

MONTANA LAWYER

State Bar
— of —
Montana

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Meet the Bar President

Matt Thiel gives thoughts
on changes in technology,
service to the Bar, access to
justice and more in Q&A



Author, Author! 2 Montana
attorneys release new books

**Don't forget: IOLTA/Trust Account compliance
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Also in this edition:

- > Supreme Court case summaries
- > Zupanic hired as MJF Executive Director
- > Meet MLSA's new litigation director

- > Protect yourself from cybersecurity threats
- > Helena's Judge Sherlock ready for final gavel
- > Member News, Court News and more

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A Q&A with Bar President Matt Thiel

Editor's note: Matt Thiel took over as State Bar of Montana president in September. As we head into a new year, the Montana Lawyer discussed with him his thoughts on a wide-ranging set of topics, including how the profession is adapting to rapid changes in technology, access to justice and his thoughts on what is working at the Bar, and what is not.

MONTANA LAWYER: What are the biggest things you'd like to focus in the rest of your term as president of the State Bar?

MATT THIEL: I plan to write some more about technology with the hope of finding ways to help practicing attorneys continue to find efficiencies and strengthen their practice. This will help the Bar, the profession and advance access to justice solutions. But the term goes by so fast. I've been surprised at how much time it takes to meet the day-to-day duties of the president.

ML: Are there concrete things you hope will have been accomplished or benchmarks on technology and practice issues that you hope will have been reached by the time your term is over in September?

MT: We've already reached one. We set out to address the ABA Ethics 20/20 guidance on competence in technology. We organized a very successful Trustees planning session. We were able to get Fred Ury (a member of the 20/20 Ethics Commission) out here to have an excellent discussion with our Technology Committee Chair Joe Sullivan, our Ethics Committee Chair Pete Habein and some past presidents. As a result, the Trustees took action and gave direction to the ethics committee to come forward with a recommendation and they've done that. And the Board of Trustees have now considered this proposal at their Dec. 4 meeting in Helena. We will also be working on other issues. It's more important to get it right than to get it done quickly. We have to be patient. It's more important to work as a team with the other bar leaders than to set a super aggressive agenda. Changes are going to happen in collaboration with several different leaders over years.

ML: What are your thoughts on how the Technology Committee and the Ethics Committee have addressed the issue in the past year?

These two committees responded well to the call to action to address the 20/20 Commission's recommendations. The Chairs and members of both committees worked hard this year to reorganize and direct their committees to address the proposed rules amendments. It is clear they have made progress on their goal to assist Bar members to absorb technology while protecting ethical responsibilities. And this is indicative of how the



State Bar serves its members and the public well: through the service of many volunteer attorneys who work on committees. This work does not get done without the volunteers. I really appreciate the work Chairs Pete Habein and Joe Sullivan did to organize and direct their committees to complete this work. This is something that has needed attention for a few years and the Chairs and members did a fine job of completing their work and getting the Bar Trustees a proposed rule to consider.

ML: So far in your term, you have focused a lot of attention on technological issues facing lawyers. Are there specific areas you think the Bar needs to address? Do you think the Bar has a responsibility to help lawyers adapt to techno-

logical changes?

MT: The Bar has the responsibility to lead on issues, and can do this through education and disseminating information through its publications, CLE, meetings, and Bar programs and its active work on policy and rule changes and legislation. The Bar must be actively involved in the policy decisions at all levels of government to protect the public interest and maintain a high quality self-regulated profession. But the Bar does not have the resources to assist lawyers on an individual basis to adapt with the challenges brought on by the rapid changes in technology that are making it more important to understand how to protect confidentiality, how to compete and remain relevant as a profession. The Bar can continue to make knowledge-based resources available to attorneys so that the job of adapting can be faster and more efficient. Thankfully over time, more and more attorneys will adapt simply because the technology is so much easier to use and because the public is using it in every aspect of life.

ML: What is the State Bar doing well?

MT: The Bar accomplishes a lot with limited resources. As the organization created by the Supreme Court to assist in the administration of justice in Montana the Bar is obligated to fulfill a lot of mandates. The Bar is meeting mandates of the Supreme Court, day in, day out. We do an excellent job of leading the profession and unifying the Bar before the Legislature and in the public arena and present a unified voice to the public about the importance of the rule of law and an independent judiciary. The Lawyers Assistance Program and access to justice efforts are very important to maintaining respect for the profession and the legal system.

We cleaned up and improved Pro Hac and Admissions. We

PRESIDENT, page 20

Danno joins Kalispell law firm

Danno Law Firm announced that Ashley Danno has joined the firm as an associate attorney. She will practice in the areas of personal injury and insurance, estates and probate, family law, and general litigation.



Danno

Danno grew up in Kalispell and graduated from Flathead High School. She received a Bachelor of Arts degree summa cum laude in theater arts from Vanguard University of Southern California in 2010.

She attended the University of Montana School of Law where she received her Juris Doctorate last May. While in law school she interned at the Lerner Law Firm, and at ASUM Legal Services Clinic, and was the president of the Montana Trial Lawyers Association Student Chapter.

She may be reached at Danno Law Firm P.C., 725 S. Main St., Kalispell, MT 59901, 406-755-4100, or email ashley@dannolawfirm.com.

Brown Law firm welcomes Jensen, Attar as associates

The Brown Law Firm, P.C., with offices in Billings and Missoula, announces that Brett C. Jensen and Davina Attar have joined the firm as associates at the Billings location.



Jensen



Attar

Jensen, originally from Noxon, graduated with honors from Montana State University - Bozeman in 2009. He worked as a wildland firefighter for the U.S. Forest Service while an undergraduate and for three seasons thereafter. He left the Forest Service after the 2011 fire season and began attending the University of Montana School of Law where he earned his Juris Doctorate in May 2015. His primary practice areas at Brown Law Firm include insurance coverage and civil defense litigation.



Photo courtesy of the University of Montana Blewett School of Law

The Honorable Harry Haines, second from left, received a Distinguished Service Award at the 63rd Annual Montana Tax Institute. Also pictured are University of Montana's Blewett Law School Dean Paul Kirgis, Haines' wife, Janet, and Associate Dean of Students Elaine Gagliardi.

Judge Haines receives honor at Montana Tax Institute

The Honorable Harry Haines was presented with the Distinguished Service Award at the 63rd Annual Montana Tax Institute in October.

U.S. Tax Court Judge Haines was honored for his service to the University of Montana School of Law, the state of Montana and the nation. After graduating from the UM School of Law in 1964, Judge Haines practiced for 37 years with Worden, Thane and Haines. He earned his LL.M in Taxation from New York University Law School, and as a practicing lawyer he developed a well-respected estate planning and tax practice. In 2003, President Bush appointed Judge Haines to the United States Tax Court, making him the first Montana lawyer to serve

on that court. Although he assumed senior status in 2009, Judge Haines continues to serve on the Tax Court and during his tenure has produced an influential body of opinions.

For more than 20 years, Judge Haines served as an adjunct professor at the School of Law. He instilled in many graduates a strong foundation in the areas of commercial and business law. He has continued to be involved with the School of Law, presenting at the Montana Tax Institute and most recently guest lecturing in tax classes.

The award was presented by Dean Paul Kirgis and Associate Dean of Students Elaine Gagliardi from the Alexander Blewett III School of Law at the University of Montana.

Attar earned her bachelor's degree from Lehigh University in 2006, a master's degree from University of California, Berkeley, in 2008, and her Juris Doctorate in 2011 from Washington and Lee University School of Law. Prior to joining Brown Law Firm, she practiced

criminal defense law for three years in Helena, primarily handling felonies. She has significant trial experience, having taken a number of cases to jury trial at both the felony and misdemeanor levels. At Brown Law Firm her primary practice area includes civil defense litigation.



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* If your firm's name does not appear, call the Montana Justice Foundation at 406-523-3920

That's it. You're done!

Still have questions? Go to montanabar.org and click on the IOLTA Compliance banner for answers to Frequently Asked Questions and detailed instructions.

Warhank joins Church, Harris, Johnson & Williams' tax and transactional practice group

The law firm of Church, Harris, Johnson & Williams, P.C. has announced that Hanna Warhank has returned to the firm as a member of its tax and transactional practice group.

Warhank grew up in the Hi-Line town of Rudyard. After high school, she attended Carroll College and graduated with a B.A. degree in accounting and political science. She continued on to the University of Montana School of Law and earned her Juris Doctorate in May of 2009.



Warhank

In 2009, Warhank joined Church, Harris, Johnson & Williams as an associate attorney and practiced law there until 2012. Most recently, she worked for the law firm of Gough, Shanahan, Johnson & Waterman in Helena.

Warhank is a member of the State Bar of Montana and the American Bar Association. She will be working mainly from Helena, but will be available to meet clients in both Helena and Great Falls. Her practice focuses on business and estate planning, taxation, estate and trust administration, and real property.

In her free time, she enjoys travel and fly fishing with her husband, Dan.

Church, Harris, Johnson & Williams is a Montana law firm that has been serving businesses and individuals in a wide range of legal disciplines since 1949. Visit chjw.com for more information. Warhank can be reached at 406-761-3000.

Moderate-cost law firm in Billings, Bozeman — 406 Law — to assist, advise pro se litigants

D. Michael Eakin, Jeannette Ellen Berry and Laurie Andreen Grygiel have left Montana Legal Services Association to open a moderate-cost law firm to assist and advise self-represented litigants and to provide direct representation in consumer law cases.

Eakin, Berry & Grygiel, PLLC, doing business as 406 Law, has offices in Billings and Bozeman. 406 Law will provide limited-scope services to self-represented litigants in the areas of family law, simple wills, informal probate and termination of joint tenancy. 406 Law will also provide direct representation in consumer law cases. The firm looks forward to providing legal assistance statewide to an underserved population.

Eakin and Grygiel can be reached in Billings at 406-969-6001. Berry can be reached in Bozeman at 406-624-6900.

New firm Hattersley Walter to open in Helena and Billings in January

Thomas Hattersley, Teri Walter, and Nathan Bilyeu are pleased to announce that Hattersley Walter, PLLP will be open

for business effective Jan. 1, 2016, with offices in Helena and Billings.

Hattersley Walter's attorneys are transitioning from their longstanding practice at Gough, Shanahan, Johnson & Waterman PLLP. The firm also announced that Jock Anderson, also formerly of GSJW, will be of counsel with Hattersley Walter, PLLP.

Hattersley Walter's primary practice areas are civil litigation and employment law. Hattersley Walter PLLP's offices are at 33 S. Last Chance Gulch, Helena, MT 59601; and 301 N. 27th St., Suite 300, Billings, MT 59101.

More information will be available soon at hwlawmt.com.

18 Americorps members sworn in by chief justice in September ceremony

The newest members of Montana's AmeriCorps team were sworn in by Montana Supreme Court Chief Justice Mike McGrath in September.

Established by the Montana Legal Services Association, in partnership with the Court Help Program of the Montana Supreme Court Office of the Court Administrator, the State Bar of Montana's Modest Means Program, and the Montana Office of Consumer Protection & Victim Services, the project places 18 members throughout Montana to help provide and expand intake, legal information and referral services for Montana's low-income residents seeking legal assistance.

Andrew Martinez is in his second year as an Americorps with the State Bar of Montana.

Montana Fellows of the American College of Trial Lawyers welcome four new members

The Montana Fellows of the American College of Trial Lawyers has announced that four new members have been inducted into the college.

Inducted into the college were Calvin J. Stacey, Billings; J. David Slovak, Great Falls; Mikel L. Moore, Kalispell; and Joseph E. Thaggard, Helena.

The College strives to improve the standards of trial practice, the administration of justice and the ethics, civility and collegiality of the trial profession.

Invitation to Fellowship is extended only after careful investigation of those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership is limited to not more than 1 percent of the lawyers who are licensed to practice in a state.

Montana State Committee members are Randi M. Hood (chair), John G. Crist, Michael D. Cok (vice chair), Carey E. Matovich, Robert E. Sheridan (past chair), and Michael F. Lamb.

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State launches study of criminal justice system as prison population expands

Montana Lawyer Staff

A bipartisan group of governmental leaders in November launched what they say will be a comprehensive examination of the state's criminal justice system as Montana faces a growing prison population and costly projections to expand capacity.

Gov. Steve Bullock, Sen. Cynthia Wolken and District Judge Ingrid Gustafson announced the start of the Justice Reinvestment Initiative in Montana, which they said will identify ways to reduce recidivism, curb corrections spending, and increase public safety in the state. Wolken is chair of the Montana Commission on Sentencing, and Gustafson is a member of the commission. The 2015 Montana Legislature created the 15-member commission with the passage of Senate Bill 224. It includes members from all three branches of state government, criminal justice practitioners and tribal community representatives.

"A thorough examination of our criminal justice system is long overdue," Bullock said in a news release. "We must determine what is driving the growth in our prison population. We're at a pivotal moment as our prison population nears capacity, and we must take a proactive and collaborative approach to establishing a more effective system that bolsters public safety."

Despite a general decline in Montana's crime and arrest rate from 2008 to 2014, the state's prison population climbed by 7 percent — from 2,373 to 2,537 — over the same period. The review, performed by The Council of State Governments Justice Center, will analyze the system, including examining issues such as crime and arrest trends, supervision, and effectiveness of programs intended to reduce recidivism.

"Among the issues we will consider

is Montana's sharp increase in felony case filings," Chief Justice Mike McGrath said. "The Supreme Court is committed to working with the other branches of government to share case filing and other data as part of this effort."

The CSG Justice Center, in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance, will provide technical assistance. Input will also be solicited from other stakeholders, as well, including district judges, county attorneys, public defenders, probation and parole board members, law enforcement officials, and victim advocates.

Adam Gelb, director of the Pew Charitable Trusts' public safety performance project, said this will be an unprecedented opportunity for state leaders to develop new strategies to reduce recidivism and increase public safety.

"By analyzing the drivers of prison growth, examining approaches that are working across the country, and engaging stakeholders throughout the criminal justice system, Montana can develop a plan that will decrease crime and incarceration rates," Gelb said.

Along with the prison population growth, total fund expenditures for over-all corrections spending also increased 16 percent from \$157 million in 2008 to \$182 million in 2014. In addition, the prison population has remained at or near capacity and is projected to reach 109 percent capacity by 2019.

"We're eager to get to work exploring potential changes in our criminal



Bullock



McGrath



Wolken

Judicial Redistricting Commission to meet Feb. 2

A commission tasked with studying the necessity of revising Montana's district court boundaries will have its next meeting in February 2016.

The Judicial Redistricting Commission's meeting will be on Tuesday, Feb. 2, at 9 a.m. and will be held at the State Capitol in Helena. An agenda will be available in mid-January.

For more information on the commission, including information on the upcoming meeting, visit the commission's website, www.leg.mt.gov/jrc, or contact commission staff Rachel Weiss at 406-444-5367.

justice system and how we can reinvest in programs that are proven to work," said Wolken, who sponsored SB224 and currently chairs the Montana Commission on Sentencing.

The system-wide review will be carried out through collaboration between the Montana Commission on Sentencing and The Council of State Governments (CSG) Justice Center, a national non-profit, nonpartisan organization that has conducted the Justice Reinvestment process with 21 states previously.

Commission meetings will continue throughout 2016, and policy recommendations will be delivered to the Legislature by the end of 2016, in time for the next legislative session. The next meeting will be March 1-2, 2016, at the Montana Capitol Building in Helena. Meeting times and an agenda will be available in mid-February.

Zupanic hired as MJF executive director

The Montana Justice Foundation has hired Niki Zupanic of Helena as its new executive director. Zupanic, an attorney, has spent the last seven years as public policy director for the ACLU of Montana.

"Niki is an energetic leader who brings significant non-profit experience to the Foundation," said MJF President Joella Bloomgren. "She is highly regarded for her professionalism, her skills in bringing people together, and her ability to get things accomplished. We received a number of very qualified applicants for the position, and Niki rose to the top as the right person to take the MJF to the next level."

Zupanic said she was looking forward to joining the Montana Justice Foundation.

"For years, MJF and its grantees have significantly improved the lives of thousands of Montanans by ensuring they have the legal help they need to successfully navigate the most challenging times in their lives," Zupanic said. "I am honored to join MJF and help lead this important work."

Zupanic replaces Amy Sings In The Timber, who served as the MJF's executive director for more than eight years before taking a position with the Chicago Bar Foundation this fall. The MJF plans to relocate its office to Helena in 2016.



Niki Zupanic is the new executive director of the Montana Justice Foundation.

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Meet new MLSA Litigation Director Mike Black



MLSA Litigation Director Mike Black

MLSA has welcomed Helena attorney Mike Black as its new litigation director.

A Montana native, Black, 53, has a wealth of experience in civil litigation, most recently as the chief civil counsel for the Attorney General's office. As MLSA litigation director, he will use this experience to help provide guidance to MLSA staff attorneys as they work their cases.

Black has been a member of the State Bar of Montana since 1991.

Why did you join MLSA?

I joined MLSA because I was looking for an important public service opportunity after over two decades in private practice, and I believe my background can help advance the essential role MLSA has in the Montana legal system.

What are your primary responsibilities as litigation director?

My primary responsibilities are to provide supervision and guidance to MLSA attorneys on their cases, as well as to manage my own caseload.

What motivates you to do this work?

I reached a point in my career where I have the experience and ability to help MLSA's mission.

What do you think the biggest challenge is for civil legal aid?

In my mind, the greatest challenge is making a broad impact for the benefit of the less fortunate facing legal problems, while having limited resources.

What is your favorite spot in Montana?

I do not have a "favorite" place, only places I want to see. I have been fortunate to experience great places like backpacking to Granite Park Chalet, paddling the Missouri Breaks, and visiting the Butte federal courtroom where evidence of a Prohibition-era boot-legger's gunfire still remains. But I have yet to visit places like the Bob Marshall's Chinese Wall, Medicine Rocks near Ekalaka, or even Bannack. So I guess my favorite place is where I am going next.

HELLO
my name is

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Thomas tapped for federal policymaking body

SAN FRANCISCO – Chief Judge Sidney R. Thomas of the United States Court of Appeals for the Ninth Circuit has gained new duties with an appointment to the Executive Committee of the Judicial Conference of the United States, the national policymaking body for the federal courts.

The appointment, made by Chief Justice John G. Roberts, Jr., of the Supreme Court of the United States, was announced Dec. 1 by the Administrative Office of the U.S. Courts.

The U.S. Judicial Conference is composed of the chief judges of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each of the 11 regional judicial circuits. Operating through a network of committees, the conference addresses and advises the chief justice on a wide variety of subjects pertaining to the federal judicial system. The conference meets biannually in Washington to conduct business.

As a member of the Executive Committee, Judge Thomas will assume additional duties that include reviewing the jurisdiction of conference committees and preparing

agendas for conference meetings. The Executive Committee also acts on behalf of the conference between sessions on matters requiring emergency action as authorized by the chief justice.

“I am extremely honored by the Chief Justice’s appointment and look forward to contributing further to the governance of our federal courts,” Judge Thomas said.

Thomas, who has his chambers in Billings, was elevated to the chief judgeship of the Ninth Circuit in December 2014. He is the 11th chief judge in the history of the circuit and the third Montanan to wield the gavel. Nominated by President Clinton, Judge Thomas has served on the Ninth Circuit Court of Appeals since 1996.

A native of Bozeman, Thomas received his B.A. from Montana State University in 1975 and his J.D. from the University of Montana School of Law, graduating with honors in 1978. Prior to coming onto the federal bench, he had been in private practice in Billings from 1978 to 1995. He also was as an adjunct instructor of law at Rocky Mountain College in Billings from 1982 to 1995.



“I am extremely honored by the Chief Justice’s appointment and look forward to contributing further to the governance of our federal courts.”

— Ninth Circuit Chief Judge
Sidney R. Thomas

Applicants for 8th Judicial District judge sought by Judicial Nomination Commission

Chief Justice Mike McGrath has notified the Judicial Nomination Commission that the Hon. Julie Macek, district judge for the Eighth Judicial District (Cascade County), will resign her position effective Feb. 29, 2016.

The Commission is now accepting applications from any lawyer in good standing who has the qualifications set forth by law for holding the position of district court judge. The application form is available electronically at courts.mt.gov. Applications must be submitted electronically as well as in hard copy. The deadline for submitting applications is 5 p.m., Saturday, Jan. 2, 2016. The Commission will announce the names of the applicants thereafter.

The public is encouraged to contact Commission members regarding the applicants during the public comment period, which will begin Monday, Jan. 4, 2016, and close Wednesday, Feb. 3, 2016.

The Commission will forward the names of three to five nominees to the governor for appointment after reviewing the applications, receiving public comment, and interviewing the

applicants if necessary. The person appointed by the governor is subject to Senate confirmation during the 2017 legislative session. If confirmed, the appointee will serve for the remainder of Judge Macek’s term, which expires in January 2019. The annual salary for the position is \$126,132.

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

Cooney appointed 1st Judicial District judge

Gov. Steve Bullock on Dec. 1 appointed Helena attorney DeAnn Cooney as 1st Judicial District judge. Cooney will replace the Honorable Jeffrey Sherlock, who is retiring after 27 years effective Jan. 1, 2016.

To read more about Judge Sherlock’s retirement and the appointment of Cooney, see the articles on pages 18 and 19 of this issue.

Sherlock ready for final gavel

Helena judge retiring after 27 years



Photos courtesy of the Helena Independent Record/Thom Bridge

The Honorable Jeffrey Sherlock is shown in his 1st Judicial District courtroom in Helena recently. Sherlock is retiring effective Jan. 1 after 27 years as a district court judge.

Editor's note: This article originally appeared in the Helena Independent Record. It is being reprinted with permission.

**By Angela Brandt
Helena Independent Record**

As the Honorable Jeffrey Sherlock entered the county courthouse recently, what he not-so-affectionately describes as a “crime car” drove by — beat up, barely running, probably unregistered. The driver screamed out: “I’m glad you’re retiring.”

Sherlock smirked.

“I took it as a compliment,” he said.

After 27 years of murders, divorces, adoptions and constitutional law cases, Sherlock is retiring at the end of the year from his post as First Judicial District judge.

Like all of his rulings, the decision to retire didn’t come easily. Sherlock let his letter of resignation sit on his desk for a few days before he finally signed it. He wanted to retire while he remained on top of his game and young enough to appreciate it.

“I’m very content with my decision,” he said. “I want to be able to enjoy retirement while I can.”

When asked to describe Sherlock, most of his colleagues

and attorneys who appear in his court use the same adjective: efficient.

"You could always rely upon him to make the right decision," said Randi Hood, major crime public defender and Sherlock's classmate in law school. "You couldn't ask for a more hardworking judge."

"He's always just the same good guy," Hood added. "I'm very fond of him even from the law school days."

Sherlock contemplated staying on the bench until next year's election. Then the 65-year-old began reading obituaries for people younger than he is.

"It's the right thing for me now," he said. "It's time for me to move on and make room for someone else."

Sherlock will be replaced by DeeAnn Cooney. (See inset article.)

Sherlock will be hard to replace, said Angie Sparks, his former clerk.

"He has taught me a huge amount. I will totally miss him," Sparks said. "He was stern when I needed it. I learned a lot. It makes me who I am today."

Judge Kathy Seeley will miss Sherlock's guidance as well. Seeley said she's always found him to be willing and available to assist.

"He's been an excellent judge," Seeley added.

With the exception of one homicide trial, Sherlock is finishing up his caseload prior to stepping away from the bench.

"I'd like to hand them a clean slate," he said of his replacement.

Sherlock has been through so many cases over the years, but it's still hard for him to believe it's been nearly three decades since he started.

"Really, it seems like yesterday," Sherlock said. "Now that I think about it, I can remember my first day like it was last week."

He reminisced that Leo Gallagher, now county attorney, was a public defender at the time and the first person to address him as judge.

"He said, 'Welcome to the bench,'" Sherlock recalled.

Gallagher says the courthouse is losing a judge with a good work ethic and impressive writing abilities.

"He's one of the smartest judges I've ever been in front of," Gallagher said. "He's going to be missed."

Sherlock looks forward to not having to worry about a hectic docket. Basically every time he turns his back, the pile of paper-work increases, he said.

"It's a tidal wave of cases here," he said.

That wasn't the case when Sherlock began his career as an attorney. About three decades ago, he served as a public defender. It was a part-time gig.

Back then, there were four local public defenders and each worked half-time. The jail was at what is now the Myrna Loy Center, and it was usually empty.

"If we had someone in jail — it was unusual," Sherlock said.

Compare that to today, when there are about a dozen full-time public defenders and the county jail is overflowing with inmates.

Sherlock said he's not sure if it's because the number of criminals is increasing or the laws are changing, but he has never had the caseload he has now.

One of the types of cases that is increasing exponentially and

Governor appoints Cooney to replace Sherlock on district court bench

Gov. Steve Bullock on Dec. 1 announced the appointment of DeeAnn Cooney to replace the Honorable Jeffrey Sherlock as 1st Judicial District Court judge.

Cooney is a solo practitioner and owner of Cooney Law Firm in Helena. Her practice primarily involves defending counties in civil litigation.

Twenty-seven people commented to the Nomination Commission in support of Cooney's application. Among them was Norman Grosfield of Grosfield Law Firm in Helena, where Cooney practiced for 24 years before starting her own firm. He said Cooney has the skills to manage a busy district court docket, noting her thoroughness, efficiency and writing and research skills. He also praised her empathy for others.

"She would protect the rights of all citizens regardless of their status or situation," Grosfield said. "She would also show patience and courtesy toward all who would appear before her."

Helena attorney Rob Farris-Olsen said he has known Cooney since childhood — attending school and playing soccer with her children — and now as a colleague. He said she has been active in her community in addition to being an outstanding advocate for her clients.

"As a result, she not only understands the law, but comprehends the community and the role of a judge in making fair and just decisions," he said. "I am confident that on the bench she would use these experiences to make objective, unbiased, and fair decisions."

Oliver Goe, an attorney at Browning, Kalczyk, Berry & Hoven in Helena, said Cooney has the work ethic and ability to be a quality jurist, but also cited her objectivity and "common sense" to make the right decision in difficult cases. "I also believe she has the courage to render an unpopular opinion where the facts and the law require it and the compassion necessary when addressing those circumstances and cases that require it," he said in his letter in support of her application. "In short, she demonstrates those qualities I want to see in a judge when I appear in court."

Cooney was one of five people whose names the Judicial Nomination Commission forwarded to the governor for consideration. The others were Chris Abbott, assistant public defender for Region Four, Helena; Marc Buyske, senior counsel at Doney Crowley in Helena; Don Jones, partner/owner of Hohenlohe, Jones PLLP in Helena; and Dan Guzyski, assistant attorney general.

Eleven attorneys applied for the position.

is extremely difficult to cover involves neglected, abused and abandoned children.

"It kind of sucks your soul," Sherlock said. "You wonder how are these kids going to make it."

It's cyclical as well. He has removed children from homes 20

Montana Supreme Court case summaries for October 2015

By Beth Brennan
Brennan Law & Mediation

State v. Montana Second Judicial District

State v. Montana Second Judicial District, 2015 MT 294 (Oct. 13, 2015) (Baker, J.) (5-0, writ granted, reversed)

Issue: (1) Whether the Court will accept review of the state's petition for supervisory control, and (2) whether the district court erred in holding that the limitations period for unlawful possession of wildlife begins to run on the date a person gains control or ownership of the unlawfully taken wildlife.

Short Answer: (1) Yes, and (2) yes. A violation of § 87-6-202(1), MCA, is continuous conduct for statute of limitations purposes. *Writ of supervisory control granted; district court's dismissal of counts I and V reversed*

Facts: The state charged Joseph McGrath with several offenses under Title 87, MCA, including four counts of unlawful possession of wildlife under § 87-6-202(1). McGrath moved to dismiss two counts on statute of limitations grounds, arguing the limitations period for unlawful possession of wildlife begins to run on the date a person gains control or ownership of the unlawfully taken wildlife. The state argued that because the statute criminalizes possession of unlawfully taken wildlife, the limitations period does not begin to run until a person no longer possess the wildlife.

Procedural Posture and Holding: The district court granted McGrath's motion and dismissed Counts I and V. The state petitioned for supervisory control, which the Supreme Court grants. The Court reverses the district court and reinstates Counts I and V.

Reasoning: (1) The state presents a purely legal issue of first impression, which will govern whether trial proceeds on two of five counts against McGrath. The state may not appeal from dismissal of one count that leaves the case still pending. Failure to assume supervisory control would cause significant injustice for which appeal is an inadequate remedy.

(2) Possession of all or part of any game animal that was unlawfully killed, captured or taken (whether in Montana or not) must be proved by the state to obtain a conviction under § 87-6-202(1), MCA. Distinguishing Mullin, which held that felony theft is not continuous conduct, the Court points out that theft occurs when a person obtains or exerts control over stolen property. The offense here is the possession of illegally taken wildlife. The criminal act is not limited to receiving the wildlife, but of possessing it. Therefore, the limitations period does not begin to run until the person no longer possesses the

illegally taken wildlife.

Public Land/Water Access Assoc., Inc. v. Jones

Public Land/Water Access Assoc., Inc. v. Jones, 2015 MT 299 (Oct. 15, 2015) (Cotter, J.; Rice, J., concurring and dissenting) (4-1, affirmed and reversed)

Issue: (1) Whether the district court erred in awarding money damages as supplemental declaratory relief; (2) whether the district court erred in failing to consider ownership of the railroad car bridge or its suitability as a bridge in violation of PLWA IV; and on cross-appeal, (3) whether the district court erred by not awarding PLWA reasonable attorney fees and costs.

Short Answer: (1) No; (2) no; and (3) yes. *Affirmed (1 and 2), reversed (3) and remanded for attorney fees*

Facts: Roger Jones bought Boadle Ranch in 2000, a 4,900-acre ranch in Teton County. Since then, he has prohibited public use of the two main roads transecting the ranch, Boadle Road and Canal Road. PLWA has consistently sought to regain use of the roads; this is the parties' fifth time before the Court. Although PLWA has been successful in the courts, Jones has not yet removed the gates barricading entrance to the property.

Boadle Road enters Boadle Ranch at the east boundary of the property and travels west where it historically crossed the Sun River Slope Canal via Boadle Bridge and intersected Canal Road, which runs northwest to Pishkun Reservoir and southeast through the property onto neighboring land. These roads have been used by the public since the early 1900s.

In earlier cases, this Court affirmed that the public has a prescriptive easement over Boadle Road, which includes the rebuilt Boadle Bridge (a flatbed rail car), and that Canal Road is a public road to which Jones may not block access.

In September 2011, Jones removed the railcar bridge, destroyed the abutments and support columns, and reinstalled the bridge about a quarter-miles away on a private road to which the public had no access. PLWA sued Jones for supplemental relief under the Uniform Declaratory Judgments Act, and for tortious interference with a public easement and public nuisance. The district court held Jones owned the bridge and had no obligation to facilitate public access across Slope Canal. PLWA appealed, and this Court reversed. PLWA IV.

Editor's note: This article contains summaries of selected Montana Supreme Court cases. Summaries of all Montana Supreme Court cases are available at brennanlawandmediation.com/mt-supreme-court-summaries

On remand, the district court held a three-day jury trial on the tort and nuisance claims. The jury found Jones liable for tortious interference with the easement and public nuisance. It awarded PLWA \$375,000 in damages to restore Boadle Bridge at the original location, \$25,000 in damages for loss of use of the bridge, and \$10,000 in punitive damages, finding Jones acted with actual malice.

Procedural Posture and Holding: The district court issued findings of fact, conclusions of law and an order on PLWA's request for supplementary declaratory relief. It adopted the jury's verdict, with variations. It awarded \$375,000 to PLWA as a restoration award but instructed PLWA to subtract its costs and fees from the award and use the remainder to restore the bridge. It allowed PLWA to give the restoration award to other entities for construction of a new bridge. Finally, it awarded PLWA \$35,000 for loss of bridge use and punitives, directing this award to be used for future bridge repair and maintenance. Jones appeals, PLWA cross-appeals, and the Supreme Court affirms in part and reverses in part.

Reasoning: (1) The jury determined that Jones had tortiously interfered with the public's easement over Boadle Bridge, and was liable for public nuisance. After hearing evidence from both sides' experts, the jury awarded \$375,000 to replace the Boadle Bridge. That figure is supported by the evidence and was a proper basis for the district court's order of equitable supplemental relief.

(2) The district court had discretion to grant supplemental relief under the UDJA and Jones's claims of improper jury instructions are unpersuasive. Moreover, the district court did consider Jones's ownership of the railcar and its suitability as a bridge when it allowed the railcar to remain in its current location for exclusive use by Jones.

(3) The general rule in Montana is the American Rule, which says attorney fees will not be awarded. In isolated cases, a district court using its equity powers may award attorney fees to make an injured party whole. In *Martin*, the Court adopted a three-part test to determine whether the equitable exception applies. The district court did not apply this test. It is apparent, however, that the equities in this matter fully support an award of attorney fees to PLWA in addition to the damages award of \$375,000. Given the long history of this case, Jones' continuous efforts to thwart the public's easement rights, and his persistent disregard for the multiple judicial decisions rendered in PLWA's favor, equity fully supports an award of attorney fees. The district court is instructed to award reasonable attorney fees and costs incurred by PLWA in pursuing this case and this appeal.

Justice Rice's Concurrence and Dissent: Justice Rice concurs on (1) and (2) and dissents on (3), the cross-appeal. The majority holds, without expressly stating, that the district court abused its discretion by including attorney fees within the \$375,000 restoration award. Justice Rice does not believe the district court abused its discretion and would affirm.

Jones argues he was given no notice that the jury was acting in an advisory capacity. He cited federal law for the rule that it is reversible error for the trial court to determine a jury verdict will be advisory after submitting the case to the jury. Justice Rice would nonetheless conclude the error is harmless. The majority's reversal of the cross-appeal results in greater damages

than those awarded by the jury, which prejudices Jones for the failure to advise him of the advisory nature of the jury.

Mlekush v. Farmers Insurance. Exchange

Mlekush v. Farmers Insurance. Exchange, 2015 MT 302 (Oct. 20, 2015) (Shea, J.) (7-0, reversed)

Issue: Whether the district court erred in determining Mlekush could not recover attorney fees and costs from Farmers.

Short Answer: Yes. *Reversed and remanded*

Facts: Mlekush was in a car accident with another driver, Shaunaugh McGoldrick, in January 2011. McGoldrick admitted liability and Mlekush recovered McGoldrick's \$50,000 policy limits for bodily injuries. At the time, Mlekush was insured with Farmers Insurance under a policy that included underinsured motorist coverage with a \$200,000 policy limit. Mlekush entered into a contingency fee agreement with Doubek, Pyfer and Fox, LLP to represent her on her UIM claim. In August 2012, Mlekush's attorneys sent Farmers a letter of representation and asked Farmers to open a medical payments claim. Over the following months, the parties exchanged information about Mlekush's treatment, medical bills and reports, prior injuries, and lost wages.

On Jan. 21, 2013, Farmers sent Mlekush's attorneys a letter asking for additional medical and wage-loss information, stating they were not denying any demands but were merely requesting additional information. The attorneys sent records the next day, and on the following day, filed suit against Farmers. Farmers answered and filed a third-party complaint against McGoldrick. Eventually, the district court granted summary judgment to McGoldrick on the basis that a third-party claim must be made in good faith, and McGoldrick was judgment-proof.

The case went to trial in July 2014 and the jury returned a verdict for Mlekush for \$450,000. Mlekush stipulated to entry of judgment for her policy limits of \$200,000.

Procedural Posture and Holding: Mlekush filed a memorandum of costs for \$1,757.45, and Farmers moved to tax costs, arguing \$996 of Mlekush's requests costs were not allowed under § 25-10-201, MCA. Mlekush then moved for attorney fees and nontaxable costs of \$10,439.30. The district court concluded the insurance exception to the American Rule did not apply and denied Mlekush's motion for attorney fees and nontaxable costs. It also denied in part Farmers' motion to tax costs. Mlekush appeals, and the Supreme Court reverses.

Reasoning: The Court first clarifies that it applies *de novo* review to mixed questions of law and fact. Mlekush sought attorney fees under the insurance exception to the American Rule, which allows an insured to recover attorney fees when the insurer forces the insured to resort to legal action to obtain the benefit of the insurance contract. The district court held this exception did not apply because Mlekush filed suit before Farmers had made a decision regarding her claim. However, "legal action" includes all stages of litigation. Farmers increased its settlement offers over the 17 months between the filing of the complaint and the jury verdict, but the district court did

Internal office practices can make or break a law firm's cybersecurity

"If you know your enemy and you know yourself, you need not fear the result of a hundred battles." - Sun Tzu, The Art of War

By Erin F. MacLean and Deborah M. Micu

The buzz words of "cyber threat," "cybersecurity" and "cyber intelligence," among other "cyber" related terms, are more and more relevant to law firms, even small law firms in Montana, every day. Cyber threats are the new enemy for all business operations. In the past, these topics have seemed irrelevant to our daily legal practice. Until now, a cyber threat was a threat that affected big companies and federal agencies and not small-town attorneys. We legal professionals have been more worried about whether a file was saved in the right electronic folder or sent to opposing counsel without "metadata" included, than whether a person from another state or country could access that same file on our systems for sale of our data or nefarious use of our client-related information. When we started integrating client files into our computer systems and using web services in our offices, we implemented firewalls and backup systems, and we thought we were "good to go," and for the most part, we were. But, that was then, and this is now.

Now, as we head into 2016, we can no longer ignore the possibility of cyber threats, nor is our failure to use appropriate cybersecurity measures in our offices acceptable. Firms are being penetrated by cyberattackers every day. It is no longer a matter of "if" your firms will experience a cyber threat, but "when." Because of all the information we store on our systems, law firms are becoming more frequent and sought after cyber targets. Stephen Cobb, CISSP of eset.com asserts that law firms are especially vulnerable, because "law firms and professional service firms have bigger bank accounts and more valuable data than consumers, but they tend to spend less on security than larger enterprises."¹ Trent Teyema, FBI special agent in charge of cybercrimes, Washington field office, is quoted as having said "[w]e have seen over the last three years an increase in the targeting of law firms. As client companies become targets, their security becomes stronger. Softer targets to go after are law firms."² Stewart Baker, former assistant secretary for policy at the Department of Homeland Security, has been quoted stating, "[t]here is every reason to believe that foreign governments are breaking into American law firm networks."³

1 Cobb, Stephen, *Cybersecurity Policies and Best Practices: Protecting small firms, large firms, and professional services from malware and other cyber threats*, www.welivesecurity.com/wp-content/media_files/Cybersecurity-Policy-Small-Firms.pdf

2 Id.

3 Id.



The State Bar of Montana's Health Care Law Section will give a webinar on protecting yourself from cyber enemies on Feb. 17, 2016. Check the calendar at montanabar.org for more details.

Unfortunately, many legal professionals still do not understand this new enemy and many are living in the past. Individuals who have studied the psychology and sociology of Information Technology (IT) users have demonstrated "how very difficult it is to raise people's awareness about threats and vulnerabilities that can jeopardize the information they work with daily."⁴

While the general public appreciates that cyber threats are of great concern primarily in the banking and health care law forums, less people see cyber threats as an immediate concern to all law firms. Today, most law firms electronically store highly sensitive confidential client information, including protected health care information, client trade secrets and other highly confidential client information. Firms also maintain electronic files containing personal information for employees, confidential partner and firm-related information, and firm-related sensitive financial and business information. As attorneys, we should recognize that our firms have a duty to our clients and our employees to secure all of this confidential information. This article will discuss the basics of cybersecurity and some basic steps your firm should take to protect itself and its clients from cyber threats. We will also be providing a one-hour basic CLE, through the State Bar of Montana's Health Care Law Section, in February 2016, to provide more specific information to firms and attorneys who want to know how to protect themselves from cyber "enemies."

Law firms, today, also need to understand that clients are becoming savvier, and some prospective clients are even asking to review law firms' cybersecurity policies and procedures prior to retaining firms as legal counsel. Other clients are firing firms

4 Department of Health & Human Services, Office of the National Coordinator for Health Information Technology, *Top 10 Tips for Cybersecurity in Health Care*, 2014, https://www.healthit.gov/sites/default/files/Top_10_Tips_for_Cybersecurity.pdf

for not having cybersecurity policies and procedures in place to better ensure that client information remains confidential and secure. In the future, we will likely see more attorneys held responsible for security breaches under professional responsibility requirements and laws protecting confidential information.⁵ Attorneys who are business associates to health care providers under HIPAA can face serious fines and other penalties for breaches of unsecured client data.⁶

Once a law firm understands the importance of being “cyber secure,” the logical next step is for the firm to take proactive measures to keep cyberattacks and cyber threats at bay – this is called implementing “cybersecurity.” Cybersecurity has been defined as the “comprehensive effort to protect computers, programs, networks, and data from attack, damage or unauthorized access through technologies, processes, and best practices.”⁷ Although cyber threats are a serious enemy that all firms need to consider, any firm can adopt appropriate cybersecurity. The first step for every firm is to determine with an IT professional whether the firm’s systems have appropriate and up to date technological security measures in place. Once the firm is “firewalled,” the firm then needs to develop internal cybersecurity-oriented policies and procedures that all firm members and employees need to follow in order to maintain the security of the firm’s system.

To know how to protect something, you must first identify your weakest link. According to *Imprivata*, a health care IT Security Company and the leading provider of authentication and access management solutions for the health care industry, perimeter defenses, such as firewalls are no longer the most likely target of an attack.⁸ The new targets of cyber attackers and hackers are you and your employees, as the “gatekeepers” of your firm’s defenses. In this day and age, the people in your firm and the actions they take are the most dangerous and vulnerable element of your cybersecurity shield. Accordingly, implementation and enforcement of appropriate firm-wide policies and procedures is a firm’s best protection. Your firm has an obligation to clients and employees to train all firm members and employees on appropriate day-to-day cybersecurity practices. Some specific areas of vulnerability in all firms are passwords (employee and administrator), internet use, social media and the handling and usage of emails. Passwords are the first line of defense in preventing unauthorized access to any computer.⁹ They are the keys to entry to your electronic perimeter, and cyberattackers know it. In order to assist businesses in avoiding penetration by cyber attackers into business systems, the Federal Communications Commission (FCC) has

developed a comprehensive “Cyber Security Planning Guide”, and suggests that “[a]ll companies should develop and maintain clear and robust policies for safeguarding critical business data and sensitive information, protecting their reputation and discouraging inappropriate behavior by employees.”¹⁰ The FCC’s “Cyber Plan Action Items” include: (1) establishing security roles and responsibilities, (2) establishing an employee internet usage policy, (3) establishing a social media policy, and (4) identifying potential reputation risks.

Because of a nationwide security focus on health, the confidentiality of health information the United States Department of Health and Human Services (HHS) has developed a list of 10 “basic” cybersecurity tips.¹¹ These tips are:

- Establish a security culture
- Protect mobile devices
- Maintain good computer habits
- Use a firewall
- Install and maintain anti-virus software
- Plan for the unexpected
- Control access to protected health information
- Use strong passwords and change them regularly
- Limit network access
- Control physical access¹²

By implementing these tips and related strategies, all firms can significantly reduce the risk and likelihood that a cyber hacker will be able to access the confidential information on their systems. Of course, firm members and employees should be well versed on potential cyber threats and defenses related to the above-stated topics. Firm administrators and IT professionals need to continually update the firm’s patching and antivirus updates. Firms also need to maintain control over all devices that are used outside the office that are connected to the firm through the Internet, and policies must be in place regarding the use of those devices. One policy example relating to device use is firms not allowing firm contacted devices to be used on public access Wi-Fi networks and ensuring that all firm connected devices use encrypted wireless connections, such as secured “Wi-Fi hotspots.”

Another example of an important internal control policy related to emails is not permitting firm members or employees to click links in emails or open email attachments, prior to first verifying with the sender that he/she sent the email and verifying what the link or attachment contains. HHS asserts that the use of basic checklists is one proven way to overcome the human blind spot with respect to information security.¹³ Although no checklist can adequately describe all that must be done to establish an organization’s security culture, the following are some key things that organizations can do to ensure that their workplaces become more cyber secure:

Education and training must be frequent and ongoing. Those who manage and direct the work of others must

Cybersecurity, page 27

5 See the *Montana Rules of Professional Conduct*, Rule 1.6 – Confidentiality of Information; See also *Don’t Let Cybersecurity Breaches Lead to Legal Malpractice: The Fax is Back*, by ISBAMutual, <https://www.isbamutual.com/liability-minute/donrquote-let-cybersecurity-breaches-lead-to-legal>

6 *United States: HIPAA One Year Later: Is Your Law Firm Complying?*, Updated: September 22 2014, by Charla Bizios Stevens and Hannah Zaitlin (*Originally published in the New Hampshire Bar Journal*), <http://www.mondaq.com/unitedstates/x/341372/Healthcare/HIPAA+One+Year+Later+Is+Your+Law+Firm+Complying>

7 *SBA Cybersecurity for Small Businesses, Training Outline Transcript*, pg. 2, Section 1.4, https://www.sba.gov/sites/default/files/cybersecurity_transcript.pdf

8 *The C-Suite Battle Plan for Cybersecurity Attacks in Healthcare*, (2015) Imprivata. Downloadable at <https://www.imprivata.com/resources/whitepapers/c-suite-battle-plan-cyber-security-attacks-healthcare>

9 Department of Health & Human Services, Office of the National Coordinator for Health Information Technology, *Top 10 Tips for Cybersecurity in Health Care*, 2014, https://www.healthit.gov/sites/default/files/Top_10_Tips_for_Cybersecurity.pdf

10 Federal Communications Commission, *Cybersecurity Planning Guide*, 2012, <https://transition.fcc.gov/cyber/cyberplanner.pdf>

11 Department of Health & Human Services, Office of the National Coordinator for Health Information Technology, *Top 10 Tips for Cybersecurity in Health Care*, 2014, https://www.healthit.gov/sites/default/files/Top_10_Tips_for_Cybersecurity.pdf

12 Id.

13 Id.

Montana lawyer turned author serves up delicious stories in pair of mystery series

By Joe Menden
Montana Lawyer

Little about Leslie Budewitz's rapidly blossoming career as a mystery writer has been by chance. The Bigfork lawyer and author has been as methodical about pursuing her dream to be a successful novelist as she has been about putting together a winning cases in her legal career.

Budewitz blends her passion for food, great mysteries, and the Northwest in the Seattle Spice Shop Mysteries and the Food Lovers' Village Mysteries. Her debut novel, "Death al Dente" won the 2013 Agatha Award for Best First Novel. Her guide for writers, "Books, Crooks & Counselors: How to Write Accurately About Criminal Law and Courtroom Procedure," won the 2011 Agatha Award for Best Nonfiction, making her the first author to win Agatha Awards for both fiction and nonfiction — and with her first two books, no less.

Though her writing has taken off quickly in recent years, she is far from an overnight success. Her writing is a craft she has honed and paid her dues at for decades. Most authors have an unsold manuscript in the closet, she says. She has four.

She may have started slowly, but Budewitz's productivity — and her success — have exploded in the past year. She has published three novels in 2015 — all mysteries with culinary titles, "Butter Off Dead," "Assault and Pepper" and "Guilty as Cinnamon" (fresh off the presses on Dec. 1). "Assault and Pepper," the first in the Seattle



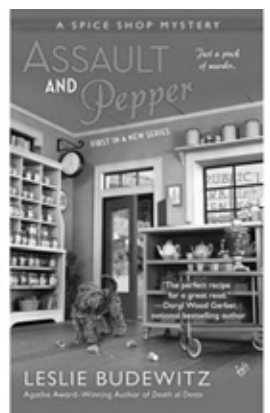
Photo provided

Leslie Budewitz is a Montana native and a member of the State Bar of Montana since 1993. She is also a best-selling author of two series of mystery novels.

Expanding menu of mysteries

Since 2013, Bigfork attorney and author Leslie Budewitz has written two series of mystery novels, totaling five books. "Death al Dente," "Crime Rib," and "Butter Off Dead" are part of the Food

Lovers Village Mysteries. "Assault and Pepper" and "Guilty as Cinnamon" are in her Seattle Spice Shop Mysteries series.



Spice Mysteries series, became a national bestseller and has been a mainstay at the top of the Seattle Mystery Bookshop's bestseller's list for much of the year. (A third in the series, "Killing Thyme," is slated for release in 2016.)

She capped off the year by being elected president of Sisters in Crime, an organization of 3,600 members in more than 50 chapters world-wide, offering networking, advice and support to mystery authors.

Budewitz, a Montana native went to college at Seattle University. After graduating from Notre Dame Law School in 1992, she returned to Seattle, where she clerked for the Washington Court of Appeals ("an absolutely fabulous finishing school for a young lawyer") and in firms in Tacoma and Seattle. In 1992, Montana called her back.

Since returning to Montana, she has taught some legal writing courses at the law school, and landed in what she said has been a good working relationship with Doug Wold, a Polson attorney and past president of the State Bar of Montana.

"For the last 20 some years I have worked with Doug in Polson," she said, adding that her practice is mostly civil litigation, both personal and business litigation.

All the while, she still kept her eye on her literary dreams.

As with most other things she has pursued, she did it with purpose and a plan.

She got the idea for her first book, the guide to writing about the law and courts, because she was spending a lot of time at workshops with other mystery writers, and they had a lot of questions: How do you get a search warrant? Who is Miranda? And why are we always warning her?

"I decided that would make a really good book," she said. "I created a proposal and got an agent."

The agent, Budewitz said, did a great job of not selling the book. Ultimately, she sold it herself.

And it was when she was writing that book that she decided she still had her own stories she wanted to tell.

"I studied the market and figured out what I was interested in writing," she said, deciding to pursue books in what is known as the "cozy mystery" genre. Cozies are a subgenre of crime fiction in which sex and violence are downplayed.

Two things that are definitely not downplayed are her love of food and her love of her native Montana and the Seattle area that she called home for more than a decade.

The Food Lovers' Village Mysteries is set in fictional Jewel Bay, Montana. Though it's not a real place, Jewel Bay does bear a remarkable resemblance to her adopted home town of Bigfork — a small town with a thriving arts community on the shore of Flathead Lake. She admits that some of the characters in the book are based on people she knows, but not as many as people in town think. And she changed some details, adding some things she wishes the town had.

The Spice Shop Mysteries, meanwhile, take place in Seattle's Pike Place Market, a place she first fell in love with during her college days and explored every chance she got when she returned to practice there.

She also sprinkles into both series a little bit of another love — the law. The main characters in both series are amateur sleuths, but she does explain in the stories what the police and prosecutors are doing.

"I understand those systems better than most other writers do," she said. "I'm already asking my readers to make a leap of faith — that a Seattle spice shop owner is solving crimes. Once you believe me on that, I still have to walk you through the investigation in a credible way. It blends everything I love."

Budewitz, page 22

Pavelich earns praise with new collection of short stories

Montana attorney Matt Pavelich recently published his fourth book, "Survivors Said," a collection of his best short stories written over four decades.

Pavelich exhibits a broad range in the collection. The stories include an imagining of a pre-historic hominid roaming what is now Montana when Glacial Lake Missoula covered the land; an alternate take on what might have really happened to Thomas Meagher, governor of Montana Territory, when he disappeared on the Missouri River in 1867; and the tale of a hapless bank robber who gets himself in more hot water by inadvertently kidnapping a judge.

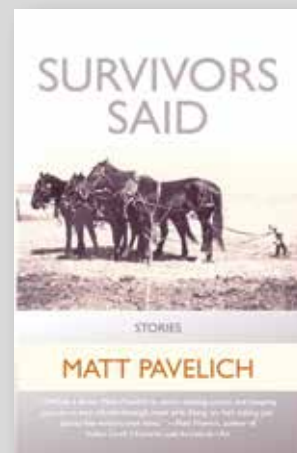
In praising "Survivors Said," acclaimed author Pete Fromm writes: "Matt Pavelich is a Montana original. From the very first story of *Survivors Said*, . . . you're along for the ride. And what a driver Pavelich is, never missing a turn, but keeping you up on two wheels through most of it. Hang on, he's taking you places few writers ever have."

Washington Post book reviewer Lizzie Skurnick wrote: "Some authors can master domestic scenes, and others are successful at handling sweeping, historical tableaux, but Pavelich is the rare writer who can skillfully combine the two."

Pavelich is a graduate of the University of Montana, the Iowa Writers Workshop and the Northwest School of Law. He lives in Hot Springs.

Pavelich's past books are the novels "The Other Shoe" and "Our Savage" and another collection of stories, "Beasts of the Forest, Beasts of the Field."

"Survivors Said" is available from bookstores everywhere, through Amazon.com, or directly from the distributor, Riverbend Publishing. To order, call or write Riverbend: 406-449-0200; janet@riverbend-publishing.com; P.O. Box 5833, Helena, MT 59604-5833; www.riverbendpublishing.com/survivors-said.html. The 328-page softcover book is available for \$16.95. Libraries receive a 20 percent discount.



President, from page 3

started a long-term relationship with Fastcase legal research that came to fruition during Randy Snyder's tenure as president in 2014. Betsy Brandborg (Bar Counsel) and Sam Alpert (Technology/IT Assistance) have been working on pushing the bar to be technology aware and compliant. Not only must we lead by keeping our own house in order, but we must educate. Everything the Bar does well is a credit to the staff and hundreds of volunteer attorneys who make the commissions, sections, and programs work.

ML: What needs work?

MT: Better communication between Officers, Trustees, and State Bar staff. I've been amazed at how important that is. By knowing each other better we really do make better decisions and work together more efficiently, even though that sounds cliché. We also need to improve, as well as find additional, funding sources for Bar programs.

ML: What needs to be addressed sooner rather than later?

MT: A technology plan for the State Bar office. This is a factor of budget issues, but the longer we wait the more problematic it will become.

ML: Do you have a vision for what that plan would be?

Funding must be initiated. Reserve money earmarked for needed upgrades. Research and planning for software, hardware, services the Bar will need to get us through the next five to 10 years. Those decisions are hard to make. I would hope we can do two things: start to budget for these things and then have a key group of people start working on a plan.

ML: Is pro bono work an important part of being a lawyer? Why?

MT: Of course it is, and the State Bar places a great focus here in terms of programs and budget. Lawyers are expected to carry the vast majority of the effort to fill the legal needs of those who have limited means, which is not the case in any other profession. It's important because it's a key part of the profession and part of the oath we take to uphold the Constitution. Having said that, I think pro bono service means different things to different attorneys. Everyone has different demands on their time and has a different story in their life that they're dealing with. For the most part, Bar members do an incredible job of providing free and limited-means legal assistance. It's unique to our profession, as society looks to us take care of all the legal needs of low-income and impoverished people. The Supreme Court commissions put a tremendous amount of resources into studying pro bono and actively working to meet the needs of the underserved. But we can't just look

to the practicing lawyer to solve the problems. There will be new ways of addressing unmet needs, especially with regard to technology. We've got to look at having better coordinated, better funded self-help centers, ways to increase funding for access to justice issues in general, and ways unmet legal services can be met by new technology and Internet-delivered services. Also addressing how to regulate or accommodate new service providers that are going to offer low-cost legal services will be important. I think we can find ways to leverage technology and new service models to help meet access to justice issues. The Supreme Court created the Access to Justice Commission in 2012 to help all Bar-related groups take a more coordinated approach to addressing access to justice issues and this will have an important impact.

ML: Why do you think it is important for lawyers to get involved in the Bar?

MT: Because the Bar is the single most important organization for sustaining the self-regulated profession of law and protecting an independent judiciary. Bar organizations are also the single most important groups that continue to educate and lobby on the importance of the rule of law above all and regardless of the political leanings of the day. This is why it is critical that more Montana attorneys be involved, at least by way of membership, in the ABA. The Montana Bar is an integrated bar. It's our bar and it falls on us to maintain it or eventually the justice system will be adversely impacted. Just by doing a little bit more, we could be so much more effective. It does not take much more involvement by more of us to be more effective — just joining a committee, coming to a meeting, taking one volunteer assignment. Most of us get it, but don't know how effective some small bit of involvement could be to get us across the finish line and really improve some of these programs.

ML: What's the biggest challenge to the profession these days?

MT: Disruptive changes to the profession as a result of the rapid changes in technology and the dramatic increase in self or unrepresented litigants in court. These two factors have changed the practice in different ways since I began practicing. And in different ways both threaten to weaken the justice system. If we're not dealing with this as leaders, there will be adverse consequences to the justice system within 10 years, if not sooner.

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

The Bar is the single most important organization for sustaining the self-regulated profession of law and protecting an independent judiciary. Bar organizations are also the single most important groups that continue to educate and lobby on the importance of the rule of law above all and regardless of the political leanings of the day.

State Bar of Montana President Matt Thiel

Public censure ordered for Missoula attorney Lyday

DISCIPLINE

Summarized from Nov. 3 order in case No. PR 15-0032

The Montana Supreme Court in November ordered a public censure for Missoula attorney Myshell Lyday.

According to the order, Lyday admitted that she failed to respond to multiple requests by the Office of Disciplinary Counsel that she respond to an ethics grievance lodged against her by a former client and that she responded only after a formal disciplinary complaint had been filed against her.

The Court ordered the public censure to be held at 1 p.m. on Tuesday, Dec. 8, in its courtroom in Helena. It also ordered Lyday to pay the costs of the proceedings as part of the terms of her admission. ODC and the Commission

on Practice filed a statement of total costs in the case of \$644.57. Lyday may file an objection to the statement of costs.

Lyday is owner of the Law Office of Myshell Lyday Uhl PLLC.

REINSTATEMENT

Summarized from Nov. 10 order in case No. PR 06-0544

James K. Conkle petitioned the Montana Supreme Court for reinstatement to active status in the State Bar of Montana after having been suspended since 1993 for failing to pay dues.

The Court ruled that Conkle should be admitted to active practice of law in Montana because he is not currently suspended or subject to discipline in another jurisdiction, has not been charged with a crime, or committed any other acts that would be sanctionable under the

Montana Rules of Professional Conduct. Conkle was ordered to pay appropriate fees and penalties to the State Bar before being admitted. The court further ordered that within six months of the order Conkle must submit proof of attendance of attendance at 30 hours of approved Continuing Legal Education to be credited to the time he was suspended.

APPOINTMENTS

Summarized from Nov. 20 order in case No. AF 06-0185

Chief Justice Mike McGrath on Nov. 20 reappointed the Honorable Kathy Seeley for a three-year term to the Sentence Review Division of the Montana Supreme Court.

Seeley's current term is set to expire on Dec. 31. Her new term runs from Jan. 1, 2016 through Dec. 31, 2018.

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?

Call us at 406-442-7660 and we'll be happy to answer your questions

Attorney-turned-humorist's book flips tired lawyer jokes back at their tellers

Montana Lawyer Staff

Lawyer jokes. Everyone has heard them. If you've introduced yourself as an attorney at parties, you've probably been told them.

They can be rude. They can be annoying. They can be downright offensive. And if you are the butt of one, it can be hard to respond to. Object to it, and you might be accused of having no sense of humor.

Humor consultant and author Malcolm Kushner has a new book that turns the lawyer joke on its head — and turns the jokes back at the teller. Kushner — himself an attorney — says the book, "Comebacks for Lawyer Jokes," is the first book to tell jokes that make lawyers look good.

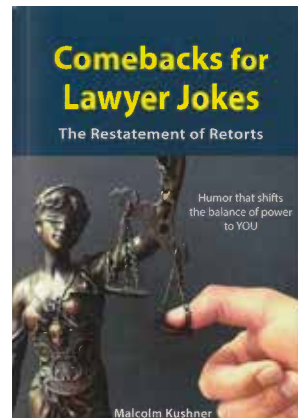
The book is broken into three sections. The first section is filled with more than 100 comebacks to lawyer jokes that shut down the teller before they get to the punchline.

You've heard the joke that asks, "What do you call 500 lawyers at the bottom of the ocean?" Armed with Kushner's book, you will reply, "The bar association of Atlantis," before the

intended punchline, "A good start."

How about, "What's the difference between a lawyer and an onion?" You can say, "Lawyers don't have thin skins," before they say, "No one cries when they cut up a lawyer."

If this tactic doesn't disarm the assailant and the jokes keep coming, part 2 of



the book offers jokes to help you go on the offensive. These jokes take the same tone as the lawyer jokes but are aimed at the person who might be telling you the joke:

CPAs, doctors and other professionals.

The third section is filled with jokes that emphasize positive traits of attorneys. Most focus on legal aid, public service and pro bono lawyers. Some are about nearly universally loved historical figures who were attorneys, like Abe

Lincoln, Mahatma Gandhi and Nelson Mandela.

OK, some of the jokes are groaners. But Kushner isn't trying to turn you into a stand-up comic, just trying to make parties safer places for lawyers.

Among those who have praised the book is one of America's most famous lawyers, Alan Dershowitz.

"Finally, a self-defense manual against politically incorrect speech that is still socially acceptable—lawyer jokes," he said. "I loved it. Lawyers need it."

Kushner is a co-creator of the humor exhibit at The Ronald Reagan Presidential Library. He has lectured about presidential humor at the Ronald Reagan Presidential Library, the Smithsonian Institution and numerous leadership conferences.

"Comebacks for Lawyer Jokes" is 192 pages and retails for \$9.95. It is available at Amazon.com.

Among his other books is "The Ultimate Lawyer Quote Book: Words of Wisdom and Humor." It is available for \$29.95 from the American Bar Association. State Bar of Montana members get a 15 percent discount on ABA books.

Budewitz, from page 19

Budewitz said it is no accident that a lot of lawyers have turned into successful authors. They have the drive. They know how to research. And a lot of lawyers have great writing skills.

"We're used to learning quickly, we have to dive in," she added. "Those are really tremendous skills for a lawyer who wants to make a career change."

Her advice to other lawyers who have dreams of being a writer? Just do it.

"The most important thing is to write," she said. "A lot of people have career ambitions but our day jobs hold us back. It can be hard to find time to write. You don't find it, you make it. You make the time to write if you really want to."

When writing her first novel, Budewitz limited her legal practice to four days a week — Fridays were reserved for writing. And every Friday when she went back to work on the book, the words flowed.

"I just really wanted it," she said. "On Fridays, I didn't go to the

office. I went to my own little study and wrote all day long.

"The story knew — or I guess you could say the muse knew — I would be there on Fridays," she said.

Budewitz says that at the moment her writing takes up about 90 percent of her time and her legal practice 10 percent. "Next week it will probably be reversed." Eventually, she hopes to hopes to transition to 100 percent writing.

Budewitz is not the only lawyer in the family. Her older brother, Tom, is an attorney practicing in Townsend.

"We are first-generation college graduates," Leslie said. "Tom paved the way."

Her books are available in the Flathead Valley at Bookworks in Whitefish, The Bookshelf and Think Local in Kalispell, and at Roma's and Frame of Reference Gallery in Bigfork, and at all nationwide and online booksellers.

Joe Menden is editor of Montana Lawyer magazine. You can reach him at 406-447-2200 or jmenden@montanabar.org.

not consider on the record the amounts of such offers, when they were made, whether they required a full and final release, what Mlekush's responses were, and what relationship, if any, the increasing settlement offers bore to Mlekush's increasing economic damages. The determination of whether an insured is entitled to attorney fees under the insurance exception requires factual findings that consider both parties' actions throughout the litigation process.

Bardsley v. Pluger

Bardsley v. Pluger, 2015 MT 301 (Oct. 20, 2015) (McKinnon, J.) (5-0, affirmed and reversed)

Issue: (1) Whether the district court abused its discretion by issuing an amended order of protection; (2) whether the district court abused its discretion by denying the Plaintiffs' motion to amend their complaint; (3) whether the district court erred by granting Defendants' motion for summary judgment; and (4) whether the district court abused its discretion by awarding Defendants attorney's fees.

Short Answer: (1) Yes; (2) no; (3) no; and (4) no.

Affirmed (2, 3, 4) and reversed (1)

Facts: Scott Bardsley owns property in Troy where he lives with his partner, Dora. Defendants Earnest Anderson and Lizann Pluger live on the adjacent property, owned by Lizann's uncle, Edwin Pluger. Before 2011, Scott often used a private road across the Pluger property to access his property. In 2011, the neighbors became hostile toward one another and Lizann sought an order of protection against Scott.

The district court granted a permanent order of protection against Scott in August 2012 that prohibited Scott from abusing or threatening Lizann, required him to stay at least 1500 feet from her, and prohibited him from using Pluger Way. Scott did not respond to Lizann's petition and the August 2012 order is not on appeal. Shortly after the order was granted, Lizann installed a locked gate across Pluger Way.

In December 2012, Scott and Dora filed a complaint against Earnest and Lizann, alleging their property enjoyed an express easement over Pluger Way and seeking money damages and a preliminary injunction preventing Defendants from obstructing the road.

At a February 2013 preliminary injunction hearing, Scott conceded he had mistakenly pled an express easement but contended his property enjoyed an easement by prescription or necessity. The district court denied the request for an injunction, and sua sponte amended its earlier order of protection to prohibit Dora as well as her family members from using Pluger Way.

Procedural Posture and Holding: Defendants moved for summary judgment on the basis of Plaintiffs' failure to name Lizann's uncle as the real party in interest, and sought attorney's fees. Plaintiffs did not respond. Almost a year later, Plaintiffs moved to amend their complaint to plead easement by prescription and necessity, and to include Lizann's uncle as a party. Defendants objected. The district court denied the motion, granted summary judgment to Defendants, and awarded Defendants attorney's fees. Plaintiffs appeal, and the Supreme

Court vacates the amended order of protection and affirms all other issues.

Reasoning: (1) A district court may not issue an order of protection without holding a hearing. The district court expanded the order of protection to include Dora without providing her an opportunity to be heard. The amended order is vacated.

(2) The decision to deny a motion to amend a complaint is within a district court's discretion. Litigants are allowed to change legal theories after a motion for summary judgment has been filed only in extraordinary cases. No extraordinary circumstances can be found here. The district court did not abuse its discretion.

(3) Because the denial of Plaintiffs' motion to amend is affirmed, they cannot withstand summary judgment.

(4) The equitable exception to the American Rule, in which each party pays its own attorney's fees, applies when the action is without merit or frivolous. The district court did not abuse its discretion in awarding fees to Defendants.

State v. Root

State v. Root, 2015 MT 310 (Oct. 27, 2015) (McGrath, C.J.; Cotter, J., dissenting) (4-3, affirmed)

Issue: (1) Whether Root's attorney was ineffective for not requesting an accomplice instruction; and (2) whether the district court erred in denying Root's motion to dismiss based on the prosecution's failure to disclose a video statement of a witness.

Short Answer: (1) No; and (2) no, with Justices Cotter, McKinnon, and Shea dissenting on (2).

Affirmed

Facts: Lawrence Lee was stabbed in the arm and neck while in his pickup truck with Root and juvenile S.R. Lee and S.R. testified that Root stabbed Lee, after which S.R. jumped out of the truck and Lee pushed Root out of the truck. S.R. testified that after Lee left, S.R. took the knife and buried it because he was afraid for his safety. Root testified that S.R. stabbed Lee.

Between the second and third days of trial, the state provided the defense with a copy of a recording of a police interview with Lonnie Boyd, a previously disclosed witness, who testified that S.R. told him he, not Root, had stabbed Lee. The next morning, defense counsel moved to dismiss on the grounds that the late disclosure of the recording violated Root's Brady rights. The district court held a hearing outside the jury's presence and denied the motion to dismiss, holding the recording was cumulative, and the defense knew about Boyd and had him available to testify at trial.

Procedural Posture and Holding: The jury convicted Root of attempted deliberate homicide. He appeals, and a divided Supreme Court affirms.

Reasoning: (1) S.R. was not charged with any offense. Root contends his trial attorney should have requested a jury instruction that S.R. was legally accountable as an accomplice, and that his testimony must be viewed with distrust and must be corroborated. Because this instruction would have conflicted with Root's defense that he did not stab Lee, failing to propose the instruction does not fall below an objective standard of reasonableness.



Photo courtesy of the Alexander Blewett III School of Law

Shown are members of the law school's ABA Negotiation Competition team, from left, coach Klaus Sitte, Frans Andersson, Kathryn Ore, Lindsay Thane, Nick VandenBos, Marianne Peters and Asa Hohman.

UM's ABA Negotiation team wins regional competition

The University of Montana Blewett School of Law's ABA Negotiation Competition Team took a first place finish in the ABA-sponsored Law School Regional Negotiation Competition held at the University of Calgary Nov. 7.

Twenty teams competed.

Team members Nick VandenBos of Bozeman and Lindsay Thane of Missoula took first place in the tournament for the second year in a row, the first team to ever accomplish the feat.

VandenBos also set team records with his third consecutive appearance in the regional final round and his third consecutive invitation to nationals.

Klaus Sitte, an adjunct faculty member at the law school who teaches Alternative Dispute Resolution and Negotiation, has

coached the negotiation team since 1990.

"Both Lindsay and Nick's records will stand for many years," Sitte said.

Both Thane and VandenBos shared credit for their performance with the rest of the team.

The team of Marianne Peters of Dillon and Asa Hohman of Missoula, both first-year law students, also advanced to the final round at regionals, finishing in a tie for third place. The last time two UM teams appeared in the final round of the regional competition was 2007.

"It's so much fun when they're enthused and excited about what they're doing," Sitte said. "I'm so pleased for them."

Thane and VandenBos will move on to the national competition in San Diego Feb. 16, 2016.

UM Moot Court teams take first, second at regionals

Teams from the Blewett School of Law finished first and second at the National Moot Court's Northwest regional competition held Nov. 20-21 at the law school in Missoula.

The team of Jason Collins, Hannah Seifert and Adam Wade finished first in the competition. The team of Carrie Gibadlo, Paige Griffith and Tyler Stockton finished second.

In addition, Gibadlo, Griffith and Stockton won the best appellate brief award, and Wade won the best oral advocate award.

"They could not have performed any better," said coach and law school Professor Larry Howell.

The team of Seifert, Wade, and Collins will advance to the final rounds in New York City, in February 2016. Normally, the top two teams in the regional competition would advance to the final rounds in February, but competition rules state that if the top two teams are from the same school, the third-place team shall advance.

Twelve teams from six schools participated in the competition.

Coolidge wins Montana Law Student Pro Bono Award

Jacob Coolidge, a third-year student at the Alexander Blewett III School of Law at the University of Montana, was awarded the 2015 Montana Law Student Pro Bono Service Award. The award was presented to Coolidge on Oct. 23 at the Missoula County Courthouse.

Coolidge has donated hundreds of hours of his time working with the American Civil Liberties Union. He was instrumental in researching the ACLU's recently released



Coolidge

look at Montana's jails titled, "Locked in the Past: Montana's Jails in Crisis."

Coolidge has also served on the ACLU's board of directors and is actively working with a committee to put together a proposal to conduct a comprehensive study of race in Montana's criminal justice system. He plans to continue his commitment to access to justice by

pursuing a career as a public defender when he graduates in spring 2016.

The Montana Law Student Pro Bono Service Award is presented annually in October to a third year law student who has demonstrated extraordinary commitment to public service and pro bono legal work during their law school career. The program is cosponsored by the Montana Legal Services Association and the Blewett School of Law.

set a good example and resist the temptation to indulge in exceptionalism.

Accountability and taking responsibility for information security must be among the organization's core values.¹⁴

We believe that cybersecurity policies should be simple and not be so long that they are ineffective, as a result of being too onerous or vague. Some of the basic categories that need to be addressed through inter-office cybersecurity-related policies are as follows:

- Office-wide cybersecurity roles and responsibilities;
 - Employee Internet usage;
 - Employee email usage;
 - Social media usage;
 - Mobile device usage in the office/out of the office;
 - Tele-networking;
 - Removable storage media;
 - Internal and external access controls (such as passwords);
- and
- Other policies applicable to the security needs of the firm, based upon what devices are used by the firm.

With respect to training, not only should all firm members and employees be trained on the policies adopted by the firm in the above-stated categories, but all firm members and employees should also be trained in a manner that they understand where the most common scams perpetrated online are targeted. The following are some of the current ways that cyberattackers are trying to get into law firms' systems:

Social Engineering Attacks – When a cyber-criminal attempts to trick users to disclose sensitive information or install malware. Methods include phishing and targeted attacks.

Malware – Malicious software that includes traditional computer viruses, computer worms and Trojan horse programs. Many cyberattackers try to get this into firms' systems through

¹⁴ Id.

emails sent to firm members and employees asking them to "click" links in the email. Once the link is clicked, the malware is downloaded.

Data Integrity Threats – Attempts to corrupt or modify data in order to disrupt operations of a business for financial gain.

Resource Abuse – Attempts to misuse network, device or identity resources. Examples include sending spam from compromised devices or denial of service attacks using computing resources of compromised devices.

Web and Network-based Attacks – Launched by malicious websites or compromised legitimate sites, these target a device's browser and attempt to install malware or steal confidential data that flows through it.¹⁵

The takeaway for all firms should be that cyber criminals can be defeated, or at least, they can be made to move on to an easier target. However, that can only be done when cybersecurity defenses are developed and implemented by all firm members and employees, at all times. The tips in this article may seem simple, and they are, but from our experience working with small businesses, law firms and health care providers, many organizational leaders and their employees either do not know, do not understand, or fail to pay attention to even the basic security strategies detailed here. We are working with the State Bar of Montana to help provide basic resources to those law firms and businesses that want to be cyber secure.

Erin F. MacLean is managing shareholder of Freeman & MacLean, P.C. and chair of the State Bar of Montana's Health Care Law Section, and Deborah M. Micu is paralegal/legal analyst with Micu Consulting. MacLean and Micu are coordinating through their firms and Cyber Secure Plus LLC to provide cybersecurity advice and education to law firms, health care providers and local and regional business organizations. If you would like more information, please watch for the CLE webinar put on by Erin and Deb through the Health Care Law Section.

¹⁵ Federal Communications Commission, *Cybersecurity Planning Guide*, 2012, <https://transition.fcc.gov/cyber/cyberplanner.pdf>

Judge, from page 13

years ago that are now the parents having their kids taken away.

On the opposite end of the spectrum are adoptions — one of Sherlock's favorite types of cases. He said people will stop him on the street and thank him for overseeing their adoption years ago.

As Sherlock ponders his years as judge, he looks around his chambers. Nearly all of the items in the room are labeled with sticky notes. Maps, vintage pictures of the courthouse and other decor have all been claimed by his comrades.

"It's kind of like your grandma's house," he said.

His future plans include swimming and travel. Sherlock, who grew up in Helena, plans on staying in the area. One of the most ambitious items on his itinerary is to improve his golf game.

Other than that, Sherlock said he plans on helping out his in-laws, who are wheat farmers in Oregon. He might go run combines.

"I don't know if they'll hire me," he said.

Regents OK Baucus Institute at UM

The University of Montana and the Blewett School of Law will be home to the new Max S. Baucus Institute, following approval by the Montana Board of Regents.

The regents approved the academic proposal from the School of Law at their meeting in Bozeman last month.

The law school says the Baucus Institute will create an interdisciplinary forum for the exchange of ideas in a setting devoted to problem-solving. Focusing on economic development with a global perspective, the institute will give students crucial skills for representing business clients and promote economic growth for the entire state.

Law school Dean Paul Kirgis praised the approval.

"Montana businesses and Montana's practicing bar are part of an increasingly interdependent world," he said. "Through the Baucus Institute, we will redouble the school's efforts in transactional practice, enhance our existing summer study program in China, and give our students new public policy study opportunities.

Law school Professor Sam Panarella will direct the institute.

Continuing Legal Education

For more information about upcoming State Bar CLEs, please call Meagan Caprara at 406-447-2206 or email mcaprara@montanabar.org. You can also find more info and register at www.montanabar.org. Click on the Calendar on the upper left of the home page to find links to registration for CLE events. We also mail out fliers for multi-credit CLE sessions, but not for one-hour CLE or webinars.

The State Bar of Montana CLE Institute has announced a schedule of 24 live CLE events for 2015, including 21 multi-hour seminars.

The year's first seminar is the popular annual CLE & Ski at Big Sky. CLE & Ski runs Friday-Sunday, Jan. 15-17. Early-bird pricing is available until Dec. 21.

The CLE & Ski schedule features early-morning and late-afternoon CLE sessions on Friday and Saturday, with a break from 9 a.m. to 4 p.m. to allow for a full day of skiing on Big Sky's world-class terrain.

This year's CLE & Ski has 10 credits pending, including 3 ethics, on a variety of topical issues. Presentations on the agenda are:

■ **There's a Snowball's Chance You Will Have Ethics Issues With Technology**, by Pete Habein, chairman of the Bar's Ethics Committee, and Joe Sullivan, chair of the Bar's Technology Committee;

■ **Tech Checklists: Questions You Should Be Asking Your Clients and Why You Should Be Asking Them**, by Sam Alpert, the Bar's IT coordinator;

■ **Stacking Bodily Injury Policies in Auto Accident Claims: Insurance Issue**, by Jim Jones and Kyle Gray;

■ **eDiscovery in State Court**, by Debra Steigerwalt;

■ **New Federal Rules of Evidence: Comparing Federal and State Court Rules**;

■ **Employment Law Updates**, by Eric Nord;

■ **Business Law Updates**, by Eric Nord;

■ **Supreme Court Updates**, by Justices James Shea and Mike Wheat.

The year's schedule of webinars kicks off on Thursday, Jan. 7, when Chris McConnell of the Bar's Health Care Law Section gives a presentation on Health Care Fraud Investigations: State and Federal.

More webinars are planned and will be added throughout the year.

2015 CLE Institute Schedule

Jan. 7 — Webinar — Health Care Fraud Investigations: State and Federal, presented by Chris McConnell of the Bar's Health Care Law Section. 1 CLE credit. Register at montanabar.org

Jan. 15-17 — Big Sky, Huntley Lodge — CLE & Ski. 10 CLE credits (3 Ethics)

Feb. 12 — Fairmont Hot Springs — Annual Real Estate CLE

Feb. 26 — Missoula — Justice Initiatives Committee Domestic Violence CLE (Pending)

March 4 — Fairmont — Annual St. Patrick's Day CLE

March 18 — Helena — Joint with Paralegal Section

March 24 — Helena — Trends in Environmental Law

March 30 — Webinar — TBD

April 1 — Great Falls — Don't Be Fooled

April 6 — Webinar — TBD

April 8 — Great Falls — Spring CLE

April 15 — Missoula — Indian Wills CLE

April 22 — Bozeman — Family Law, General Practice

May 6 — Missoula — Bench Bar Conference

May 13 — Helena — TBD

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

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

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

Sept. 22-23 — Great Falls — Annual Meeting

Oct. 21 — Advanced Family Law — Cutting Edge Issues

Oct. TBD — Site TBD — Construction Law

Nov. TBD — Site TBD — Fall CLE

Other CLE of interest

March 3 — Great Falls — Red Mass Ethics CLE

Court Help Program now permanently funded, thanks to Legislature

After one-time-only funding since its inception in 2008, the Montana Court Help Program will now continue operation through permanent funding under House Bill 2, which contains a substantial portion of appropriations supporting the ongoing functions of state government.

The biennium appropriation funds staff and operations in six full-time self-help centers in six counties. Centers are located in Billings, Bozeman, Great Falls, Helena, Kalispell and Missoula. In addition, the Court Help Program maintains self-help stations throughout Montana.

"I am pleased and grateful that the 2015 Legislature recognized the long-term benefit of permanent funding for the Court

Help Program," Chief Justice Mike McGrath said. "Every day, Montanans turn to our courts for life's basic necessities – a safe place to live and support and protection for themselves or their families, often without the help of a lawyer. Access to the resources and information provided by the Court Help Program provides a much needed service to those with nowhere else to turn and advances our long-term vision of justice for all."

Appropriated funds are leveraged through effective utilization of AmeriCorps volunteers through the Justice for Montanans program.

More information about Court Help is at courts.mt.gov/selfhelp.

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- There's a Snowball's Chance You Will Have Ethics Issues with Technology
- Tech Checklists: Questions You Should Ask Your Clients, Why You Should Ask
- Stacking Bodily Injury Policies in Auto Accident Claims: Insurance Issues
- eDiscovery in State Court
- New Federal Rules of Evidence, Especially Comparing eDiscovery Evidence Rules in Federal, State Courts
- Employment Law Updates
- Business Law Updates
- Supreme Court Updates

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William G. Sternhagen

Helena attorney William G. Sternhagen, 86, died Nov. 6 at St. Peter's Hospital in Helena. Bill battled cancer for 15 years and endured a stroke four years ago.

Bill was born on July 11, 1929, in Havre, three months before the Great Depression, and grew up in Glasgow. He was one of nine children and learned in



Sternhagen

the early days how to work hard to support his family and contribute in a positive way to his community.

He raised his family in Helena, practicing law, leading and participating in several organizations in the community. He was a loving and giving man, husband, father, grandfather, colleague, and friend; a true example of a member of The Greatest Generation. He most enjoyed spending time with his family and did whatever it took to ensure his kids had the opportunity to succeed.

As Lt. Sternhagen, "Wild Bill" served in the U.S. Air Force and flew F-86 Sabre

Jets in the Korean War with 52 combat missions, earning the Distinguished Flying Cross. After his combat tour, he was an instructor and then left the Air Force, attending Carroll College and the University of Montana Law School.

In 1958, he married Joyce M. Morgan, a Carroll Graduate and Nurse, of Helena. Bill practiced law for a short time in Glasgow before returning to Helena to be an assistant attorney general for the State of Montana. After his service to the state, Bill joined private practice in Helena and was a distinguished and respected attorney, practicing law for over 50 years. As an attorney, he prided himself on being able to help people with their problems and took personal and professional responsibility to do his very best to help others.

A devout Catholic, Bill was an altar boy at a very young age and attended daily Mass for most of his life. He also led and participated in numerous church and community organizations including the Montana Cancer Society, Kiwanis Club, Ducks Unlimited, the Helena Trap Club, and many others.

Bill enjoyed hunting and fishing, especially with his family, relatives, and friends and was an avid outdoorsman. He was a lifelong Scout and lived the Scout Oath and Law every day of his life.

An accomplished athlete and competitor, Bill was a six-sport athlete in high school and played football for Carroll College under the legendary John Gagliardi. Known as a "60 minute man", he never left the field, playing the full game on both sides of the ball as halfback, safety, and special teams. "Wild Bill" loved to carry the ball and to tackle. Known at Carroll and across the conference as one of the "fastest and toughest ever," he was inducted into the Carroll Hall of Fame and was twice named 1st Team All-Conference Halfback.

Bill is survived by his wife, Joyce, and children Bill, Ann, Joe and Maggie as well as his sister Rita and numerous grandchildren and relatives.

A graveside service with full military honors was held at Resurrection Cemetery in Helena. Visit www.retzfuneralhome.com to offer condolences to the family or to share a memory of Bill.

Summaries, from page 27

(2) The state had a duty to disclose the Boyd statement earlier than it did, although there is no contention that the prosecutor knew about it prior to disclosing it. Boyd's statement had exculpatory value and impeachment value. However, because Boyd testified at trial after disclosure of the recording, the jury heard his account that S.R. claimed to have done the stabbing. Boyd directly contradicted

S.R.'s previous testimony that S.R. did not know Boyd and had not talked to him about the incident. Root contends earlier disclosure of Boyd's recorded interview would have allowed different questioning of S.R., who had already testified for the state, but did not seek to recall S.R. after Boyd's testimony. The late disclosure was not prejudicial to Root's defense.

Justice Cotter's Dissent (joined by Justices Shea and McKinnon): Justice Cotter would not reach the first issue, as

she would hold the district court erred in denying Root's motion to dismiss based on the late disclosure of Boyd's statement. There is no question the state possessed evidence favorable to the defense, which it failed to provide to Root in advance of trial. The only remaining question in the Brady analysis is whether the late disclosure prejudiced Root, which Justice Cotter believes it clearly did. Root did not receive a fair trial.

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RESEARCH & WRITING SPECIALIST: The Office of the Federal Public Defender for the Districts of Colorado and Wyoming has an opening for a research and writing specialist in our Cheyenne, Wyoming office. Please see our website (<http://www.cofpd.org/employment/WY-RW2015.html>) for details.

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