issues. He also worked on public policy issues at the Arizona legislature including passage of extending voting rights for persons with developmental disabilities under guardianship, ensuring equal access to information technology, and accessible books for disabled children.

He recently retired after eight years as the deputy executive director for the Arizona Center for Disability Law and from NAU. He has also been published in several journals and the Montana Law Review on disability and technology issues.

MacBride Law PLLC opens in Bozeman

William L. (Bill) MacBride, Jr. announces that he has opened the MacBride Law PLLC office in Bozeman, after 22 years with the law firm of Gough,



MacBride

Shanahan, Johnson & Waterman. MacBride Law will focus primarily on intellectual property (patents, copyrights and trademarks) and small business development; natural resources (mining and oil and gas) and immigration matters.

MacBride began his legal career in 1985 in Colorado after 11 years as a geologist, primarily for Pennzoil Company. He worked as a mining lawyer for Gold Fields Mining Company before joining the Gough, Shanahan firm. He is a registered patent attorney.

MacBride Law, PLLC may be contacted

Mecklenberg Jackson named executive director, Cook staff attorney at Montana Innocence Project

The Montana Innocence Project has welcomed several new staff members in 2016, including a new executive director and a new staff attorney.

Mecklenberg Jackson joined the Montana Innocence Project in April 2016 as the organization's new executive director. She has an extensive legal background, coming to the Montana Innocence Project from the Montana Supreme Court where she was Director of the State Law Library.

Mecklenberg Jackson earned a BA in English from Concordia College in Moorhead, Minnesota, and she worked as a journalist before attending law school. She earned her JD from the University of North Dakota School of Law in 1996 and a Masters in Law Librarianship from the University of Washington in 1997. She is licensed to practice law in Montana and serves on several State Bar of Montana committees.

Mecklenberg Jackson says she has been fortunate to be able to use both her law degree and library science degree throughout her career with positions at the Montana Supreme Court, the Montana Legislature, and Missoula Public Library. She credits her years as a staff attorney for the Montana Legislature for her interest in policy writing and equal application of the law. She believes very strongly in equal access to justice for all and assists with the 4th Judicial District Pro Bono program as well as statewide pro bono efforts. She is thrilled to be working at the Montana Innocence Project, advocating for the wrongfully convicted.

She also serves on a number of state and national legal and library committees and does a great deal of volunteer work within the Missoula community.

She is married to a wildlife biologist and spends much of her time chasing after her 12-year-old twin girls.

On June 1, Toby Cook joined the Montana Innocence Project as its new staff attorney.

Cook grew up in Gillette, Wyoming, where he served eight years in the Wyoming National Guard as a cannon

crew member in a field artillery unit and earned an associate's degree in criminal justice. Cook attended Seattle Pacific University and graduated with a double major in philosophy and political science.

Cook earned his JD from the University of Montana School of Law in 2015. He started working with the Montana Innocence Project his second semester of law school. He has worked with MTIP in various capacities since that time and is proud to return as a staff attorney. He is looking forward to advancing MTIP's mission of freeing those who were wrongfully convicted and preventing future wrongful convictions. In his free time, Toby enjoys hiking, rock climbing, fishing, swimming, tennis, scuba diving, and exploring Montana's great outdoors with friends.

MTIP also welcomed John Blake to its offices for the summer as a legal intern.

Blake is a law student intern, visiting from the University of the District of Columbia (U.D.C). David A. Clarke School of Law. John is an alum of the University of Montana where he earned his Bachelor of Arts in public administration and American government and minored in communication studies. He is a longtime advocate of social justice and has organized, directed, and volunteered for various nonprofits for over 15 years. He was a Montanans for Justice AmeriCorps member serving with Montana Legal Services Association before law school.

As part of his first year experience at U.D.C. David A. Clarke School of Law, Blake volunteered on the Clemency Project 2014. During this project he developed a better understanding of federal sentencing and how the criminal justice system can fail those who find themselves a part of it. He is delighted that the Joseph L. Rauh Fellowship, which allows students of U.D.C. Law to serve public interest organizations over the summer, allowed him to spend his time back in Missoula with the Montana Innocence Project.

at 2066 Stadium Drive, Ste. 101, Bozeman, MT 59715. 406-577-2777 and wlm@macbridelaw.com.

Billings law firms merge to form Bishop, Heenan & Davies

Bishop & Heenan Law Firm and Davies Law Firm have merged. The new firm, Bishop, Heenan & Davies will continue to be located at 1631 Zimmerman Trail in Billings. The firm specializes in the areas of consumer protection and

personal injury with a particular emphasis in trial practice. The firm has been listed by U.S. News Best Law Firms as "First Tier" for personal injury litigation and is rated "AV Preeminent" by Martindale Hubbell.

Randy Bishop is regarded as one of the premier insurance bad faith attorneys in the state. He has been listed as a Super Lawyer each year since 2008 and has been listed in The Best Lawyers in America each year since 1993.

John Heenan maintains a national

consumer law practice and has successfully litigated precedent-setting consumer protection cases against banks, mortgage companies, debt collectors and insurance companies. He has been listed as a Rising Star or Super Lawyer every year since 2008.

Colette Davies has enjoyed a 19-year career as a litigator, with particular expertise in personal injury, insurance coverage disputes, and bad faith law. She is a former municipal judge for the city of Billings and has passionately represented

News, from previous page

individuals since leaving the bench.

In late August, Colin Gerstner will be joining the firm. Gerstner graduated with honors from the Alexander Blewett III School of Law at the University of Montana in 2012 and has clerked for the Honorable Susan P. Watters in state and federal court since graduation. He will maintain a trial practice including plaintiff's litigation and criminal defense.

Mattioli joins Appellate Services Bureau at Montana Attorney General's Office

Madison Mattioli has joined the office of Attorney General Tim Fox as a new Assistant Attorney General in the Appellate Services Bureau. Mattioli recently finished a federal clerkship for U.S. District Court Judge Brian Morris in Great Falls. She is a 2015 graduate of the University of Montana School of Law, and is a 2010 graduate of the University of Montana with a bachelor of arts degree in psychology.



Mattioli

Mattioli and her husband founded and own i.e. Recycling, LLC, a Missoula-based local curbside recycling company. She has three beautiful daughters, ages 2, 4, and 6, who keep her hands full at home. In her spare time, she enjoys being active and spending time with her family outdoors.

Pro bono settlement masters, GALs sought

Missoula County District Court is in need of attorneys to act as pro bono settlement masters and/or guardians ad litem in family law cases involving indigent parties.

Over 70 percent of the county's domestic relations cases involve at least one pro se litigant. In cases where one or both parties are indigent based on the court's review of their Affidavits of Inability to Pay, the court is issuing orders appointing settlement masters or GALs after speaking with counsel who've graciously volunteered their services. If you can help, contact jjacobsen@mt.gov.

Troiano earns Certified Paralegal credential

Thomas T. Tornow P.C. has announced that Katherine Troiano

Gallagher wins 9th Circuit Court's John Frank Award

Anthony R. "Tony" Gallagher, the executive director of the Federal Defenders of Montana, will be honored for outstanding service by the Ninth U.S. Circuit Court of Appeals during its judicial conference at Big Sky this week.



Gallagher

Gallagher, of Great Falls, received the 2016 Ninth Circuit John Frank Award.

In his 39-year career, Gallagher has actively litigated more than 400 trials and argued cases in state and federal appellate courts.

Some of his clients have included former anti-government Montana Freeman leader LeRoy Schweitzer, who rejected the court system and refused to participate in his own defense, and Theodore Kaczynski, the Unabomber, in the early stages of his case.

Gallagher has served as chief of the Montana Federal Defenders since it was established in 1992 as a community defender organization. His staff includes 11 lawyers and support personnel. Based in Great Falls, the federal defenders have offices in Billings, Helena and Missoula. In 2015, the office opened 828 new cases.

The John Frank Award recognizes a lawyer who has "demonstrated outstanding character and integrity; dedication to the rule of law; proficiency as a trial and appellate lawyer; success in promoting collegiality among members of the bench and bar; and a lifetime of service to the federal courts of the Ninth Circuit."

According to a release from the Ninth Circuit, Frank was a renowned attorney in Phoenix who, over the course of a 62-year career, argued more than 500 appeals before the Arizona Court of Appeals, the Arizona Supreme Court, the Ninth Circuit Court of Appeals, other federal circuit courts and the U.S. Supreme Court.

406-683-6525

Montana's Lawyers Assistance Program Hotline

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

Halligan elected State Bar president-elect; 5 new Board of Trustees members elected

By Montana Lawyer Staff

The Honorable Leslie Halligan was chosen by the State Bar of Montana membership in this summer's election to be the Bar's new president-elect. Votes were counted on Friday, June 3.



Halligan

Halligan, a state district court judge from Missoula, has been the Chair of the Bar's Board of Trustees for the past year.

The Bar's current president-elect, Helena attorney Bruce Spencer, will step up as State Bar president in September for a one-year term. Halligan will become president in September 2017.

Bar members also elected five new trustees:

■ Jessica Polan, from the Office of the

State Public Defender's Kalispell office won election as a write-in candidate in Area A. She replaces Marybeth Sampsel, who did not run for re-election.



Gray



Smith

■ Brian C. Smith, a criminal defense attorney in Missoula, won election in Area B (Missoula, Ravalli, Mineral, Sanders and Lake counties). He was one of five candidates for three trustee positions in Area B.



Minor



Steele

■ David Steele, a partner at Geiszler Steele P.C. in Missoula, also won election

in Area B.

■ Kaylan Minor, an attorney from Dillon, won as a write-in candidate in Area C. She replaces Ellen Donohue of Anaconda, who did not seek re-election.

■ Christopher Gray, owner of Gray Law Firm in Bozeman, won in Area G (Gallatin, Park and Sweet Grass counties). He was one of five candidates for running for two seats.

Current trustees winning re-election are Beth Brennan in Area B; Shari Gianarelli and Paul Haffeman in Area D (Cascade, Teton, Pondera, Toole and Glacier counties); and Lynda White in Area G.

Gianarelli resigned her trustee seat after the election. She was replaced by Channing Hartelius.

Shane Vannatta was re-elected as the State Bar ABA delegate.

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Sexual assault on college campuses is subject of law school's 2016 Browning Symposium

"Sexual Assault: Conflicts Between Campus and Courts" is the topic of the 2016 Honorable James R. Browning Symposium at the Alexander Blewett III School of Law.

The symposium will be held at the Alexander Blewett III School of Law at the University of Montana in Missoula on September 30. It is free and open to the public. Information about purchasing CLE credit is forthcoming.

Keynote speakers for the event are United States Attorney Michael Cotter and Montana Attorney General Tim Fox, both of whom helped facilitate the agreement between the U.S. Department of Justice and the Missoula County Attorney's Office.

Panelists are Deborah Brake, University of Pittsburgh School of Law; Erin Buzuvis, Western New England University School of Law; Kevin Cole, University of San Diego School of Law; Andi Curico, Georgia State University College of Law; Joanna Grossman, Hofstra Law School; Kari Hong, Boston College Law School; Diane Rosenfeld, Harvard Law School; and Nadine Strossen, New York Law School.

Panelists may also include Montana practitioners and policymakers.

For more information, contact symposium editors Brandon Shannon, brandon.shannon@umontana.edu or Caitlin Williams, caitlin.williams@umontana.edu.

Law Alumni reunion weekend

Law Alumni Reunion Weekend at the Alexander Blewett III School of Law is Friday and Saturday, Sept. 30 to Oct. 1.

This year's featured classes are from years ending in 6 and 1.

Activities during Law Alumni Reunion Weekend traditionally include class dinners, a CLE program, the scholarship brunch for donors and scholarship recipients, the reunion tailgate and Griz football. This year's game will be against Southern Utah.

More information is available at <http://www.umt.edu/law/newsevents/events/default.php>

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Bar's Annual Meeting to host oral argument on ranchers' water dispute with BLM

A water claim dispute between the federal Bureau of Land Management and six Montana ranches will be the focus of a Montana Supreme Court oral argument at the State Bar of Montana's 2016 Annual Meeting in Great Falls on Sept. 23.

In the dispute, a group of BLM permittees are challenging a Water Court determination that six stock water claims on the Beaver Creek tributary of Milk River Basin in south Phillips County are owned by the BLM.

The Water Court determined the existence of the permittees' senior instream rights neither defeats BLM's claims based on five reservoirs BLM has constructed nor provides legal grounds for declaring the BLM reservoir rights to be owned by the permittees.

The permittees object to the determination that BLM is the owner of the claims, because the permittees or their predecessors in interest have been the actual user of the water. The permittees also object to the Water Court's determination that BLM has validly reserved water rights in a pothole lake—they argue that genuine issues of material fact exist as to the size and recordation of the pothole lake.

The Annual Meeting will be held Sept. 22-23 at the Great Falls Holiday Inn, 400 10th Ave. South.


The oral argument will be introduced by a law professor from the University of Montana's Alexander Blewett III School of Law. The introduction will begin at 10:15 a.m., with the oral argument to follow at 10:45 a.m.

Bankruptcy Appellate Panel judges appointed

Chief Judge Sidney R. Thomas of the United States Court of Appeals for the Ninth Circuit announced the appointments of Bankruptcy Judges William J. Lafferty III and Julia W. Brand to seven-year terms on the Ninth Circuit Bankruptcy Appellate Panel, which resolves appeals arising out of bankruptcy court decisions in the Western states.

Judge Lafferty is one of nine judges sitting on the U.S. Bankruptcy Court for the Northern District of California, which handled 11,471 cases in calendar year 2015. His appointment is effective Aug. 1.

Judge Brand is one of 27 bankruptcy judges sitting on the U.S. Bankruptcy Court for the Central District of California, which handled 46,523 cases in calendar year 2015. Her appointment is effective Dec. 1.



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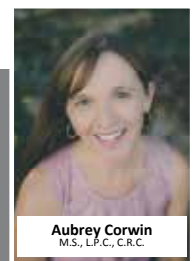


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DISCIPLINE

Kohn receives 7-month suspension

Summarized from a July 5 order in Supreme Court Case No. PR 15-0626

The Supreme Court ordered Montana attorney Brian Kohn to serve a seven-month suspension effective Sept. 1.

According to the order, the Commission on Practice determined that Kohn refused to keep a client reasonably informed about the status of the client's DUI case, engaged in conduct prejudicial to the administration of justice, failed to provide his client with competent representation, and failed to act with reasonable diligence and promptness in representing his client. The commission found Kohn violated multiple provisions of the Montana Rules of Professional Conduct.

Kohn had previously received a 60-day suspension for similar misconduct in 2015. He was reinstated on July 22, 2015. The new charges were filed on Oct. 16, 2015.

APPOINTMENTS

Commission on Practice

Summarized from Supreme Court orders on May 31 and

June 21 in Case No. AF 06-0990

The Montana Supreme Court has appointed Jean Faure and Kelly J.C. Gallinger as members of the Commission on Practice.

Faure, who represents Area C (Cascade, Glacier, Toole, Pondera and Teton counties), was reappointed on June 21. Her previous term expired on June 19.

Gallinger was appointed on May 31 to represent Area G (Yellowstone, Big Horn, Carbon and Stillwater counties). She took over for Donald Harris, whose term expired on May 22.

The appointments followed elections among resident members in their respective Areas. By rule, the names of the top three vote-getters in each Area are forwarded to the Supreme Court, and the court appoints one of them.

Commission on Courts of Limited Jurisdiction

Summarized from a June 21 Supreme Court order in Case No. AF 06-0263

The Montana Supreme Court has reappointed five members of the Commission on Courts of Limited Jurisdiction to new terms.

The terms of the Honorable Perry Miller (chair), the Honorable Larry Carver (vice chair), the Honorable Steve Fagenstrom (justice court), and Margaret Tonon (State Bar representative) expired on June 30 and were reappointed to terms that will end June 30, 2020.

The term of the honorable Bob Wood (municipal judge) will expire on Dec. 31. He was reappointed to a term that ends Dec. 31, 2020.

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- James Delaney
- Pippa Browde
- Jon Forman
- Roberta Mann



MLSA using the power of limited scope to bridge access to justice gap in Montana

By Angie Wagenhals
Montana Legal Services Association

“My situation is handled thanks to the education, help and advice I received from MLSA (Montana Legal Services Association). I know exactly what to do and when to do it.”

That’s the feedback received from a client after receiving one-time, over-the-phone advice from an attorney through MLSA’s new limited-scope pro bono advice program. With just one attorney for every 12,133 Montanans living in poverty, MLSA recognizes that it must utilize and continually expand these services to meet the growing demand for legal services and that limited scope is a powerful tool to do so.

This past March, MLSA launched a new limited-scope advice platform: the Montana Pro Bono Connect Phone Advice Project. Funded through a Pro Bono Innovation Grant from the Legal Services Corporation, the project connects pro se litigants with civil legal matters to volunteer attorneys who provide legal advice over the phone. With a focus on communities with the fewest legal resources, particularly those without legal clinics, the Montana Pro Bono Connect Phone Advice Project allows MLSA to better serve populations facing the greatest barriers to legal aid.

Free and reduced-rate legal resources are concentrated in Montana’s major cities. Individuals who live in Missoula, Helena, Bozeman and Billings, for example, can benefit from monthly family law clinics and a sizable corps of pro bono attorneys. On the other hand, Montanans living in more remote places often find that legal resources are scarce and much farther away. An individual from Plentywood might need to drive five hours for a consultation with an attorney, a trip that entails potentially prohibitive expenses for things like gas and child care.

Until 2011, MLSA had attorneys in eight locations around the state and was able to offer phone advice to a majority of applicants. Major funding cuts in 2011 forced MLSA to close five of the eight offices and dramatically curtail the use of phone advice.

Acutely aware of the resulting barriers to justice, MLSA and its partners have worked to make existing legal resources more inclusive. Despite this flexibility, MLSA has found that many pro se litigants living in rural communities simply do not have the same opportunities to access free legal help as those living in more populous ones. MLSA developed the Montana Pro Bono Connect Phone Advice Project in an effort to bridge this resource gap and, so far, it has been working.

In addition to serving clients, the program offers attorneys who wish to serve their community through pro bono assistance a convenient means to do so. As with all of its other programs, MLSA screens applicants for financial eligibility before scheduling them for phone advice appointments. MLSA makes the process easy for volunteer attorneys, providing detailed case files

MLSA planning 50th anniversary celebration

Montana Legal Services Association celebrates its 50th anniversary this year, and it is inviting the Montana legal community to the party.

The celebration is scheduled for Thursday, Oct. 6 from 5:30 to 7:30 p.m. at the Holter Museum of Art in Helena. The celebration will include appetizers, live music, a cash bar, and remarks by Montana Supreme Court Chief Justice Mike McGrath. The event is intended to be a celebration of both MLSA and access to justice, and members of the legal and access to justice community are encouraged to attend.

RSVP to mlsa@mtlsa.org if you plan on attending.

and relevant documents and by scheduling and following up with clients. Attorneys are free to do their one- or two-hour phone advice “shift” from their own desk. As always, MLSA also provides malpractice insurance coverage for all work done through the phone advice project.

So far in 2016, MLSA has received 3,065 requests for assistance. MLSA continues to build the phone advice program to meet the needs of an increasing number of applicants who come through its doors. In just four months, the project has enabled over 60 Montanans to obtain legal advice, assistance with pro se forms and help preparing for court proceedings. One client recently wrote of her experience with the project, “I really appreciated that the program was available, I had a lot of stress before and now it’s gone. I hope that the program can continue.”

Of course, MLSA relies on the assistance of pro bono attorneys willing to donate their time and expertise to ensure that the program can continue. We still need your help. If you are willing to donate two hours of your time every few months, please consider volunteering with the Montana Pro Bono Connect Phone Advice Project. Your time is an invaluable service to low-income Montanans facing an unfamiliar and, at times, overwhelming legal system.

If you are interested in finding out more about the project and signing up to volunteer, please contact Angie Wagenhals at 406-543-8343 ext. 207; or awagenha@mtlsa.org. MLSA plans to make the Montana Pro Bono Connect Phone Advice Project a consistent and reliable tool for low-income Montanans for years to come. We look forward to working with the Bar as we continue to strive to serve those most in need.

Angie Wagenhals is the pro bono coordinator for Montana Legal Services Association.

William J. Jameson Award

Carlson has garnered national notice, acclaim

By Joe Menden
Montana Lawyer

When Bob Carlson first won election to the American Bar Association House of Delegates in 1999, he never could have imagined the path he would then follow.

Carlson has served in the House of Delegates ever since. He was elected as Chair of the House (2012-2014), which earned him a lifetime appointment as a delegate. Over the past 20 years he also has served on numerous ABA boards, committees and commissions, working on such weighty issues as homelessness and poverty and racial and ethnic diversity in the profession. He has lobbied in Washington, D.C., for continued congressional funding of Legal Services Corporation and criminal justice reform among other issues of importance to the profession.

Currently Carlson, a shareholder at Corette Black Carlson & Mickelson in Butte, is unopposed as a candidate for president-elect of the ABA for the term beginning in August 2017. If successful, he would be only the second Montanan in history to become ABA president. The first was William J. Jameson (1953-1954).

In July, Carlson added yet another accolade to his growing list of career accomplishments —one that connects him to Jameson in another way — when he was named the winner of the 2016 William J. Jameson Award, the highest honor bestowed by the State Bar of Montana.

He will receive the award at the bar's 42nd Annual Meeting in Great Falls Sept. 22-23.

"It's humbling. It's very special," Carlson said of winning the Jameson Award. "I have been very fortunate. My firm has provided me with great mentoring and support over the years, and it continues to this day. I've had the opportunity to work with people around the state and around the country that have just been great. I've learned a lot. I try to keep learning from them."

Carlson said the support of his wife, Cindy, has been especially important. It's tough to be the spouse of a lawyer, he said, especially a trial lawyer. Cindy supported him every step of the way, even though it meant more time away from home for Bob and more burden on her to manage the household and our children in addition to working outside the home.

"Frankly, none of what I've done, both as a practitioner and as a Bar officer, would have been at all feasible or possible without



Bob Carlson is the 2016 William J. Jameson Award winner.

Cindy," he said.

Bittersweet moment for Carlson

Carlson nominated the 2015 Jameson Award winner, his good friend, colleague and fellow ABA delegate Damon Gannett of Billings.

Despite Carlson's personal accomplishments, this year has been bittersweet for him, as he has watched his good friend battle pancreatic cancer.

Carlson was emotional when talking about what his

friendship with Gannett means to him.

"I hope I used up most of the adjectives when I nominated him last year for the award," Carlson said. "You never get the essence of Damon until you're with him. He has an unassuming way. Not only with the children he represents (as a guardian ad litem) and his clients, but with his family and the bar."

Gannett has continued to work and fulfill his obligations as an ABA delegate while battling cancer, Carlson said, despite being run down by the effects of the disease and the treatment.

Carlson said he has had other friends who have faced cancer, both in the ABA and in Montana. Some died quickly. Others lived a long, productive time after their diagnosis.

He hopes Gannett falls into the category of those who beat the disease altogether.

"We're hoping for a miracle," Carlson said. "He's a very special person. It's been very tough."

Shining light on Montana, ABA

When Carlson first became an ABA delegate, he realized Montana did not have a lot of representation in the organization's leadership — something he hoped would change.

It has.

For years, Montana had only two ABA delegates, the minimum representation a state can have. Montana's representation is now at an all-time high, with Carlson, Gannett, Shane Vannatta, Jock Schulte, Erica Grinde, Eli Patten and Tony Patterson all serving in the House of Delegates. Additionally, two other Montanans will become Chairs of ABA Sections beginning this August -David Dietrich (Real Property, Trust and Estate Law) and Greg Murphy (Legal Education and Admissions to the Bar)

Carlson hopes that their good work shines some light—both in Montana and across the nation — on Montana attorneys' abilities.

Likewise, he hopes it brings home to the state's attorneys that the ABA provides value and not just for the big firms in major cities. Attorneys from rural areas get as much value, if not more from ABA membership.

"It's really critical in the rural states — the support, the resources, the advice, the sharing of information that you wouldn't be able to get on your own," he said. "Having someone from a more rural state and a small firm lead the Association gives people the idea that the ABA is relevant to their practice, I hope. That's what we're trying to accomplish."

Carlson noted that outgoing ABA President Paulette Brown has supported rural states with her Main Street ABA initiative — including visiting Montana's 2015 Annual Meeting shortly after taking office last year.

'Devotion to the public good'

Schulte — who is finishing a three-year term on the ABA Board of Governors this year — nominated Carlson for the Jameson Award. Schulte said Carlson has earned the highest respect of his peers on a national level through his work with the ABA.

"There are very few lawyers in this country that have provided more public service than Bob," Schulte wrote in his nomination letter. "His work with the SBOM and the ABA clearly demonstrate his devotion to the public good. His very prominent and

public role in the ABA has been the perfect platform for Bob to educate the public about the legal system, promote and ensure the competence of lawyers and judges, improve the workings of the legal system, including access to justice, enhance diversity and promote the rule of law. His deep commitment to improving the legal profession and the justice system is apparent for all to see."

In a statement, Brown, the outgoing ABA president, praised Carlson for his decades of service to the ABA.

"Bob Carlson has shown his commitment to the law, working as an active and dedicated member of the American Bar Association, serving in the House of Delegates since 1999, and acting as the Chair of the House from 2012 to 2014," Brown said. "His dedication to fairness and justice, coupled with his affable manner, has made him a valuable advocate and admired colleague."

'Being chair of the House was the best'

Carlson's service to the profession did not begin with his election as an ABA delegate. He was elected to the State Bar of Montana Board of Trustees in 1987. He eventually became president of the State Bar for the 1993-1994 term.

Even as Carlson has risen through the ranks of the ABA, he has continued to serve the legal profession in Montana. He serves on the Montana Supreme Court's Character and Fitness Commission and served on the State Bar's Resolutions Committee right up until he became chair of the House of Delegates.

He said the time and energy he has given to the profession haven't been a sacrifice, but rather a labor of love — love for the work and for the people he has worked with along the way.

"Being chair of the House was the best," Carlson said. "You work with some of the most intelligent, dedicated folks from around the country. The Chair's view of the House when it is in session is incredible. You look out and see this diverse group of smart, talented people from every part of the profession gathered together to resolve issues of critical importance to the legal system. It was just amazing."

As much as Carlson has given to the bar, he said, he has gotten more back. That has been part of his motivation to continue doing his part.

"It's hard to put your finger on it, but people you trust and admire see something in you and ask you to help out. You think, 'OK, I'm going to help out,'" he said. "If you commit to doing something, you have to realize this isn't about you. This is about helping advance the rule of law, helping advance the profession, and protecting the public."

Ultimate respect as a practitioner

Carlson's work as a bar officer has not come at the expense of his work as a practicing attorney. Far from it.

The respect Carlson commands is evident by the fact that he has earned an AV Preeminent 5.0 peer rating from Martindale-Hubbell.

Schulte said a recent experience working with Carlson as a settlement master on a particularly tragic and complex case drove home for him Carlson's gifts as an attorney.

"My head was swimming trying to understand the issues," he

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George L. Bousliman Award

Bjelland helped ensure group trust was a benefit till its end

By Joe Menden
Montana Lawyer

Gary Bjelland doesn't like to quit. He's made that clear throughout his career.

In law school, Bjelland took up running as a way to combat stress. Nearly 40 years and 35 marathons later – including the famed Boston Marathon and New York City Marathon – he's still putting in more than 1,000 miles a year.

Bjelland passed the bar in 1979, and that year he joined the Great Falls firm of Jardine, Stephenson, Blewett & Weaver. After 37 years, he still practices at the firm. He has served on the Board of Bar Examiners since the Montana Supreme Court appointed him in the mid-1990s, currently as vice chair.

When the State Bar of Montana formed the Group Benefits Trust in 2001 to provide an affordable health insurance option for bar members, Bjelland served on the board from day one. Today, he chairs the board.

So in late 2015 when he and the rest of the benefits trust board determined it was time to dissolve the trust, you can be sure it wasn't decided on a whim.

The plan's numbers had been diminishing over time, since passage of the Affordable Care Act changed the health insurance landscape in 2010. On top of that, the trust had a large number of substantial claims in 2015. For the first time, claims exceeded revenues.

"Frankly everyone who was a participant could get a decent plan elsewhere," Bjelland said. "We determined it was time to discontinue it. The trend was there. We saw the writing on the wall."

Bjelland, along with Montana Legal Services Association attorney Ed Higgins, is a winner of the 2016 George L. Bousliman Award. Past State Bar Presidents Mark Parker and Peggy



Gary Bjelland is a 2016 George L. Bousliman Award winner.

Probasco, a former member and current member of the benefits trust board, respectively, nominated Bjelland, praising him for his efforts to close out the self-funded plan without leaving members on the hook for any liability.

"Gary Bjelland, by all reports, dedicated a heroic amount of time to the effort of bringing the group benefit trust to a peaceful close where there would be no exposure to the members for any excess liability," Parker wrote in his nomination letter.

Bjelland said he was shocked and humbled to win the Bousliman Award. He never saw himself going down the path of being an award winner. But he is proud of what the Group Benefits Trust has done for members over the years, keeping premium increases to a minimum, giving premium holidays, all the way.

He considers the Bousliman a group award for everyone who served with him on the board over the years, including

Nomination letters online

To read the George L. Bousliman Award nomination letters, read this article online at www.montanabar.org/news/?id=7186

current members Roberta Anner-Hughes, Kristi Blazer, Gregory Gould, Stan Kaleczyc, Perry Schneider and Probasco. He also noted that Glenn Tremper served on the board from its launch in 2001 until 2015, and that Jim Edwards, now with Leavitt Great West, designed and developed the plan. Jim Edwards (since its inception) and Mary Kay Puckett, also with Leavitt Great West, served as key financial advisers till the end.

"We had a good working group for a long time," Bjelland said. "We've had the same advisers from day one. I think we clearly had the best interests of the bar at heart. I think we accomplished good things for the bar. I think anyone who was a member would vouch for that."

Work is not quite done yet – there are still run-out claims to pay, and stop-loss insurance was kept in place for several months to protect the plan assets. But almost all of the claims are cleaned up, Bjelland said, reserves are in excess of \$1 million, which will be returned to the members who were participants at end of 2015 year. The board will formulate a refund procedure in the third quarter of this year.

Bjelland said that now that work is winding up, there are some mixed feelings about seeing it go. But he is confident it was the right decision.

"All of a sudden there's a sense of loss not having it," he said. "But it served its purpose, and it did it well. Times, they change. They don't stay stagnant as we well know. We made a good business decision. I'm very comfortable with it."

George L. Bousliman Award

Higgins has devoted his career to advancing access to justice

By Joe Menden
Montana Lawyer

Ed Higgins doesn't think of himself as someone who has done enough as an attorney to merit being an award winner.

For at least one of his recent pro bono clients, Higgins has done enough to be called Superman.

The client was Jason, a cognitively disabled man who sought Montana Legal Services Association's help with the dissolution of an abusive marriage. According to Angie Wagenhals, MLSA's pro bono coordinator, Jason's disabilities made filling out the paperwork for the dissolution an overwhelming task.

Higgins, a managing attorney and triage attorney in MLSA's Missoula office, guided Jason through the paperwork and saw him through the divorce.

Jason was so grateful for the help that he presented Higgins with a wooden plaque that he made. The plaque, which was decorated with a Superman logo, has an inscription that reads, "Thank you for setting me free."

Higgins was surprised to learn recently that he is a winner of the State Bar of Montana's 2016 George L. Bousliman Award.

Attorney Randy Snyder of Bigfork, a past president of the State Bar, nominated Higgins for the Bousliman Award, citing him for helping set up a structured pro bono program for the Northwest Montana Bar Association and for his work on the Access to Justice Commission in creating easy-to-use forms for self-represented litigants.

Missoula attorney Meri Althaus also wrote a letter in support of Higgins' nomination. (To see the nomination letters, go to the links in this article online at montanabar.org.)

Higgins compares the task of creating forms for self-represented litigants to the Hippocratic Oath that doctors take — first do no harm. It's crucial, he said, to set them up to minimize the chances that someone is going to get themselves in more trouble by using them.

"There's such a huge need for help in whatever form it can come," he said. "There are so many people who need some assistance, there just aren't the resources to help all those people. There's a lot of people who can help themselves, and if we can put out a resource that can help them do that, we should."

While form development is a never-ending project, Higgins said, the Access to Justice Commission's forms subcommittee is now at the stage where it is piloting its forms in Gallatin County and training the court staff and other stakeholders such as court self-help centers so they get used to what the new forms



Ed Higgins is a 2016 George L. Bousliman Award winner.

look like. Also all the new forms are being automated as they come out, making them much easier to fill out. Users can sit at a computer, answer some simple questions, and their answers will populate the forms, producing a Word-compatible file that looks like it came from a lawyer that the user can print out.

Higgins said he actually played a small role in getting the Northwest Montana Bar Association program off the ground — showing the attorneys what other local bars had done to get

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STATE BAR OF MONTANA ANNUAL MEETING

SEPTEMBER 22-23, HOLIDAY INN GREAT FALLS
MORE THAN 10 HOURS OF CLE, INCLUDING ALL YOUR ETHICS

REGISTER AT MONTANABAR.ORG

HOT TOPICS CLE SCHEDULE

THURSDAY, SEPT. 22: 8-11:40 A.M., 2-5 P.M.; FRIDAY, SEPT. 23: 8 A.M. TO 12:15 P.M.

THURSDAY, SEPT. 22

8:00 to 8:45 a.m.	Supreme Court Update Part I — Supreme Court Rule Changes <i>Beth Brennan, Brennan Law & Mediation</i>
8:45 to 9:30 a.m.	Federal Rules Changes You Need to Know, Even if You Practice Only in State Court <i>Brian Carl Smith, Smith Law</i>
9:30 to 9:40 a.m.	Break
9:40 to 10:10 a.m.	Supreme Court Update Part II, <i>Beth Brennan</i>
10:10 to 11:40 a.m.	We've Made Pro Bono Easier — Here's How <i>Michelle Potts and Angie Wagenhals, MLSA</i>
10:40 to 11:40 a.m.	What Do You Do When You Goof (Ethics), <i>A vignette by the State Bar of Montana Professionalism Committee</i>
11:40	Break in the Exhibitor Hall

Noon to 2 p.m. — Awards Lunch/Business
Meeting — See details, on facing page

2:00 to 3:15 p.m.	Security Breach Primer: What to Do in the Event of a Breach (Ethics) <i>Dana Hupp, Worden Thane; and Sherri Davidoff, LMG Security</i>
3:15 to 3:30 p.m.	Break
3:30 to 4:15 p.m.	Transitions: Responsibilities When Changing or Closing a Firm <i>Robert Phillips, Garlington, Lohn & Robinson</i>
4:15 to 5:00 p.m.	State District Courts Year in Review <i>The Honorable Kim Christopher</i>

FRIDAY, SEPT. 23

8:00 to 8:45 a.m.	Tax Reform and the Presidential Candidates' Plans <i>Presented by Professor J. Martin Burke, Blewett School of Law</i>
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8:45 to
9:30
a.m.

**Wealth Planning: Maxi-
mizing Tax Advantages
of Charitable Giving and
Endowments. What You
Should Be Telling Your
Clients. What You Should
Be Doing Yourself**
*John Mudd, Blewett
School of Law; and Bjarne
Johnson, Church, Harris,
Johnson and Williams*

9:30 to
10:00
a.m.

**Indian Country and the
New Era of Trust Reform**
*Presented by Deb DuMon-
tier, U.S. Dept. of Interior*

10:00
a.m.

Break

10:15 to
10:45
a.m.

**Supreme Court Oral Argu-
ment Introduction**
*Professor Michelle Bryan,
Blewett School of Law*

10:45 to
12:15
p.m.

**Supreme Court Oral Argu-
ment Claimant: United
States of America, (Bureau
of Land Management)
Objectors: Barthelmess
Ranch Corporation; et al.**

ANNUAL MEETING 2016

Highlights



FREE FASTCASE WORKSHOPS

Get the most out of your **FREE** Fastcase legal research member benefit by attending a training workshop during the Annual Meeting.

- One-on-one, hands on training from experienced Fastcase users
- Try out your own research task while we guide you and answer questions
- An official trainer from Fastcase will be on hand to answer your toughest questions
- Get a sneak preview of Fastcase 7
- More than one-third of State Bar of Montana members already use Fastcase's comprehensive, trusted legal research tool. You can too.

Free. No strings attached.

Workshops are available the following times: Thursday, September 22 – 8:30 to 11:30 a.m. and 2:00 to 5:00 p.m.; Friday, September 23 – 8:00 to 10:00 a.m.

Local Bar Reception – Wednesday, Sept. 21, 5:30 p.m., The Celtic Cowboy, 116 1st Avenue South. Enjoy an evening of camaraderie hosted by the members of the Cascade County Bar Association.

Awards Lunch/Business Dinner – Thursday, Sept. 22, Noon, Holiday Inn Ballroom. We will honor Michele Snowberger, winner of the 2016 Neil Haight Pro Bono Award, and winners of Distinguished Service Awards.

President's Reception Thursday, September 22, 5:30 p.m., C.M Russell Museum. Join us for a reception and listen to the sweet sounds of the Great Falls Symphony's Cascade Quartet. Attendees can also view all of the museum's exhibits, including "Going to the Sun: Artists in Glacier National Park."



Awards Banquet, Thursday, September 22, 7:00 p.m. at the Holiday Inn Ballroom – We will honor the winners of the Frank I. Haswell Award, Shaun Thompson; the George L. Bousliman Award, Gary Bjelland and Ed Higgins; and the William J. Jameson Award, Robert M. Carlson; with a special presentation honoring 50-Year Membership.

IMPORTANT MEETINGS

Wednesday, September 21

(All meetings at the Great Falls Holiday Inn Downtown)

1 to 3 p.m.	Executive Committee Meeting
3 to 5 p.m.	Board of Trustees Meeting
2 to 4 p.m.	Past Presidents Committee Resolutions Meeting

Thursday, September 22

Noon to 2 p.m. Awards Lunch/Business Meeting -

Sponsorship information

Sponsorship opportunities are available for the 2016 Annual Meeting. Depending on level of support, sponsors can receive recognition through pre-meeting publicity, on the Bar website, in the Montana Lawyer magazine, in the Annual Meeting Program, on-site and in post-meeting publicity. Contact: mcaprara@montanabar.org; 406-447-2206.

Thompson wins Haswell Award for series of articles on misappropriation of funds

Articles shone light on prominent disciplinary cases for misappropriation of client funds in Montana history

Shaun Thompson is the winner of the 2016 Frank I. Haswell Award for outstanding contribution to the Montana Lawyer magazine.

Thompson, who is chief disciplinary counsel for the Office of Disciplinary Counsel, won the award for "Gone But Not Forgotten," a three-part series that detailed some of the more prominent disciplinary cases for misappropriation of client funds in Montana history. The articles ran in the April, May and June-July 2016 issues of the magazine.

The articles included case summaries of 26 disciplinary cases wherein the attorney was disbarred for misappropriation of funds, dating back to the 1906 disbarment of B.S. Thresher for the theft of what would be about \$14,000 in today's value and concluding with the 2015 disbarments of Randy S. Laedeke and David M. McLean.

The State Bar of Montana Past Presidents Committee chose Thompson as the Haswell winner. Thompson will be presented with the award at the awards banquet at the State Bar of Montana's 2016 Annual Meeting. The Annual Meeting will be held Sept. 22-23 in Great Falls.

Thompson said in an email interview that the award was a pleasant surprise.

"I did not expect to receive an award. I wasn't even sure if anyone had read the article," he said. "I am honored to receive the award. I'm glad the award is named after Chief Justice Frank Haswell. I argued a number of cases before him. Chief Haswell was a gentleman with a noble bearing. I have a great deal of respect for him."

Haswell served as an associate justice on the Montana Supreme Court from 1967-78 and as chief justice from 1978-85.

When asked what he hoped attorneys got out of the article, he said he simply hoped those who read it found it interesting.

"The vast majority of Montana lawyers are honest and trustworthy," Thompson said. "The few who misappropriate funds entrusted to them not only harm their clients, but impugn the integrity of the profession. I believe it is important to remind everyone that misappropriation is an ongoing problem and that there necessarily needs to be severe consequences."

Thompson noted that cases involving alleged misappropriation always take a significant amount of ODC staff time. I want to mention that every grievance processed by ODC involves ODC staff teamwork.

"I want to thank all those who had a hand in giving me support," he said. "I especially want to acknowledge two persons.



Shaun Thompson is the 2016 Frank I. Haswell Award winner. Thompson was appointed Chief Disciplinary Counsel by the Montana Supreme Court in 2005.

About the Award

The Frank I. Haswell Award is named for the Honorable Frank I. Haswell (1918-1990), the 12th chief justice of the Montana Supreme Court. Haswell served as an associate justice on the court from 1967-78 and as chief justice from 1978-85. The annual award for the best contribution to the Montana Lawyer comes with a \$200 prize, which is through an endowment set up by Haswell.

Marni Sowell of ODC searched for documents that I could use in the article and edited my drafts. My wife, Jennifer Jeffries Thompson, searched the newspaper archives at the Montana Historical Society. "Jennifer is a historian and once was head of the Historical Society's education program.

The Haswell Award comes with a \$200 prize. Thompson donated the prize money to the Montana Justice Foundation, noting that while he appreciated the offer he does not feel it is appropriate to accept outside compensation for activity related to lawyer discipline.

"Given the topic of the article, the Montana Justice Foundation immediately came to mind as the entity to donate the money to," he said. "I note when lawyers do not hold funds in an IOLTA account as is required by the rules, the Montana Justice Foundation is cheated out of receiving interest payments that it can use to help indigent persons."

In addition to Thompson, the Past Presidents Committee gave honorable mention recognition to several other authors. Joel Henry was recognized for two articles he wrote on e-discovery; Rep. Kim Dudik was recognized for her article on the history of women in the Montana Legislature; and Jon Ellingson and Kyle Gray were recognized for their articles arguing the merits of campaign finance reform.

Have clients who own water rights? New developments could affect you

Re-examination of claims and second decrees, opportunity to file exempt claims important beyond Water Court cases

By Bina R. Peters and Dana Elias Pepper of Pepper Law Firm, PLLC

Water law has been making more appearances in the news recently as a result of issues such as drought in the Western states, particularly in California and, more locally, the contentious CSKT water compact. However, there are a few more “mundane” issues here in Montana involving the adjudication of historical water rights and changes in the law that attorneys practicing in Montana should be aware of. Awareness of these issues may be important because water rights are often involved, not just in cases in front of the Water Court, but also in property transfers, subdivisions, local government, conservation, and many other areas of law.

Two developments attorneys should be aware of are: (1) the re-examination of claims and second decrees; and (2) the opportunity to file on exempt claims based on Senate Bill 355.

Re-examination of Historical Water Rights and Second Decrees

The adjudication of historical pre-1973 water right claims (water rights with priority dates prior to July 1, 1973) began in the 1980s. Most water users who own pre-1973 water rights had their rights decreed in a Temporary Preliminary Decree or Preliminary Decree and have gone through one phase of the adjudication in front of the Montana Water Court.

Although most attorneys may be generally familiar with the adjudication of water rights in Montana based on the Water Use Act found at Title 85, Chapter 2, MCA, many attorneys, are not aware that there will be a second decree for many basins across the state. In fact, the Water Court just decreed the first “second decree” in Basin 76GJ, Flint Creek.

Why are second decrees being issued? In the early years of the adjudication, two decrees were planned for every basin. However, in 1997, the Legislature changed that requirement and decided only single decrees should be issued for basins issued after 1997. As a result, second decrees will still be issued for basins not impacted by the 1997 law.

A list of basins that will be subject to second decrees and a list of basins being re-examined by the DNRC is available at <http://dnrc.mt.gov/divisions/water/adjudication/reexamination-sb57>.

In preparation for second decrees, the Montana Department of Natural Resources and Conservation (DNRC) is performing a limited re-examination of water right claims slated to appear in second decrees. Water users may be receiving letters and information from the DNRC about their water right claims and the re-examination of those claims.

As part of DNRC’s re-examination, certain elements of water rights may be standardized by the DNRC so that elements of claims appear more uniform across the state. Additionally, the DNRC may add “issue remarks” to claims. Attorneys who have not been involved with the adjudication since prior to 2005, may not be familiar with the issue remark resolution process. Issue remarks are comments added to the abstracts of water right claims to denote potential problems discovered by DNRC during the examination or re-examination. House Bill 782, passed in 2005 clarified that issue remarks have to be resolved prior to a final decree. Thus, the Water Court is required to resolve all issue remarks on claims during the adjudication pursuant to § 85-2-248, MCA. Attorneys should be aware that any water right claim with an issue remark added either during examination or re-examination will require proceedings in front of the Water Court. To resolve issue remarks, additional evidence is generally necessary.

Just like the first decrees, after each second decree is issued, there will be an objection period, a counter-objection period, and a final deadline for notices of intent to appear pursuant to § 85-2-233, MCA. Cases will be consolidated by the Water Court and proceedings will be set to resolve all issue remarks, the water user may be required to provide additional evidence to the Water Court.

If you have clients who own water rights in Montana, those clients may be receiving information from the DNRC and Water Court concerning re-examination and second decrees.

SB 355 Exempt Claims

Pursuant to the Water Use Act, water users who own water rights with priority dates prior to July 1, 1973, were required to file Statements of Claim with the DNRC. Water users who failed to file Statements of Claim forfeited their water rights. However, an exception to the filing requirement was that water users were not required but could voluntarily file on their individual domestic or stock water rights from instream or groundwater sources. Many water users chose not to file on these rights.

During the 2013 legislative session, SB 355 was passed. This bill opened up another filing period for individual domestic or stock water rights from instream or groundwater sources. If

Water, page 28

How do ABA model technology rules apply to e-discovery? Calif. opinion gives guidance

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

In the world of legal ethics, 2015 was a big year, with 20 states adopting the ABA's revised rules (Model Rule 1.1 and 1.6) regarding the need to be familiar with the risks and benefits of technology, including how to use technology to secure confidential data. CLEs about competence and technology began to multiply faster than rabbits as lawyers scrambled to see what their new ethical duties were.

Lost in that shuffle, for the most part, were discussions of an ethical requirement to be competent in e-discovery. News channels flared briefly when the California Bar released an ethics opinion (Formal Opinion 2015 – 193, published on June 30, 2015) which detailed the skills that attorneys must have when dealing with electronically stored information (ESI) and e-discovery. But the publicity died down and we saw only a handful of CLEs which touched on this issue even slightly, so the topic seemed ripe for an article.

The nine core skills that the California State Bar says an attorney working with ESI should have are:

1. initially assessing e-discovery needs and issues, if any;
2. implementing or causing implementation of appropriate ESI preservation procedures, such as circulating litigation holds or suspending the usage of auto-delete programs;
3. analyzing and understanding a client's ESI systems and storage;
4. advising the client on available options for collection and preservation of ESI;
5. identifying custodians of potentially relevant ESI;
6. engaging in "competent and meaningful meet and confer with opposing counsel concerning an e-discovery plan";
7. performing data searches;
8. collecting responsive ESI in a manner that preserves the integrity of that ESI; and
9. producing responsive non-privileged ESI in a recognized and appropriate manner.

What if you don't have the requisite skills? According to the opinion, you have three choices. Acquire the needed skills. Find skilled lawyer or expert assistance. If you can't do either of those, you have to decline the representation. That's pretty blunt.

There really is no body of disciplinary decisions anywhere to guide us on how this ethical requirement will play out. However, we do have some court decisions (requiring additional discovery, a change in production format, monetary sanctions and the dreaded adverse inference instruction).

The California opinion strikes as a good first step, essentially

Supreme Court considering MRPC changes

The Montana Supreme Court is accepting comment on a State Bar of Montana proposal to change the Montana Rules of Professional Conduct to address lawyers' use of technology. The court will accept comment on the proposal until Aug. 22. To read the court's order go to <https://supremecourtdocket.mt.gov/activecase.jsp> and search case number AF 09-0688. Comments must be filed in writing with the clerk of the Montana Supreme Court. The State Bar proposal does not specifically address e-discovery.

defining what the new model rules may mean when it comes to e-discovery. We would add that under the current rules (Rule 5.1), lawyers must ensure that the work of others in the e-discovery realm must be supervised and completed in a competent manner.

Protecting data under Rule 1.6 (the old or new version) is obviously extended to protecting such data in e-discovery. However, in a world of dark data (data you don't know your client has) and shadow IT (think "Hillary's e-mail server"), the duty is sometime more complex than it first appears.

The California opinion is akin to a skeleton, with flesh on the bones given by some previous case law and more flesh sure to come as the entire subject of ethics in e discovery matures. And this will not be a static subject – though ethical rules try to be technology-agnostic, the rapid changes in technology will inevitably impact the specifics of ethics in e-discovery.

In our own lectures, we have urged attorneys to become familiar with the publications of The Sedona Conference, to attend CLEs on the core skills identified by California, to be familiar with the Federal Rules of Civil Procedure which touch on e-discovery and to know some of the leading cases that have given attorneys ethical guidance.

A few such cases include:

First Coast Energy L.L.P. v. Mid-Continent Cas. Co. (M.D. Fla. 2015) which said that attorneys need to make a complete search for relevant documents, respond reasonably to document requests and produce relevant documents in a timely manner. In this case, Judge Timothy J. Corrigan rejected Mid-Continent's arguments and determined that the default judgment on the bad faith claim by the magistrate judge was appropriate given the number of Mid-Continent's supplemental responses after the deadline – certainly some evidence of bad faith.

"Frankly, Mid-Continent's contention that the repeated

supplements were Mid Continent's effort to stagger production to 'give First Coast time to digest' is ridiculous. The Court is not aware of any order or agreement allowing for the 'staggered' production of documents that should have been produced years earlier. Instead, based on a review of the supplemental responses, the repeated supplementation is an indication of an inadequate initial investigation followed by a disjointed effort to search for responsive documents only after the Court stepped in to address the deficiencies," the judge said.

Keithley v. Homestore.com, Inc. (N.D. California, 2008) upheld monetary sanctions for failure to preserve ESI and the failure to have a litigation hold in place. That seemed like a no-brainer, but it was big news in 2008.

In one of the most infamous e-discovery sanctions cases, *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.* (Fla. Cir. Ct. 2005) CPH sued financial giant Morgan Stanley for fraud in connection with CPH's sale of stock, and sought access to Morgan Stanley's internal e-mails. After learning that many relevant e-mails were lost because Morgan Stanley had continued its policy of overwriting e-mails (despite an SEC regulation requiring their retention), the court ordered Morgan Stanley to go to its backup tapes for relevant emails.

Morgan Stanley partially complied, but its team in charge of the project knowingly failed to search many hundreds of backup tapes and falsely certified the production as complete. There were too many missteps to cite here. A bizarre mix of incompetence and unethical behavior.

This earned Morgan Stanley the dreaded adverse inference instruction, in which the judge explained that (1) the spoliator had a duty to preserve the evidence, (2) the spoliator had a "culpable state of mind," and (3) the destroyed evidence was relevant to the opponent's claims or defenses.

In *James v. National Financial LLC* (Del. Ch. 2014), the opinion focused on discovery issues and failure to comply with discovery orders resulting in the grant of a motion for sanctions.

The opinion contained an exhaustive description of the multiple failures to comply with prior orders of the court granting motions to compel, as well as inconsistent answers to the same questions and conflicting explanations for failure to comply.

The court referred to the recent amendment to Rule 1.1 of the Delaware Rules of Professional Conduct, and Comment 8 thereto, which address the requirement that attorneys maintain familiarity with technological developments in order to maintain technological competence in connection with the practice of law. The court confirmed that: "Technological incompetence is not an excuse for discovery misconduct."

There are a plethora of cases in which parties make pathetic bleating excuses for why they did not do what they clearly should have done. It seems to us that courts have heard enough of the Sad Sack excuses and are drawing a line in the sand. It is downright dangerous today to say that discovery misconduct was a result of ignorance. While there might have been some merit in this argument when the federal rules were first amended to incorporate e-discovery rules in 2006, we are a decade out now – and there is no shortage of CLEs, articles and books explaining e-discovery in detail. Increasingly, lawyers who fail to

get educated (and therefore competent to handle e-discovery) are being taken to the judicial woodshed.

We have seen judges enforcing competency in their own unique ways. One judge told us that he was sick and tired of hearing about meet and confers in which one attorney proclaimed that he was "entirely reasonable but opposing counsel was a jerk." He made a rule that, in such cases, both counsel would have to have a phone call with him. He has never gotten a call.

Another judge with a similar approach tells both sides to videotape the meet and confer and give him the video if one side is being truly unreasonable. He has yet to receive a video.

A real ethical no-no is playing hide the ball – which we see all the time. A federal judge from the Eastern District of Virginia once lectured at a CLE: "If you play hide the ball with the electronic evidence in my court, you can rest assured that I will always remember who you are." That sounded quite ominous to us.

Keywords are a particular source of incompetence. For all one hears about technology-assisted review, in smaller cases, keywords are still king. In general, lawyers have not taken the time to educate themselves about keywords. We nearly fell on the floor laughing when one attorney wanted, as a keyword, the domain name of the other party. That's a great way to discover EVERY e-mail message whether relevant or not. As for Boolean connectors, fuzzy searches (to catch misspellings, typos) etc., they are largely clueless. California's new opinion certainly wouldn't tolerate this level of incompetence – no state should at this point in time.

In *Victor Stanley v. Creative Pipe* (D. Md. 2010), Magistrate Paul Grimm noted: "While keyword searches have long been recognized as appropriate and helpful for ESI search and retrieval, there are well-known limitations and risks associated with them, and proper selection and implementation obviously involves technical, if not scientific knowledge."

Amen. But attorneys are prone to devise the terms themselves, blissfully ignorant of their lack of skill – and what that lack of skill is going to cost their clients in unnecessary e-discovery costs. Failure to engage an e-discovery expert (which could be an attorney within the firm or an outside attorney or consultant) is pure incompetence – and clients are beginning to catch on to that fact and scrutinizing the competence of their counsel.

Lawyers tend to react to vanishing clients, so we hope that clients will more rigorously examine the e-discovery skills of their counsel. What competence means in e-discovery is no longer shrouded in fog. Standards have begun to emerge and California did a pretty good job of encapsulating those standards. California may have been the first state to articulate what competence means in e-discovery, but we doubt it will be the last.

Sharon D. Nelson and John W. Simek are the president and vice president at Sensei Enterprises, Inc., a digital forensics, information security and legal technology firm based in Fairfax, VA. 703-359-0700 (phone); 703-359-8434 (fax); sensei@senseient.com ; or <http://www.senseient.com>.

Use your client intake form to help you stop having to write declination letters

Mark Bassingthwaite, Esq.
Risk Manager

OK. I get it. How many malpractice claims are there that have been the result of a failure to write a declination letter? You know the one that says thanks but no.

Truth be told, not many; although we have seen a few. Some are conflict problems because the creation of this letter is what normally would trigger the entering of the names of declined clients into the conflict database. When the letter isn't written, the names can't be entered and a conflict problem sometimes arises down the road. Others are a bit more concerning and represent the real reason why these letters should be used. Sometimes a non-client who did speak with you eventually sues you for failing to do something. They allege that you were indeed their attorney, at least as they understood it. If you have no documentation that they weren't, you may have a problem because these kinds of word against word disputes don't always end well for the attorney.

Excuses vary. Declination letters are viewed as a waste of time, unnecessary in most matters, irrelevant, or too costly in terms of attorney and staff time. Sometimes they are just simply overlooked. Again, I get it. The good news is that declinations can be documented in another more efficient way. The letter approach isn't the only option.

Many attorneys use some version of a client intake form during an initial prospective client interview. If you do use this form, consider making a few modifications to it that will help document the engagement or declination. Once you finish the initial interview you will give the prospective client a copy of this modified client intake form and then you and your prospective client should sign both the copy and the original. If you and your prospective client decide to create an attorney/client relationship, you will then ask the client to also sign a fee agreement. This leaves the client with a copy of the client intake form and the written fee agreement. If you decide not to form an attorney/client relationship at the conclusion of the initial consultation, the prospective client will sign only the original and copy of the client intake form and receive just a copy of that document.

In order to use your client intake form as the method of documenting the engagement or declination, you might add to the beginning of this form language that reads something like this:

The purpose of our initial consultation meeting is for me to determine what legal services (if any) our firm might be able to provide to address your legal concerns, as well as to provide an indication

as to what your cost might be if you decide to hire this firm.

Our initial consultation meeting does not give me enough time or information to provide you with a definite legal opinion. The short time allotted for this meeting makes it impossible for me to properly and fully assess any legal matter that you might have.

Regardless of whether you and I create an attorney/client relationship today, the attorney/client privilege protects all information that I gather during this meeting and record on this client intake form. Rest assured that I will hold that information in strict confidence.

At the end of the client intake form, you might add something similar to this:

Please Read Carefully and Sign Below

Now that we have concluded our initial consultation, if you agree to hire me as your attorney and I agree to represent you, we will both sign a Contract for Legal Services. That Contract will state the terms and conditions under which this firm will provide you with legal representation.

If I am willing to represent you and you decide not to sign a Contract for Legal Services today, I strongly urge you to do one of two things: (1) schedule a follow-up appointment with me at the earliest possible time; or (2) immediately consult with another attorney in order to ensure that you fully protect your legal rights. Unless and until both of us sign a Contract for Legal Services, neither I nor this firm represent you on the matters described in this client intake form or discussed during this initial consultation. No action of any kind will be taken on your behalf until you authorize us to do so by our both signing a Contract for Legal Services.

If I do not agree to represent you, then we have not formed an attorney/client relationship, even though we had this initial consultation. Neither

Continuing Legal Education

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.

Friday, Aug. 12 — Business, Estates, Trusts, Tax & Real Estate (BETTR) Section Practice Primer CLE, pending approval for 6.0 CLE (1.0 ethics) — Missoula. Online registration open now!

Thursday-Friday, Aug. 18-19 — Annual Bankruptcy Section CLE — Billings. 9.75 CLE credits (Approved in MT, ND, WY; pending approval in ID).

Online registration open now!

Friday, Sept. 9 — New Health Care Powers of Attorney, details TBA — Billings

Thursday-Friday, Sept. 22-23 — State Bar of Montana Annual Meeting — Great Falls . sponsored by the State Bar's Professionalism committee. Approximately 10 CLE credits (2 ethics).

Friday, Oct. 7 — Eastern Montana CLE, details TBA — Miles City

Friday, Oct. 14 — Road Show, 3 Ethics CLE — Billings

Friday, Oct. 21 — Advanced Family Law — Cutting-Edge Issues, details TBA — Missoula

Lawyer Referral & Information Service

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

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

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

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

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

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

this firm nor I will represent you on the matters set forth in this client intake form or discussed during this initial consultation. If your legal matter involves a potential lawsuit, it is important that you realize that you must file your lawsuit within a certain period of time, known as a Statute of Limitations. Therefore, I strongly urge you to immediately consult with another attorney in order to protect your rights. My decision not to represent you is not a legal opinion regarding the merits of your case.

By signing below, you acknowledge that you have received a copy of this completed client intake form. Your signature also confirms that you understand that I have not been hired as your attorney and that this firm will take no further actions on your behalf.

Signature _____
Date _____

The expanded use of a client intake form with text substantively similar to what I have suggested above does effectively eliminate the need for a separate declination letter. The issue is addressed and documented while the client is in your office. Finally, if your practice covers several areas of the law, simply alter the sample language to meet the needs of each practice area. For example, a big reason that these letters aren't used with prospective divorce clients is out of a fear of notifying an innocent spouse. This approach is a win/win on that front. The innocent spouse will never see a letter from an attorney in the mail and documentation of the declination is hand delivered to the prospective client before they ever leave your office.

ALPS Risk Manager Mark Bassingthwaight, 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. Contact him at mbass@alpsnet.com.



Modest Means

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

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

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

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.

Questions?

Please email: amartinez@montanabar.org. You can also call us at 442-7660.

Higgins, from page 15

a program going, showing them what forms and support were available and offering his and MLSA's support in the process. He said, as in all cases of launching organized pro bono programs, it was the local attorneys who made the program a success.

"If we're all pitching in then there's less work for everybody," Higgins said. "That really makes the difference between getting a program going and floundering."

He singled out attorney Brian Muldoon of Whitefish for helping get buy-in from the Kalispell legal community, where in the past there had been some vocal opposition to an organized pro bono program.

"They've been able to serve a ton of people and do it in some pretty creative ways," Higgins said. "It's been a pretty darn dramatic change from not really having anything to all of a sudden having something that works pretty well. It's a pretty remarkable program that they were able to get so many people to quickly participate."

Higgins, 47, said that even in law school he saw himself becoming a legal aid attorney. Other than eight months he spent clerking for the Honorable John W. Larson in Missoula "before MLSA lured me away with promises of less money," he has done just that.

He said it was the fundamental notion of fairness that drew him to the work.

"Our system is designed to work best when both parties have representation and have someone to explain the system and make sure that their interests are represented within it," he said. "I just decided I was going to do something where every morning when I got up I would want to go to work, and I would know at the end of the day when I was going home that I was contributing to my community and trying to make it a better place."

Higgins said that what really keeps him going is the people like his pro bono client Jason.

"I can think of an awful lot of clients that — but for Montana Legal Services, but for a pro bono program — they would not have gotten help getting through the legal system when they really needed it. The help they got changed their life in a significant way and made it better in some aspect.

"He felt like I made such a difference in his life that he made



Photo courtesy of Montana Legal Services Association

Higgins is shown receiving a plaque from Jason, a pro bono client he represented through Montana Legal Services Association.

something for me," Higgins said. "I'm never going to get rich doing this, but I have a little plaque, and I made a difference in someone's life."

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

Volunteers sought for Stand-Down in Helena Aug. 13

The Helena area is having a Veterans' Stand-Down (now becoming known as a Resource Fair) at the Gateway Center on Saturday, Aug. 13. The State Bar's Veterans Law Section is looking for volunteers from 9 a.m. to 4 p.m. to provide veterans any legal assistance that may be requested during the Stand-Down.

We're not talking anything dramatic or involved. We have the simple forms that are used in the Legal Document Clinics around the state, such as simple wills, powers of attorney, and homestead exemptions. According to section chair Steve

Garrison, there may not be a lot of veterans seeking advice. Volunteers at last year's Stand-Down were hardly over-taxed, he said, but those who received help greatly appreciated it, and they probably wouldn't have gotten the advice anywhere else.

Attorneys are asked to bring their own laptops. Wi-fi connection will be provided. If someone can bring a printer, that would be a big help.

A free lunch will be provided for the workers, as well as coffee, doughnuts, and soft drinks.

Juras, Sandefur advance in Supreme Court race

Great Falls attorney Kristen Juras and 8th Judicial District Judge Dirk Sandefur advanced to the general election in a three-way race for an associate justice seat on the Montana Supreme Court.

Juras led the primary polling, with 99,176 votes. Sandefur received 77,698 votes.

Great Falls attorney Eric Mills finished in third with 48,277 votes.

Sandefur held a substantial edge over Juras in fundraising as of the last reports filed with the Montana Commissioner of Political Practices in June.

Sandefur had a general campaign balance of \$59,681.70 from the previous report and reported receipts of \$84,948, including a transfer of 82,018 from his primary fund. He reported spending \$5,251.26, leaving him with \$139,378.70 cash in bank.



Juras



Sandefur



McGrath



Shea

Juras reported \$4,615.65 general campaign balance from the previous report. she reported receipts of \$320 and no expenditures, leaving her with \$4,935.65 cash in bank.

Juras and Sandefur are vying to replace Justice Patricia Cotter, who is retiring at the end of this term.

Chief Justice Mike McGrath and

Justice James Jeremiah Shea also are up for re-election this year. Neither McGrath, who was elected chief justice in 2008, nor Shea, who was appointed to his seat in 2014 by Gov. Steve Bullock, faces opposition on the ballot.

See voting information on this and all other Montana races at the Montana Secretary of State's Office website.

Carlson from page 13

said. "Bob broke it down for me in such a logical and concise way that I had one of those moments when the light just came on and I understood. I have always thought of Bob as a smart man and very good lawyer, but that aha moment I had with him multiplied my opinion of his intelligence and abilities as a lawyer. He is the best Montana and the country has to offer.

For his part, Carlson said there aren't any specific moments that stand out as career highlights as a practitioner.

"What stands out is you just try every day to do the best you can, keeping in mind that it's not your case, it's not your life that's being affected — although if you're doing your job it does have an impact on you," he said. "It's your clients you're trying to help. It's really their case. You try to figure out the best way to resolve it and try to meet their needs. You also try to do it in a way that people can trust what you say and without being overly adversarial. It's not about perfection, you try to learn from both your successes and failures and hopefully become a better lawyer and a better person."

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

New from page 6

passed the three-day Certified Paralegal examination by the National Association of Legal Assistants. This entitles Troiano to use the credential of Certified Paralegal.

Troiano is the only Certified Paralegal in Whitefish and one of only 98 in Montana, according to Tornow.

The Certified Paralegal exam is a professional credentialing program developed by the National Association of Legal Assistants; accredited by the National Commission for Certifying Agencies; and administered by a Board of Paralegals, American Bar Association members and Paralegal educators. The three-day comprehensive exam covered communications, legal research, ethics, human relations, interviewing techniques, legal terminology, judgment and analytical ability and the substantive law of civil litigation, business organizations, contracts and the American legal system.

Troiano is approaching her ninth year with Thomas T. Tornow, P.C.

Blewett School of Law's Pepprock wins Fellowship

Jennifer Pepprock, a recent University

of Montana graduate, recently won a \$5,000 Phi Kappa Phi Fellowship to support her law school career, which she will begin this fall, UM's Alexander Blewett III School of Law has announced.

Pepprock won the Mortar Board President's Outstanding Senior Recognition Award for her major, history, and earned a minor in political science. This past May, she graduated with high honors in history and as a University Scholar from the Davidson Honors College.

During her college career, Pepprock also won the Jules A. Karlin Endowment, awarded to one history major who has demonstrated independence of thought and high academic performance, and the Isabel Haynes Scholarship, which is awarded to UM students with academic merit and an interest in serving Montana.

Among the many achievements that helped Pepprock win the fellowship are her volunteer commitments. She served as a Volunteer Missoula outreach coordinator, as a student mentor for incoming freshmen in the Davidson Honors College, and as a Court Appointed Special Advocate for children involved in court proceedings.

Robert Schuyler Anderson

Robert Schuyler Anderson, known to his friends as Bob, passed away at his Missoula home on Tuesday, Jan. 26, 2016, at the young age of 61.

Bob was born Oct. 2, 1954, in Brooklyn, New York, the son of Lillian and Kingsley Anderson and brother to Edwin, Maureen and William.



Anderson

After graduating from high school in Rowland Heights, California, in 1972, Bob entered the Navy. He completed the Navy Language School in Monterey and then spent the remainder of his Naval service as a Mandarin Chinese interpreter and code breaker in Guam.

Bob graduated from the University of Montana with a bachelor's degree in zoology in 1983 and obtained his law degree from the University of Montana School of Law in 1988.

After serving as a prosecutor in Montana, Bob joined

the Department of Justice in 1991 as a prosecutor in the Wildlife and Marine Resources Section and later joined the Environmental Crimes Section, where he was senior counsel at the time of his death.

At the time of his death, Bob had served as a federal prosecutor for more than 25 years, and had traveled the country and the world extensively in the prosecution of illegal trafficking of fauna and flora. He dedicated his life's work to protecting endangered species of all kinds and was recognized numerous times by the Department of Justice for excellence and achievement. For many in the industry, Bob was the first person to call when an environmental crime had been committed – here in the United States, in Siberia, in Hong Kong and in Tanzania.

Bob was an avid fly fisherman, hunter and outdoorsman and was regularly seen driving his green Land Cruiser in and about Missoula. He was an accomplished guitarist who regularly played with local groups in the Missoula area and hosted various radio programs on Montana Public Radio.

Milo Janecek

Milo Janecek passed away on Wednesday, July 20, 2016, at St. Patrick Hospital of natural causes. Milo was born on Oct. 20, 1921, in Crete, Nebraska, and was the fourth of nine children. He exemplified the Greatest Generation, and was a dynamic, multi-faceted man.



Janacek

He survived the Great Depression and all of its trials as a young boy, and served as a P-40 pilot with the Army Air Corps during the Second World War. After the end of the war he worked his way through undergraduate and law school, working full time, and attending three different law schools in order to accommodate his boss and mentor's needs between Oregon, Idaho and Montana.

He purchased Title Guaranty, Co. in 1957, and operated it for over four decades. As sidelines, he also served significant roles in close friends' businesses so he could harness his skills, and have more fun. Those roles included being on the team that moved the Greenough Mansion from its original location on

the north side of Missoula, across the Clark Fork River, and to its relocated home on the hills of south Missoula; and traveling nationally and internationally on complex water drilling projects with his good friend and colleague, who was a world-renowned water well drilling and geological expert.

Milo also pursued his many interests and hobbies with his family and many friends. He was an avid horseman, trap shooter, sportsman, and marksman, and also relished the recreational pursuit of knowledge of every kind through reading and vibrant conversation with friends and colleagues. Even more than the pursuit and capture of knowledge, Milo reveled in sharing it with others. All who knew him and read this obituary will understand, and most are now reciting pi to ten decimal places with a smile.

Most significantly, Milo was the anchor of his family. He was a tremendous husband, father, and provider, and did hero's work caring for his wife, Jean, until his last day. Milo is survived by his wife, Jean; their son, Edward, and much extended family, both genetically and as a result of Milo's impactful relationships with so many.

Harold G. Stanton

Harold G. Stanton passed away at home on Friday, July 22.

He was born on May 24, 1925, at Camp Crook, South Dakota, to James W. and Blanche V. Stanton. The family moved to Crow Agency in 1929 and in 1943, he was drafted into World War II. Harold attended the University of Montana on the GI Bill and graduated from law school, practicing State and Federal law in Montana for 62 years.

An active volunteer in his community, he was a Boy Scout leader, participated in the creation of the Custer Battle Reenactment and was the President of the Custer Battlefield

Preservation Committee. He was well known for his interesting storytelling, usually about local history and people.

His son Jon Patrick preceded Harold in death.

Harold is survived by his wife, Karen; his children, James (Jennifer) Stanton, Susan Stanton and Haylee (Carl) Shaia; his grandchildren include Genna, Jared and Jacob Shaia, Jonathan, Colin and Michael Stanton.

There will be a private committal at Custer Battlefield National Cemetery at a future date.

Memorials may be made to the Big Horn County Historical Society, 1163 Third St. East Hardin, MT 59034.

you have a client with an individual domestic or stock water rights from instream or groundwater sources that were put to beneficial use prior to July 1, 1973, there is an opportunity to file on those rights.

There are two important advantages to filing on these rights. Exempt rights that are not filed on are still valid but are not enforceable against other rights. Filing on these rights allows these rights to become enforceable against other pre-1973 water rights as well as groundwater certificates and water use permits. Also water users who file on these rights will receive notice of water-right proceedings in the basin.

The DNRC previously used form 627 to enter exempt claims into the state database so that water users could receive notice of water right proceedings. However, 627 forms have not been recognized as a proper mechanism for filing on these claims. Thus, even if a 627 form was filed, the claim will need to be re-filed in accordance with SB 355.

The filing requirements for exempt claims are the same as they were for Statements of Claim. Therefore, evidence supporting the claim is necessary. Like all pre-1973 water rights, these claims will be examined by the DNRC and may go through judicial proceedings at the Water Court prior to being included in a final decree.

Currently, the deadline to file on these claims is 90 days

prior to the final decree in the basin. However, there have been efforts to enact legislation to set a specific date deadline.

In conclusion, these developments illustrate the ongoing importance of water in Montana. Many attorneys and water users are under the impression that all water right claims associated with real property are valid rights. However, until the adjudication is complete, pre-1973 water right claims are still "claims." Therefore, attorneys may want to explain to clients that pre-1973 water rights are currently, or likely will be, subject to further proceedings. Additionally, attorneys may want to discuss with clients whether there are exempt stock or domestic claims associated with property that need to be filed. These considerations should be made for clients spanning from farmers and ranchers, institutional and industrial water users, and even counties and municipalities.

Dana Pepper is a partner at Pepper Law Firm, PLLC. She served as a Water Master at the Montana Water Court for six years. Before joining the Water Court, she served as a law clerk for the 18th Judicial District Judge, the Honorable Mike Salvagni. She received her JD along with an M.B.A. from the University of Montana.

Bina Peters is a partner at Pepper Law Firm, PLLC. Prior to joining Pepper Law Firm, she was the law clerk for Chief Water Judge C. Bruce Loble and a Water Master at the Montana Water Court. She received her JD from the University of Montana.

Mark your calendars!

The Alexander Blewett III School of Law at the University of Montana invites you to participate in the

Fall 2016

On-Campus Interview Weekend

Interview second and third year students for intern, law clerk, and associate positions during our semi-annual on-campus interview program.

Friday • Saturday Sept. 30 • Oct. 1

Alexander Blewett III

SCHOOL OF LAW

UNIVERSITY OF MONTANA

Career Services

To advertise a position and set up an interview schedule:

VISIT:

<http://www.umt.edu/law/careerservices/employers/default.php>

LOG ONTO SYMPPLICITY:

<https://law-umt-csm.symplicity.com>

EMAIL:

sarah.phillips@mso.umt.edu

or

CALL:

406.243.6169

Job Postings and Classified Advertisements

CLASSIFIEDS Contact | Joe Menden at jmenden@montanabar.org or call him at (406) 447-2200. Check out the State Bar of Montana's **new online Career Center** at jobs.montanabar.org.

ATTORNEYS

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

ASSOCIATE ATTORNEY: Kasting, Kauffman & Mersen, a general practice law firm in Bozeman, MT, is seeking an associate with strong research, writing and analytical skills. Ideal candidate has 2-5 years of experience. Salary depends on experience. Please send resume, cover letter and references to Margaux Meyer, mmeyer@kkmlaw.net.

CASCADE COUNTY - DEPUTY COUNTY ATTORNEY – CRIMINAL: The Cascade

County - Deputy County Attorney primarily prosecutes adult criminal offenders in Justice and District Courts. Applicant may also prosecute child abuse and neglect cases/Youth in Need of Care proceedings; bring involuntary mental health commitments; prosecute child support enforcement; initiate guardianship/conservatorship proceedings; prosecute youth offenders in Youth Court and attend Drug Treatment Court. Prosecution includes: charging cases against defendants; attending hearings; trials; trial preparation; plea negotiations; pretrial motions; contact with defense lawyers and victims of crime; provides legal advice to county officials and agencies and law enforcement officials; performs related duties as required including serving as "on call" attorney on a rotational basis.

For complete explanation of job duties and responsibilities please read the full

job description at <http://jobs.cascadecountymt.gov/countyattorney/deputycountyattorneycriminal>

Education and Experience - At a minimum, all qualified applicants must have:

- Juris Doctor Degree from an accredited law school.
- License to practice law in the State of Montana **and** 0-3 years of experience.

Each applicant is required to provide the following:

- Completed Cascade County Employment Application.
- Letter of introduction, resume and writing sample.
- Copy of Montana Law License.

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BUSINESS/TRANSACTIONS ATTORNEY:

Church, Harris, Johnson & Williams, P.C., a full-service law firm based in Great Falls, is seeking an Associate with business and transactions experience to join our team. Salary DOE with excellent benefits package. Must be licensed in Montana. Please send cover letter and resume to Church, Harris, Johnson & Williams, P.C., P.O. Box 1645, Great Falls, MT 59403 or email to srubino@chjw.com.

DEPUTY CITY ATTORNEY-PROSECUTOR:

Under direction of the Helena City Attorney, performs a variety of professional duties involved in providing a full range of legal services related to municipal government operations; to represent the City in proceedings before courts, administrative agencies and boards, arbitrators, and other administrative agencies; to investigate, prepare and prosecute civil and misdemeanor criminal cases in courts; to develop legal documents; and to advise City departments, staff, boards and commissions. All applications must be submitted with all required documents as specified in the full recruitment notice. To see the full posting, click apply now in the listing at jobs.montanabar.org.

DEPUTY COUNTY ATTORNEY: The Hill County Attorney's Office has one full-time Deputy County Attorney position open for hire. Salary depends on qualifications and experience plus all applicable Hill County benefits. A full job description is available at [Havre Job Service](http://HavreJobService.com). Please provide a cover letter, resume, transcript, writing sample, and references to the Hill County Personnel Office, 315 Fourth Street, Havre, Montana 59501. This position is open until filled. For more information, please contact the Personnel Office or Gina Dahl, Hill County Attorney at 265-5481 extension 211.

EASTERN WASHINGTON LAW FIRM FOR SALE:

A stable tri-counties, eastern Washington law firm ideally located in a prestigious setting, with an excess of \$500,000 annual revenue. This is an excellent opportunity with capacity for substantial growth in revenues. Contact 800-837-5880 or edpoll@lawbiz.com.

IN-HOUSE POSITION – Associate General Counsel – AVITUS GROUP: Avitus Group, a professional employer organization with a

national presence, is seeking an associate general counsel with 3-6 years of transactional experience to join its growing legal department of 2 attorneys and one legal assistant in Billings, Montana. The ideal candidate will have experience reviewing and drafting client service agreements, vendor agreements, office leases, NDA's, employment agreements, referral agreements, asset purchase agreements, and corporate policies and procedures. Some litigation experience is a plus. Qualified candidates should have strong attention to detail and have the ability to relate to a variety of business stakeholders. Compensation range is 70k to 90k, DOE. This is a unique opportunity to join a company that is aggressively expanding and consequently planning to more than double its workforce in the next 3 years. Preferable start date is October 2016, but Company is flexible. Applicants should send a cover letter, resume, and a transactional writing sample to careers@avitus-group.com.

ASSOCIATE ATTORNEY: Matovich, Keller & Murphy, P.C. is seeking an associate attorney with strong research and writing skills and desire to gain experience in litigation. Competitive salary depending on experience. Send letter of application, resume, references, and writing sample to Matovich, Keller & Murphy, P.C., Attn: Geoffrey R. Keller, P.O. Box 1098, Billings, Montana 59103-1098, or via email to mkmfirm@mkmfirm.com. All applications will be kept confidential.

STAFF ATTORNEY with relevant experience with land, water rights, and personnel matters, preferably on behalf of Indian tribes or other governments. The Office of Legal Counsel provides the full range of legal services to the Nez Perce Tribe (Tribe), in Lapwai, ID, and consists of 5 attorneys. The ideal candidate will be comfortable handling litigation, transactional negotiations, project management, and strategic planning; be a team player, have sound judgement, accompanied by excellent research, writing and communications skills; have the ability to analyze complex factual, legal, and policy issues; delve deeply into any area of law; and to respond to the wide array of legal issues that require prompt and accurate analysis on a day-to-day basis. **STAFF ATTORNEY**

HR-16-173, P.O. Box 365, Lapwai, ID 83540, by 4:30 pm., 8/19/16 (208) 843-7332 Tribal, Indian, Veteran preference applies. INCOMPLETE APPLICATION PACKETS WILL NOT BE CONSIDERED. www.nezperce.org

LITIGATION/TRANSACTIONS.

Established law firm in Billings, Montana, seeks attorney with three or more years of experience in litigation and/or transactions. Please send letter of application, references, resume, transcript and writing sample to classifieds@montanabar.org with a subject line of 1606-01.

GENERAL PRACTICE: General practice Bozeman law and litigation firm searching for attorney with 3+ years experience to help with our growing case load. Experience in business litigation preferred. Competitive compensation. Please send resume and writing sample to classifieds@montanabar.org with a subject line of 1607-01.

PARALEGALS/LEGAL ASSISTANTS**LEGAL SECRETARY/LEGAL ASSISTANT:**

Active, expanding Helena law firm seeks a Legal Secretary. Applicant must have excellent communication, clerical, organizational and personal skills, and prior legal experience. We are looking for a self-starter with a keen attention to detail. Team player a must! We offer competitive salary and benefits. Send cover letter and resume to Doney Crowley P.C., P.O. Box 1185, Helena, MT 59624 or email to Melissa Hanson at mhanson@doneylaw.com.

PARALEGAL/LEGAL ASSISTANT:

Billings civil trial defense law firm seeks paralegal with degree or certification and 3 years of litigation experience. Must have strong written and oral communication skills, organizational skills with attention to detail, ability to prioritize work and manage time, ability to multi-task, and work under pressure with a high volume of data at a fast pace. Competitive salary DOE with competitive full benefits. Send resume and cover letter to Nelson & Dahle, P.C., 2619 St. Johns Ave., Ste. E, Billings, MT 59102 or email tvincen@nelson-dahle.com.

PARALEGAL/LEGAL ASSISTANT:

Dynamic, busy, growing Helena

environmental and natural resource law firm seeks paralegal. Applicant must have excellent communication, clerical, organizational and personal skills, and prior legal experience. Three or more years of litigation experience and paralegal certification preferred. Team player a must! We offer competitive salary and benefits. Send cover letter and resume to Doney Crowley P.C., P.O. Box 1185, Helena, MT 59624 or email to Melissa Hanson at mhanson@doneylaw.com.

PARALEGAL/LEGAL ASSISTANT:

Helena firm known for its work in natural resource and water law seeks full time paralegal with litigation and real estate experience. Successful candidate will have experience in legal research, document review, title research, motion/discovery drafting, and real estate document drafting. Background in water law or natural resources and degree or paralegal certificate preferred. Generous benefit package and salary. Please submit resume and cover letter to Bloomquist Law Firm, 3355 Colton Drive, Suite A, Helena, MT 59602 or solsen@helenalaw.com.

PARALEGAL: Silverman Law Offices, located in Helena and Bozeman, is hiring an experienced, highly motivated, full-time paralegal, for our rapidly expanding Helena and Bozeman offices. Duties include working with clients and attorneys on probate, estate planning, real estate, business, and transactional matters. This position requires proficiency in use of Microsoft Word and Excel, as well as excellent proofreading and writing abilities. Candidates must possess knowledge of legal procedures involved in processing cases, outstanding organizational skills, ability to prioritize workflow assigned by multiple team-members, and an ability to work independently. Full benefit package and competitive wage, with a signing bonus for qualified applicant. Please send a resume, cover letter and writing sample to to julie@mttaxlaw.com.

**ATTORNEY SUPPORT/
RESEARCH/WRITING**

ENHANCE YOUR PRACTICE with help from an AV-rated attorney with 33

years of broad-based experience. I can research, write and/or edit your trial or appellate briefs, analyze legal issues or otherwise assist with litigation. Please visit my new website at www.denevilegal.com to learn more. mdenevi@bresnan.net, 406-541-0416.

COMPLICATED CASE? I can help you sort through issues, design a strategy, and write excellent briefs, at either the trial or appellate level. 17+ years' experience in state and federal courts, including 5 years teaching at UM Law School and 1 year clerking for Hon. D.W. Molloy. Let me help you help your clients. Beth Brennan, Brennan Law & Mediation, 406-240-0145, babrennan@gmail.com.

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

MEDIATION

AVAILABLE FOR MEDIATION AND

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

CONSULTANTS & EXPERTS

FORENSIC DOCUMENT EXAMINER:

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

BOARD CERTIFIED VOCATIONAL

EXPERT: 42 years experience providing vocational expert services to Montana attorneys. Professional member of the American Board of Vocational Experts,

National Association of Forensic Economics, International Association of Rehabilitation Professionals, and the American Rehabilitation Economics Association. I have provided testimony in FELA, personal injury, marital dissolution, medical malpractice, workers' compensation, and wrongful death cases. Norman W. Johnson, M.S., CRC, ABVE/F, www.normjohnsoncrc.com, nwjrcr@charter.net 406 883-0398

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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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MONTANA LAWYER

State Bar
— of —
Montana

State Bar of Montana
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