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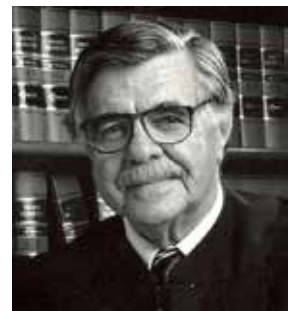
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Also in this edition:

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- > A look at ABA Model Regulatory Objectives for future of legal services
- > Montana Supreme Court upholds most of 2011 medical marijuana law
- > Governor appoints Murnion as 16th Judicial District judge



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From the cover

The prospect of going through e-discovery can be a scary one for attorneys that encourages settling in cases they otherwise wouldn't. Knowing just a few basics can help you rest easy — and avoid a big bill.



“[T]he profession ... must remain relevant by actively addressing changes in the practice in a way that makes protection of the public and promotion of the rule of law the core principles of any new regulatory models. If we do, the profession will prosper.”

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.

Opposing, ignoring new models won't keep profession relevant

The past few months leading up to the ABA Mid-Year Meeting, I followed the sometimes emotional debate over what I believed to be a fairly straightforward resolution concerning a proposal for the ABA House of Delegates to adopt Model Regulatory Objectives for the Provision of Legal Services.

Resolution 105, proposed by the ABA Commission on the Future of Legal Services, urges each state's highest court to be guided by the following Model Regulatory Objectives for the Provision of Legal Services, in assessing or developing regulations concerning nontraditional legal service providers:

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
- D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of privileged and confidential information
- H. Independence of professional judgment
- I. Accessible civil remedies for negligence and breach of other duties owed, disciplinary sanctions for misconduct, and advancement of appropriate preventive or wellness programs
- J. Diversity and inclusion among legal service providers and freedom from discrimination for those receiving legal services and in the justice system

The resolution specifically states it does not put an end to existing ABA policy prohibiting non-lawyer ownership of law firms or the core values adopted by the House of Delegates.

The Executive Committee and Trustees had some productive discussions concerning R-105, aided by our ABA State Bar Delegates

More on Mid-Year Meeting

See the article on page 19 to read more about the ABA House of Delegates' actions at the Mid-Year Meeting.

Damon Gannett (Billings) and Shane Vannatta (Missoula). The consensus was that R-105 stated sound policy, but we took no formal action to endorse passage. Both delegates supported passage after listening to the debate.

The debate I witnessed at the National Council of Bar Presidents portion of the ABA Mid-Year meeting indicated that some degree of fear and misconception persists that Bar organizations are not doing enough to oppose changes to the delivery of legal services or at worst, are supporting efforts to put lawyers out of work. Emotional arguments centered on preventing “non-lawyer entrepreneurs” from providing any form of legal services and outright demands that Bars protect the economic interests of their members. These arguments are unfair but especially ignore the rapid changes in technology and the dramatic increase in unmet legal needs of a growing segment of society that have changed the delivery of legal services for some areas of law. They also forget that lawyers have been involved in developing these services and that antitrust laws and limits on enforcing the unauthorized practice of law make outright opposition futile. Most importantly, the essential role of the unified Bar has always been the protection and promotion of the public interest. The vast majority of our members understand this.

Bar leaders must be involved in shaping new regulations directed at new forms of legal service providers, not in opposing any efforts to address the realities of the disruptive changes in technology and society. Courts will have no choice but to address challenges to market

Message, page 18

Member and Montana News

If you would like to submit an announcement in Member and Montana News, email it to jmenden@montanabar.org. Articles are subject to editing for style, length and grammar. For photos, high-resolution JPEG images are preferred (at least 300 ppi).

Jackson, Murdo & Grant, P.C. welcomes new attorneys

The law firm of Jackson, Murdo & Grant, P.C., has announced that Terry Cosgrove, David Dalthorp, Jeff Hindoiien, Murry Warhank and Burt Ward have joined the Helena firm.

Cosgrove previously served as executive vice president and general counsel for Blue Cross Blue Shield of Montana, tax counsel for the Montana Department of Revenue and has been engaged in private practice in Helena. Cosgrove serves the firm in an "of counsel" position.

Dalthorp has practiced law in Helena since 1992. His practice areas include school litigation, employment law, civil

litigation and insurance defense.

Hindoiien has practiced law since 1994. He previously served as chief legal counsel to former Gov. Judy Martz and was an attorney-adviser in the chambers of Judge Charles E. "Chip" Erdmann of the U.S. Court of Appeals for the Armed Forces in Washington, D.C. He also recently served as city attorney for the city of Helena. His practice areas include public education law, local government operations and infrastructure, estate planning and probate and general business matters.

Warhank has practiced law since 2007. He graduated with high honors from the University of Utah's law school and clerked for the senior judge in the United States District Court for the District of Utah. Originally from Rudyard, Montana, he has practiced in Montana since 2010. His practice focuses on insurance, tax liability and creditor rights.

Ward began practicing law in 2014 after graduating with honors from the

University of Montana School of Law. His practice areas include civil litigation, banking and foreclosures, insurance defense, commercial transactions and employment law.

Jackson, Murdo & Grant has offices at 203 N. Ewing, in Helena. 406-442-1300. The firm has been serving business entities, nonprofit entities, government entities and individuals in a wide range of legal areas since 1967. Cosgrove can be reached at 406-513-1117 or tcosgrove@jmgm.com; Dalthorp at 406-513-1120 or dalthorp@jmgm.com; Hindoiien at 406-513-1124 or jhindoiien@jmgm.com; Warkank at 406-442-1308 or mwarhank@jmgm.com; and Ward at 406-513-1123 or bwward@jmgm.com.

Reiff a shareholder at Church, Harris, Johnson & Williams

The law firm of Church, Harris, Johnson & Williams has announced that Karen Reiff has become a shareholder with the firm.

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Member and Montana News

Reiff was raised in southwestern Montana. She received a B.A. in English from North Dakota State University in 1999 and a Juris Doctorate degree from the University of Montana School of Law in 2003. Following her graduation from law school, Karen attended the University of Washington School of

Law Graduate Tax Program and in 2004 received an LL.M. degree.



Reiff

Reiff joined Church, Harris, Johnson & Williams in 2004 and is a member of the firm's tax and transactional practice group, with an emphasis on estate and business planning, taxation, estate administration, elder law, and real estate. She is a member of the State Bar of Montana and the American Bar Association. Reiff and her husband, Nathan, have a daughter, Kate. Together the family enjoys the wide realm of outdoor activities that Montana has to offer including skiing, camping, rafting, and hiking.

Church, Harris, Johnson & Williams is a full-service law firm with locations in Great Falls and Helena. For more information, visit www.chjw.com.

Brown joins Lund Law as Associate Attorney

Lund Law PLLC of Bozeman has announced that attorney Julia Brown has joined the firm. Her primary practice areas will be water and natural resources law. Brown grew up just outside of Conrad, MT and received her B.A. from Montana State University.



Brown

Brown graduated with her Juris Doctorate from the University of Montana School of Law where she spent her third year clinic at the DNRC and was the student bar president. Before joining Lund Law, Julie clerked for the Honorable Gregory Todd of the 13th Judicial District in

Billings.

Brown's farm and ranch background will bring a unique perspective to the water and agriculture law worlds. You can reach her at 406-586-6254 or by email at brown@lund-law.com.

Lund Law is a well-established firm in Bozeman which focuses on property rights, eminent domain, water rights, business transactions and litigation, entity formation, employment, oil and gas law, and mineral leasing. Brown will be joining attorneys Hertha Lund and Alison Garab. Lund Law has also recently added attorney Colleen Coyle, former water master, to the firm. For more information, please visit Lund Law's website at www.lund-law.com.

Sketchley joins Bryan Law Firm as Of Counsel

The Bryan Law Firm, PC in Bozeman has announced that Twyla Sketchley has joined the firm as Of Counsel.

Sketchley is licensed to practice law in Montana and

Florida, is the chair of the Montana Bar Elder Assistance Committee, and is a Florida Bar certified elder law attorney. She has received numerous awards and honors in her Elder Law practice, including the 2014 Richard W. Ervin Equal Justice



Sketchley

Award; 2014 National Academy of Elder Law Attorneys Florida Chapter Member of the Year; 2011 Florida Association for Women Lawyers Leaders In The Law; 2009 Florida Bar Elder Law Section Charlotte Brayer Award (Public Service); and the 2009 Florida Bar President's Pro Bono Service Award, Second Judicial Circuit.

Sketchley's Of Counsel relationship brings elder law to the Bryan Law Firm, PC's Estate Planning, Trust Administration, and Probate practices. The Bryan Law Firm will now provide legal services involving issues affecting elders and persons with disabilities, including long-term care planning, guardianship, retirement, Social Security, Medicare/Medicaid, and special needs.

You may contact Sketchley at: Bryan Law Firm, PC, 11 E. Main St., Suite D, Bozeman, MT 59715; 406-586-8565; or Tsketchley@bryanlawoffice.com. For more information, please visit Bryan Law Firm's website at www.bryanlawoffice.com.



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Court rules medical marijuana providers can be paid, upholds other law provisions

The Montana Supreme Court ruled Feb. 25 that medical marijuana providers should be allowed to be paid, but it limited all other provisions of a 2011 state law cracking down on medical marijuana, including limiting providers to no more than three patients each.

The ruling in *Montana Cannabis Industry Association v. Montana* rejected most of the arguments by the MCIA that the Medical Marijuana act is unconstitutional. The MCIA brought suit after the Legislature repealed a 2004 voter initiative to legalize medical marijuana.

Justice Beth Baker wrote the majority decision, which said the compensation prohibition it is at odds with the act's stated purpose of allowing the limited possession and use of medical marijuana where certified by a physician. The court determined that the prohibition arbitrarily sets apart patients who are unable to produce medical marijuana for their own use — which is not within any of the act's legitimate objectives or based on any reasonable consideration of differences between people with debilitating medical conditions. Additionally, the court determined that prohibiting providers from charging for their services is contrary to the Legislature's purpose of keeping revenues out of the hands of criminal enterprises because it would drive the business into the

black market.

The Legislature enacted numerous additional restrictions in the act that MCIA claimed were unreasonable and overly burdensome. In addition to the compensation provision, the group challenged a requirement that the Department of Public Health and Human Services notify the Board of Medical Examiners of any doctor who certifies 25 or more medical marijuana patients in a year; a three-patient limit for medical marijuana providers; a ban on medical marijuana provider advertising; a prohibition against persons on probation becoming registered cardholders for medical marijuana use, and a provision allowing inspections of medical marijuana providers' businesses without a warrant.

The court held that the state has a legitimate interest in carefully regulating the cultivation and distribution of marijuana for medical purposes based on the fact that marijuana is illegal for all purposes under federal law. The Legislature considered abuses that had occurred under the 2004 law, such as telemedicine, traveling certification caravans, and a disproportionate number of medical marijuana users who falsified or exaggerated their need for medical marijuana. Additionally, the federal government has expressed an expectation that states carefully regulate and monitor marijuana activities authorized by

state law.

The court upheld the 25-patient physician review provision and the three-patient limit because they are rational responses to the over-certification problems and the "drastic increase" in the number of caregivers and users under the 2004 act.

The court determined that the advertising ban is a permissible regulation of commercial speech because sale and possession of marijuana are not "lawful activities" under federal law, which controls the First Amendment analysis. The court also upheld the laws prohibiting people on probation from possessing medical marijuana and allowing inspection of a marijuana business without a warrant because those laws are not invalid on their face. The court noted that specific challenges to those laws would must be decided on a case-by-case basis.

Chief Justice Mike McGrath, Justice James Jeremiah Shea and District Judge Robert G. Olsen, sitting for Justice Patricia Cotter, signed on to Justice Baker's opinion.

In a dissent, Justice Mike Wheat wrote that he would have invalidated all of the challenged provisions and imposed a permanent injunction against their enforcement. Justices Jim Rice and Laurie McKinnon wrote separate dissents that would have upheld all of the act's challenged provisions.

8th Judicial District nominees sent to governor

The Judicial Nomination Commission has submitted the following names to Gov. Steve Bullock for consideration for appointment to the upcoming vacant judicial seat in the 8th Judicial District (Cascade County):

- Elizabeth Allaire Best
- Allen Page Lanning
- Joseph M. Sullivan

The commission's action follows the close of a 30-day public comment period. Before recommending the nominees to the governor, commission members

interviewed the applicants.

The governor must fill the position within 30 days of receipt of the nominees from the commission. If the governor appoints a person on or before March 14, the filing deadline for the 2016 primary election, the appointee must file for the 2016 primary election. If the appointment is made after the filing deadline, the appointee will be subject to Senate confirmation during the 2017 legislative session. In either case, the successful candidate or confirmed appointee will serve

until January 2019.

To read the candidates' applications and public comment received, visit the Judicial Nomination Commission's web page, http://courts.mt.gov/supreme/boards/jud_nomination.

Judicial Nomination Commission members are District Judge Richard Simonton of Glendive; Janice Bishop of Missoula, Karl Englund of Missoula, Elizabeth Halverson of Billings; Hal Harper of Helena; Lane Larson of Billings; and Nancy Zadick of Great Falls.

Bullock appoints Nick Murnion, Valley Co. attorney, as 16th Judicial District judge

Gov. Steve Bullock announced on Feb. 24 that he has appointed Nick Murnion as 16th Judicial District judge.

Murnion, 62, is currently Valley County attorney. He takes over for former District Judge George Huss, who resigned effective Jan. 1. The 16th Judicial District encompasses Carter, Custer, Fallon, Garfield, Powder River, Rosebud, and Treasure counties.

Murnion will be sworn in as judge on March 17 in Forsyth.

Murnion gained national recognition in the mid-1990s for prosecuting Montana's anti-government Freemen group.

The State Bar of Montana awarded Murnion the Local Professionalism Award in 1996. He received the Profile in Courage Award in 1998 from the John F. Kennedy Library in Boston, and he won the 2000 Griffin Bell Award from the American College of Trial Lawyers.

He also received the Larry Broadbent Criminal Justice Award in 1996 from the Northwest Coalition Against Malicious Harrassment.

Murnion previously served as Garfield County attorney as well as in



Murnion

private practice. He has a Bachelor of Science in government from Montana State University and a Juris Doctorate from the University of Montana School of Law.

Murnion was one of three people whose names the Judicial Nomination Commission forwarded to the governor for consideration. The others were Custer County Attorney Wyatt Glade and State Department of Natural Resources attorney Kevin Peterson.

He is now subject to election in the 2016 primary and general elections.

Alexander Blewett III

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Daines calls for splitting 9th Circuit Court

One of Montana's U.S. senators has introduced legislation to split the 9th Circuit Court of Appeals in two.

The 9th Circuit, the largest of the 13 courts of appeals, has jurisdiction over federal appeals in nine states, Guam and the Northern Mariana Islands.

The proposed legislation would create a new 12th Circuit Court of Appeals, which would consist of Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington. The re-configured Ninth Circuit would consist of California, Hawaii, Guam and the Northern Mariana Islands.

Daines said in a news release that the Ninth circuit's size and scope deny citizens in its jurisdiction equal access to justice.

"When our courts are overburdened and overworked, Americans are left underserved and waiting too long for justice. It's time to take a serious look at how our court system can better serve the American people," Daines stated. "The Ninth Circuit's jurisdiction includes 20 percent of our country's population, nearly twice the size of the next largest circuit, and holds more than 30 percent of all pending cases. The Ninth Circuit

has failed to adequately serve Americans' needs – it's time a court system that functions and provides the American people with the service they deserve."

Sen. Jon Tester said in a statement that he does not support splitting the 9th Circuit.

"The backlog in our courts system undermines Montanans' access to justice, and the Senate can start to address it by confirming judges who continue to wait for their chance to serve," Tester said. "Congress has a responsibility to make government work more efficiently, but creating a new judicial bureaucracy that will cost millions of dollars does not seem like the right solution."

Tester noted that three judicial nominees for the 9th Circuit Court have been awaiting Senate confirmation since last year. He also noted that according to previous Congressional Budget Office the cost for creating a new circuit would likely be in the tens of millions if not more.

Past attempts to split the Ninth Circuit, the most recent one in 2005, have been unsuccessful.

Judge Koh nominated to 9th Circuit Court of Appeals

SAN FRANCISCO – President Barack Obama on Feb. 25 nominated a federal judge who has presided over patent feuds between Apple and Samsung and other major Silicon Valley fights to the nation's largest federal appellate court.

The White House announced the nomination of U.S. District Court Judge Lucy Koh to the 9th U.S. Circuit Court of Appeals, with Obama calling Koh a "first-rate jurist with unflagging integrity and even-handedness."

Koh, 47, is based in San Jose, California, and has presided over cases involving some of Silicon Valley's biggest companies, among them the patent fight between Apple and Samsung over smartphones. Koh two years ago tossed out an effort to win class-action status for a lawsuit accusing Google of violating the privacy terms of email users. The same year, she rejected a \$324 million settlement in a lawsuit alleging Google and Apple conspired with other technology companies to restrict employee recruiting.

If confirmed by the Senate, Judge Koh would fill a judgeship vacant since Dec. 11, 2015, when Circuit Judge Harry Pregerson of Woodland Hills, California, assumed senior status.

Koh, 47, was nominated to serve as a district judge of the U.S. District Court for the Northern District of California on Jan. 20, 2010. She was confirmed by a unanimous Senate vote on June 7, 2010, and received her judicial commission on June 9, 2010. Prior to coming onto the federal bench, she was appointed to serve as a judge of the Santa Clara County (California) Superior Court in 2008 by Gov. Arnold Schwarzenegger.

Prior to her appointment to the bench, Koh had been a

litigation partner since 2002 with the law firm of McDermott, Will and Emery in Palo Alto, California, where she practiced appellate, commercial and criminal law, intellectual property, and litigation. She also worked as a senior associate at Wilson, Sonsini, Goodrich & Rosati in Palo Alto from 2000 to 2002.

Earlier in her career, Koh served as an assistant U.S. attorney in the Criminal Division of the Office of the U.S. Attorney for the Central District of California in Los Angeles from 1997 to 2000. She worked from 1994 to 1997 in the Office of Legislative Affairs, U.S. Department of Justice, where she served as special assistant to the deputy attorney general from 1996 to 1997 and as special counsel from 1994 to 1996.

Judge Koh received her B.A., magna cum laude, from Harvard University in 1990 and her J.D. from Harvard Law School in 1993. Following law school, she served as a Women's Law and Public Policy fellow for the U.S. Senate Committee on the Judiciary from 1993 to 1994.

The 9th Circuit Court of Appeals hears appeals of cases decided by executive branch agencies and federal trial courts in nine western states and two Pacific Island jurisdictions. The court normally meets monthly in Seattle; San Francisco; and Pasadena, California; every other month in Portland, Oregon; three times per year in Honolulu; and twice a year in Anchorage, Alaska.

The U.S. Court of Appeals for the Ninth Circuit had 11,870 case filings in fiscal year 2015. The court is authorized 29 judgeships, one of which is currently vacant. Two vacancies are scheduled to occur when Circuit Judges Barry G. Silverman and Richard R. Clifton, assume senior status in October and December 2016, respectively.



Koh

McGrath, Shea so far unopposed for high court seats

Unless new candidates emerge in the final weeks of filing, there will only be one contested race among the three Montana Supreme Court seats up for election in 2016.

The Honorable Dirk Sandfur, 8th Judicial District Court judge, and Kristen

Juras, adjunct professor at the University of Montana's Blewett School of Law, have both filed to run for the seat currently held by retiring Justice Patricia Cotter.

As of Feb. 26, Chief Justice Mike McGrath, who was elected to his first term in 2008, and Justice James Jeremiah

Shea, who was appointed to his seat by Gov. Steve Bullock in 2015, had no opponents in their re-election campaigns.

Candidates have until 5 p.m. on March 14 to file a candidacy with the Montana Secretary of State.

Court Orders

DISCIPLINE

Commission on Practice gives public admonition to Anderson

Summarized from findings of fact in case No. PR 15-0247, Oct. 26, 2015

Livingston attorney Kendra Anderson received a public admonition from the Supreme Court Commission on Practice for delaying withdrawal from her representation of a client she had begun seeing romantically.

In exchange for Anderson's conditional admission to the charge, the Office of Disciplinary Counsel dismissed two other counts against Anderson— that she had a conflict of interest in the case and she engaged in conduct that was prejudicial to the administration of justice by

contributing to an acrimonious dissolution proceeding.

In addition to the public admonition, Anderson was ordered to pay court costs.

Commission on Practices gives Peasley letter of admonition

Summarized from findings of fact in case No. PR 15-0623, Feb. 4, 2016

Judith Peasley, an attorney from Kalispell, received a letter of admonition from the Supreme Court's Commission on Practice for a conflict of interest and failure to provide competent representation in her drafting of an irrevocable property trust in 2006. Peasley was also ordered to pay court costs.

Peasley drafted the trust for three clients — a man and his daughter and

stepdaughter— to protect Seeley Lake lakefront property in conjunction with a prenuptial agreement she drafted for the father. The commission concluded that there was a clear conflict of interest because Peasley is the daughter's mother-in-law. She did not obtain written conflict waivers.

Peasley also did not discuss certain terms of the trust with all of her clients.

In 2014, one of the clients objected to the trust and alleged that it was created under undue influence and coercion. The clients set aside the trust to return to their prior ownership status and interests.

Peasley has been suspended from practice since 2011 because she says medical issues prevent her from satisfying continuing legal education credit hour requirements.

Correction

Omission, error in candidate list

An article in the February issue of Montana Lawyer on attorneys who have filed as candidates for the Montana Legislature failed to include Joey Jayne, who filed as a Democrat in Senate District 47 on Jan. 14.

The article also incorrectly identified Kim Abbott as an attorney. Abbott is running against Quinlan O'Connor, who is an attorney, in the Democratic primary

for House District 83 in Helena.

Candidate filing deadline with the Montana Secretary of State's Office is Monday, March 14.

As of Feb. 25, Montana attorneys who had filed for legislative seats included:

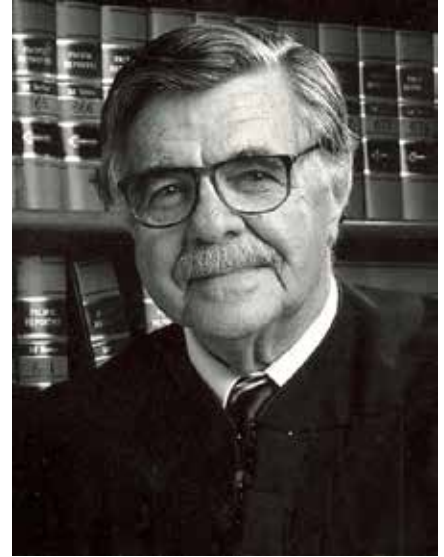
Steve Fitzpatrick, R-Great Falls, SD10
Hertha Lund, R-Martinsdale, SD15
Tom France, D-Missoula, SD47
Joey Jayne, D-Arlee, SD47
Mark A. Dunn, R-Great Falls, HD23
Austin Knudsen, R-Culbertson,

House District 34

Joel G. Krautter, R-Sidney, HD35
Jeff Essman, R-Billings, HD54
Quinlan O'Connor, D-Helena, HD83
Nate McConnell, D-Missoula, HD89
Ellie Hill Smith, D-Missoula, HD90
James Lapotka, R- St. Ignatius, HD93
Kim Dudik, D-Missoula, HD94
Shane Morigeau, D-Missoula, HD95
Andrew Person, D-Missoula, HD96
Andrea Olsen, D-Missoula, HD100

Longtime justice remembered for ruling from heart

Hunt recalled as defender of civil liberties, mentor to young lawyers



**By Joe Menden
Montana Lawyer**

Former Montana Supreme Court Justice William E. Hunt, a self-described liberal who was remembered as one of the giants of the Montana legal community, died on Feb. 16. He was 92.

Hunt was first elected to the Montana Supreme Court in 1985 and served until his retirement in 2000.

Colleagues, friends and family remember him as a fierce defender of individual rights, civil liberties and the environment.

"I think Bill is probably one of the greatest public servants Montana has ever had," said former Justice Terry Trieweiler, one of Hunt's closest friends and allies on the court. "It wasn't about prestige. It was about serving other people."

"I think that people in the positions that he held are under the radar of public consciousness. If you care about the rights of consumers or employees or victims of corporate abuse, you owe him a great deal for the public service."

Hunt was a 1955 graduate of the University of Montana School of Law.

Early in his career, he served as mayor of Chester and Liberty County attorney in the 1960s. As mayor, he was influential in forming the Montana Consumer Council in the late 1960s, and he was a trustee for Central Montana Legal Services. In 1970, Gov. Thomas Judge appointed Hunt as director of the state Aeronautics Board. In 1975, Judge appointed him as the state's first workers' compensation judge.

Hunt was born Feb. 28, 1923. At age 16, he dropped out of high school and gave a false birthdate of Feb. 29, 1920, so he could join the Iowa National Guard and fight in World War II. He participated in the Allied invasion of Normandy on D-Day and the landings in Sicily and Algeria. He was among the first wave of soldiers to storm Utah Beach.

Hunt's son James G. Hunt, himself a Helena attorney, said his father's life was largely shaped by his World War II service,

even more so than for other WWII vets were. He said there is an old saying that the closer you are to the flagpole or the rear a soldier is, the more likely that soldier is to get a medal.

"He never got any real significant medals," the younger Hunt said. "He was always out fighting."

Jim added that you can't talk about his father without talking about his wife, Mary, whom he married in 1952. Jim said that his mother was a major reason for his father's success, noting that his dad literally couldn't cook a can of soup by himself.

Jim said that when the UM law school was considering a scholarship in his father's name, Professor Martin Burke spoke up at the meeting and said they couldn't have a scholarship named for William Hunt without having Mary's name be a part of it.

Mary died in 2009.

Jim said his dad was a kind, loving and generous father. Though Jim and both his brothers, Joe and Bill Jr., became lawyers, he said that wasn't because their father pushed them in that direction. In law school, he said, some classmates assume that children of lawyers have an advantage. For him, that wasn't the case.

"He was a lawyer, but it didn't really define him as a human being," Jim said. "I didn't know anything more about the law (in law school) than anyone else."

In 2000, Hunt received the Montana Trial Lawyers Association's Public Service and Career Achievement awards and the Citizens Award in 2007. He received the 2009 Jeannette Rankin public service award from the ACLU of Montana.

In 2003, he was inducted in the Officer Candidate School Hall of Honor at Fort Benning, Ga.

According to Trieweiler, Hunt put substance over style in the opinions that he wrote.

"He wrote a number of opinions on employer accountability to workers who were injured," Trieweiler said. "He wrote a number of opinions that were significant to consumers. He

had an impact on all of our votes while I was on the court that protected the environment. And he was absolutely devoted to the Montana Constitution, especially those parts of it that protected civil liberties, like the right to free speech, the right to open government, the right to a clean and healthy environment, the right to equal protection. He was just a very strong advocate of individual liberties.”

Trieweiler also said Hunt was an avid bicyclist, even into his 70s taking his bike up into the mountains around Helena and racing back down at 50 mph.

“It used to scare the hell out of me, but he always had a big smile on his face coming back and talking about it,” Trieweiler said. “He loved life and he loved everything about it.”

Many of Hunt’s former law clerks fondly recall their time working for him.

Ericka Johnson, who clerked for Hunt for two years in the late 1990s, said he was a mentor to her “on the grandest scale.”

Johnson said that when she came out of law school she was mostly excited about the academics and the theory of law. She said Hunt taught her that law should have a heart too.

“He ruled from the heart many, many times and then said, ‘Find a way in the law to make this happen,’” Johnson said. “By and large, we always could. The law is gray, and maybe it’s good that it is gray because we can help people for fairness’ sake.”

Johnson added that even though she was in her mid-20s and Hunt was in his late 60s, she developed a friendship with him that lasted years beyond her clerkship.

“I’ve never had a friend like that,” she said. “He was a mentor, a father figure almost. I valued how he approached and looked at life.”

Former Justice Jim Regnier, who served with Hunt in the late ’90s, said Hunt’s way with mentoring young attorneys was a factor of the sense of service of his generation.

“He was from the World War II generation,” Regnier said. “My experience with men and women from that generation is they had an innate sense of fairness and doing what is right and set that as an example for those who worked with them.”

The Honorable Charles E. “Chip” Erdmann, chief judge of the United States Court of Appeals for the Armed Forces in Washington, D.C., served with Hunt on the Montana Supreme Court from 1995 to 1997. Erdmann said Hunt’s death is a significant loss for the Montana legal community.

“He was a prince of a fellow,” Erdmann said. “One of the nicest colleagues that I had up there. He always had time for a chat. He just had wonderful stories of his young days in Missoula.”

Erdmann said he and Hunt were both railroad buffs and that Hunt had worked as a call boy for the railroad in his youth. Hunt’s duties were to rouse the train crews in the morning. Erdmann said Hunt had some colorful stories of his railroad



Photo provided

Former Justice William E. Hunt is shown with his wife, Mary, in this undated photo.

days and always enjoyed telling them.

Erdmann said Hunt was a well-known and colorful character before he joined the Supreme Court because as workers’ compensation judge he would travel to hear cases in different parts of the state and became known as The Flying Judge.

Havre attorney Brian Lilletvedt briefly clerked for Hunt when he was workers’ comp judge.

Hunt ran a tight courtroom, according to Lilletvedt. He remembers a time when a young attorney was arguing a complainant’s case before Hunt, and the attorney and opposing counsel got into an argument about medical records.

“(Hunt) stopped (the argument),” Lilletvedt said. “He said, ‘This is my courtroom. When you are here, you will address me.’”

Lilletvedt said he only clerked for Hunt for a few months, but despite the short time he worked for him, Hunt always kept an interest in his career and what he was doing.

“He was a real gracious individual,” Lilletvedt said. “I think he went out of his way to educate me, to mentor me. He was always good at introducing me to older attorneys.”

Erdmann noted that Hunt’s death came just a few months after the death of former Chief Justice Jean Turnage, calling it the end of an era. Turnage and Hunt both started on the court in 1985 and retired in 2000.

Hunt’s funeral was at St. Helena Cathedral in Helena on Feb. 24. He was buried in Resurrection Cemetery in Helena.

“

He ruled from the heart many, many times and then said, ‘Find a way in the law to make that happen.’ By and large, we always could. The law is gray, and maybe it’s good that it is gray because we can help people for fairness’ sake.

Ericka Johnson, former clerk

”

Panic about e-discovery?

It doesn't take a techie to make sense of tech — learn the basics and rest easy



"There are many who don't wish to sleep for fear of nightmares. Sadly, there are many who don't wish to wake for the same fear."

Richelle E. Goodrich, "Dandelions: The Disappearance of Annabelle."

By Joel Henry and Michael Pasque

Introduction

The subject of electronic discovery (e-discovery) seems to strike fear in lawyers from coast to coast, and border to border. Many legal professionals, from first-year law students to bar presidents, recoil in fear just hearing the phrase. No wonder the entire task of collecting and reviewing documents and emails spurs settlement talks and early retirement considerations. E-discovery should not be a nightmare, yet, quite frankly, the task is like a bad dream from the very beginning. Why?

First, the legal profession struggles with both technology and change. Put them together and we have a very large iceberg. Fear of this unknown, and largely misunderstood, block of ice makes sense. An e-discovery iceberg hides cost and schedule slippage in great quantities below the water's surface. But people with basic knowledge of icebergs know what's under the surface. An attorney need not know a dictionary of technology acronyms, software platforms, hard drive configurations, and complicated algorithms to effectively perform e-discovery. Just some basic knowledge and the right technical support can melt the iceberg. But therein lies the problem — the right support.

Second, this e-discovery support, often camouflaged as

litigation support, can be self-serving. Convincing attorneys that data volumes are large, complexity high, and accuracy critical simply scares the legal field into paying by the gigabyte, by the hour, or both. With no fixed cost the support vendor has no motivation to be efficient. In fact, the more data included and more hours required increases their bottom line. In practice, more than 90 percent of collected data has no bearing on a case. Effective software does the work of dozens of support vendor staff, and the field itself can, and does, offer flat fee pricing. When paying a vendor by the hour, a law firm simply shifts billable hours away to a third party or, worse yet, adds to the total hours billed to the client by combining vendor hours with legal team hours. A vendor who can't commoditize e-discovery shouldn't be your choice of vendors.

Third, effective collaboration with opposing counsel can reduce the data you both must produce. Technology exists to select the most likely relevant data instead of every document and email within a custodian's grasp who ever heard of the controversy at issue. Mutually decide on search terms, or better yet the concepts, you both hope to find, then only retrieve and review that data.

Fourth, understand exactly what e-discovery can produce. Human reviewers consistently miss 35-40 percent of the relevant documents. Of course they do — who could possibly read documents or emails for days and days and be more accurate than that? Technology doesn't get tired but it fails to be perfect. People fail to be perfect and easily tire. The idea that human review sets a high standard of accuracy simply doesn't prove true in practice. Therefore, a technology that consistently locates 80 percent of the relevant documents and emails in 10 percent of the time will always be a

far superior choice to human review. Technology isn't a magic bullet, but it can make the humans involved more efficient, more accurate, and far more productive. Think of how your car with a GPS system makes you more efficient, more accurate, and more productive in getting from place to place. Of course the GPS fails to be perfect but no one trades their GPS for a map and compass.

An e-discovery project need not be a nightmare. A number of simple steps and pieces of knowledge can make these projects ones that do not devour a case or wake you up at night in fear. Don't fear sleeping, or waking up to an e-discovery nightmare. Instead, know enough about e-discovery to implement cost-effective solutions that allow you to practice law and gain the trust of your clients.

E-discovery technology and the legal profession

No one accuses the legal field of being cutting edge when it comes to technology. Attorneys spend much of their time managing client risk or resolving the result of that risk. Yet, lawyers tend to jump quickly on new law in their field of practice. The difference may be perception. Lawyers understand the significant problems they face if they miss a key point of law, so they diligently monitor the case law in their practice areas. Unfortunately, attorneys fail to see the problems they face by moving slowly forward on the technology front. Without technology, attorneys often draft the same contract clause in many different ways, or make arguments on the same point from different angles, or worst of all, miss key facts that could turn their case. The technologies impacting the practice of law — such as e-discovery — should be given the same level of attention as the law itself.

Every profession fears the unknown. Many, however, must embrace the unknown of new technology to stay relevant or even profitable. The refrigerator of today uses a fraction of the power needed by a refrigerator from 10 years ago. Consumers don't buy a new refrigerator every year, but you can be sure refrigerator manufacturers do make new models every year for the crop of consumers that need them. Attorneys must view themselves as manufacturers of legal solutions for a new crop of clients every year. New technology proves to be almost as important as new judicial rulings.

E-discovery technology requires some investment of time to understand, just like a new TV, microwave, thermostat, or automobile. Good technology makes that initial investment small in comparison to the efficiency provided. To start with, focus on what you really need to know and where best to spend your time. Most attorneys don't need to know the complex technology under an e-discovery tool's hood, but they do need to know what goes into the tool, what comes out of the tool, and the cost of what's produced.

First your team must preserve data. An e-discovery technology should be able to collect data from multiple custodians for a particular time period and store the data so it can't be changed. Your team probably doesn't need to know what operating system, programming language, and database must be used to effectively preserve the right data. Does the technology gather the data, store the data in a way that prevents alteration, and allow multiple searches for likely relevant data? Solid answers to those questions provide a defensible and effective collection process.

Second, a legal team needs to find documents and emails with

information about the case from the preserved data sets. You should understand that each data set includes an enormous number of data items that have no relevance to the case or controversy. With that fact in hand, don't accept an e-discovery technology that requires someone to review or tag all preserved data. An effective technology should collect the documents and emails most likely relevant to the case from the preserved data. If the technology requires review of all collected data by a person, you have the wrong technology. Remember, people fail to be perfect, therefore technology need not be perfect to be far superior to people, which is supported by the new proportionality standard in Federal Rule of Civil Procedure 26.

Third, the team must produce data to the other side. This falls into the strictest of black boxes because you know what you need to produce — for example PDF files with Bates stamps that conform to a particular format. Can the technology produce the format needed? If not, will opposing counsel accept an alternative format that keeps the cost of discovery proportional to the case?

Lastly, remember that the learning curve on e-discovery technology must provide a significant return on investment. Part of that return requires looking back at how work was done before e-discovery technology was used. For example, many firms use an inefficient process like this:

Hard copy correspondence comes in the door and is scanned into an image PDF file. This turns out to be a very effective way to prevent users from searching for any words in the document.

Client data continues to arrive in a wide variety of electronic formats on a thumb drive, or even in a single image format.

Your firm pays for the data to be run through optical character recognition, or converted to a single format like PDF, or both, in order to perform basic keyword searches.

Your team loads the documents into a document management system. Worse yet, they create a spreadsheet and enter every document name and a tag for the document generated through manual reviews of each document, removing those protected by rule or law.

You convert the data to image PDFs or TIFFs (both are pictures rather than text searchable documents) and ship the data to opposing counsel.

Opposing counsel performs steps 2, 3, and 4 before getting your production and attempting to cross reference with the data you produced.

You and opposing counsel now realize the case has become about data processing and not law.

One law firm faced this exact situation recently but to a far worse degree. The data produced to the legal team consisted of only 32 PDF files, but a staggering 234,000 pages total. Even more challenging, the pages were all images. The text of each page could be read by a person but could not be searched for a specific word by a computer. Without good technology and technology support, the firm paid to have the pages manually run through optical character recognition only to get back another small set of files with an enormous number of pages. The firm then had to pay to use yet another technology to search, sort, and extract the pages with key information. Fortunately, a vendor with new, easy to use technology saved the day. In a document with thousands of words, the legal team could find the one page containing the text critical to the case.

All these problems could have been avoided with some basic understanding of technology and the appropriate support. This starts with agreeing to a production that does not require data conversion, does not place thousands of pages in a few files, and can be analyzed by software that locates the pages within documents containing key information. Such location shouldn't take days or require additional cost, and should be agile enough to find content on pages when new information about the case arises. The takeaway — learn some basic technology, get the right support, and be a more effective lawyer.

E-discovery vendors

E-discovery vendors, like all businesses, strive for revenue and profit. While document collection, review, and production can be complex, it need not be. If seen as too simple, vendors may not be able to put into place lucrative contracts that grow with the volume of data and, subsequently, personnel hours required. Let's face it, many e-discovery vendors use technical complexity to cultivate fear of the project, or see themselves as capitalizing on law firm challenges rather than being a trusted support vendor providing solutions. Many times a lawyer contacts a vendor with a deadline looming — that's a very poor time to negotiate a contract. In other cases, the legal team has no idea what a project entails, thus any estimate or proposal gets accepted. Vendors should provide cost-effective, accurate solutions that allow legal teams to succeed. After all, that's what lawyers do for their clients.

Vendor communication and professionalism should provide insight into their ability to help you understand the project, the costs, the results to expect, and a reasonable timeframe to complete the tasks. As soon as a vendor starts talking, begin listening for how they can make the project easier, faster, and more accurate. Don't let a vendor deluge you with jargon, acronyms, and techno-speak that lead to larger costs. A vendor should be able to talk to technology professionals one way, and attorneys another. If the vendor confuses the audience, you have the wrong vendor. If you can't understand the vendor, find another you can understand. Misunderstandings mushroom into nightmares, resulting in fear of ever using technology again.

In the recent past, litigation support vendors feasted on time and materials contracts. Law firms that charge clients by the hour understand this type of billing — such costs simply get passed on to the law firm's client. The world has changed. The email software you use doesn't charge by the hour or by the email — it's commoditized. E-discovery has become commoditized as well, meaning that vendors with the right technology can charge flat fees in a tiered fashion. There may be some portion of the vendor contract requiring hourly compensation for vendor personnel but a qualified vendor should be able to accurately estimate this and stand by the estimate unless a major project factor changes (i.e. more attorneys to train, significantly more hands on work, etc.).

Consider the technology used by a vendor. There are two extremes: vendors with their own technology and vendors with a menu of off-the-shelf technology. Vendors on both ends can be good or bad. A vendor with in-house technology may be superior, or far less than acceptable. Suppose a vendor provides in-house technology based on a Microsoft product that is out of date, not properly licensed, and no longer supported by

Microsoft. Further, suppose this vendor used software developers without any formal education in computer science or software engineering. Perhaps website development can be done with such personnel, but few lawyers would trust their data to such an application developed by learn-as-you-go developers.

Conversely, suppose another vendor offers patent pending technology developed by experienced professionals, some with master's degrees in computer science. This company utilizes technology unique on a national stage and can offer both superior price points and accurate results. Without a software supplier, this vendor can adjust price points as needed to meet law firm needs. However, in-house technology should be subject to a price vs. capability analysis. Understanding what the software can't do and what process must be used to complete the project will be key. A lawyer need not be a techie to ask the right questions: what can't the software do and what must my team do to complete the project?

Many e-discovery and litigation support vendors use third-party software solutions. These come with a baseline price from the software vendor and tend to significantly increase the starting point of a bid on any project. Many of these software solutions fall into the category of big software products requiring significant effort to set up, maintain, train, and use. These solutions come with the accumulation of features requested by other law firms all across the world over a period of many years. Think of the biggest multi-player instrument in Dr. Seuss' "How the Grinch Stole Christmas." That software might be just what your team needs, but it might also far more features than you need, all of which you will pay for. Big, do-everything, software packages have another downside: They have so many features that learning the few your team needs becomes much more difficult. How many of those buttons on your satellite TV control do you really use?

One litigation support vendor recently charged a client in excess of \$18,000 to simply obtain preserved data the client extracted from an email system and place all of it in a third-party tool. No selection from the preserved set took place to reduce the amount of data requiring review. No review of data or production had been included in the bid but the vendor was happy to continue to charge the law firm by the hour for both. That's a nightmare to be avoided. Your vendor should be able to preserve, collect, assist in review, and produce data for a flat fee.

E-discovery vendors should strive to solve problems and be seen as an asset to a law firm. The ability to utilize the right software for the project at price points proportional to the case leads to more engagements between legal teams and vendors. When the legal field sees both utility and cost-effectiveness of e-discovery on cases with values as low as \$50,000, the legal field begins to leverage the technology advancements needed to make law affordable and more effective for all. E-discovery vendors must play a role through education which erodes the fear of the subject, improves selection of the correct tools for the project, and includes flat rate, tiered pricing.

Working with counsel

Most pairs of opposing counsel eye each other with respect and trust, until they have reason not to. E-discovery should not be that reason. Unfortunately, the opposite does occur: two

lawyers fear e-discovery so much they avoid it and thus fail to perform due diligence on all sources of facts about their case. This fear can also become the ugly truth behind movement to settle a case. The perceived cost of e-discovery can also motivate these settlement discussions. Neither approach — ignorance or avoidance — meets the level of representation the legal field requires.

When e-discovery must be performed by either party, cooperation and transparency over effort, cost, and schedule ensures trust between opposing counsel. Cooperation goes beyond a basic meet-and-confer conference. E-discovery requires each attorney to talk with their client and IT staff to understand the process used to create electronic data as well as the storage and retrieval process. This forms the basis of the next discussion, namely how to ensure preservation and then how to collect data from the preserved set for review. Data types, locations, and formats should be identified and then a smart collection process used. Smart collection selects from the data set those documents and emails most likely to be relevant, instead of moving all preserved data straight to the review phase.

In another recent example, attorneys at two firms struggled with e-discovery largely due to a vendor, charging by the hour, insisting that many more hours would be required to remove duplicates across the data set and review *all* data preserved. With an estimate that exceeded \$30,000, the firms felt trapped by factors that neither fully understood. Fortunately, another vendor was able to step in and help finish the project — from collection to production — for less than \$9,000. Since both attorneys trusted each other, they were able to take this important step of bringing in another vendor with more effective technology. This vendor focused on the attorneys' needs rather than the opportunity to run up an e-discovery bill.

E-discovery that falls disproportionately on one side of a case can present cooperation issues. Certainly a big national company with many employees generates more email and documents than a single plaintiff. No matter how the burden of e-discovery breaks down between counsel, cooperation must still occur. E-discovery requests that include multiple custodians over a reasonable time range might never be considered overly expansive, yet could be very costly and yield relevant data totaling only 5-10 percent of the total data collected. Counsel can cooperate by discussing exactly what both sides want from the collection and then only select documents and email that meet those wishes. This requires some understanding about the difference between preservation and collection.

Once data preservation has occurred, collection and review cooperation must take place. Preservation means ensuring that electronically stored information (ESI) is protected against inappropriate alteration or destruction, while collection means "gathering ESI for further use in the e-discovery process (processing, review, etc.)."¹ Both legal teams must preserve, but smart collection can save significant costs. Smart collection means selecting the most likely relevant data from the preserved data set. If both counsel can agree on how to smartly collect data, the focus can remain on the practice of law rather than the process of e-discovery while still retrieving the data both parties need. Smart collection can be as simple as mutually agreeing on particularized

search terms, or better yet, concepts that relate to the case. A simple keyword search like "grievance" will return every document or email in the data set with the word "grievance" which might result in a huge, although overly broad, data set to review. However, a concept like "Sally Smith grievance" used with the right technology (i.e. that finds documents with "grievance of Sally Smith" as well as "grievance filed by Mrs. Sally Smith") will return a much more focused data set to review. Smart collection technology can be used repeatedly when new concepts arise during the case or new data augments the collection. Think about the white pages from Chicago with tabbed pages separating the letters of the alphabet — you don't review the entire phone book for Sam Jeffcoat, you go to the J's. To make this work, both counsel must cooperate.

Smart collection produces a much smaller, more focused data set to review. Counsel then should use a cost-effective, accurate review technology. Human review might be cost effective if every review hour can be billed to the client *and* the client agrees to pay for those hours. However, savvy clients, especially corporate and insurance companies, will demand review software be used that reduces review time while maintaining accuracy. Keeping in mind that human reviewer accuracy rarely exceeds 65 percent, software that meets this low threshold and cuts review time in half becomes a must. Review should focus on identifying privileged documents and emails, as well as other data protected by HIPPA, FERPA, and other state and federal law. Identifying relevant data during review will also be key as counsel will be searching for facts that support the case on either side. Review should be focused, efficient, and the resulting data easily produced in a format that saves time and expense for both attorneys, and subsequently their clients.

Production is the last step in the e-discovery process. A reasonably sized, focused set of data has been collected, reviewed, and stands ready to be produced. Counsel should agree on the data type and organization for the production. There is no reason for one attorney to convert text searchable files to image files, or, worse yet, print and then scan documents into image files only to have opposing counsel pay to have the documents converted back to a text searchable format through a costly optical character recognition process. Matching the data type produced to the data type needed for review by the receiving party makes production faster, cheaper, and far less likely to be a source of contention.

On the topic of production format, many firms still view production as a set of TIFF files, which in fact are images. It is much better to produce in the format of the original data or standard PDF files that can be text searched. Nearly all document management systems and review tools handle PDFs efficiently and nearly all production tools produce PDFs. Keeping production simple and matching the produced data type and organization to the receiving party's needs facilitates using electronic data to support legal work rather than clashing about e-discovery and using legal work to defend the e-discovery process.

Working knowledge of e-discovery

While e-discovery does not require an attorney to become a techie, some working knowledge of the field leads to smoother,

¹ EDRM, EDRM Stages, edrm.net, <http://www.edrm.net/resources/edrm-stages-explained> (last visited Feb. 16, 2016).



Recent high-profile data breaches — and lessons learned from them

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

We should be grateful for other peoples' data breaches — they help us to improve our own security. In our breach-a-day world, we seem to have more data breaches than ever. They come fast and furious — rare is the day when we don't hear of one or more breaches on the evening news or through online media. Attack vectors change constantly — those of us in information security have a deep sense of humility in the face of constant changes in threats as well as technology, policies and training to defend against those threats.

Here are a few of the famous data breaches of 2015 (and one from 2014) with lessons to be learned from how they happened.

Office of Personnel Management

This was probably the most controversial breach of 2015. In May, the federal Office of Personnel Management reported a breach affecting 4.2 million current and former federal employees. A few days later, it revealed a second breach (lesson here: don't speak too quickly about data breach specifics). The second breach brought the number impacted to 22 million people who had applied for government jobs or security clearances. Data from some applicants' family members was also compromised. The data taken included names, addresses, names of relatives, employment histories and health care histories. There was a lot of talk about the fact that 5.6 million digital fingerprints were compromised, giving rise to concern about the security of biometrics. Members of law

enforcement, the intelligence community and the federal court system were all impacted. Some of the data included information on peoples' sex lives, drug and alcohol problems and debts, all of which could be used for blackmail.

The press confirmed through multiple sources that the government had concluded that China was behind the hack. But it declined to overtly accuse China because revealing technical details of how they attributed the breach to China would tip off hackers to the ways that American intelligence agencies track them.

Computer security firm CrowdStrike, which has close ties to U.S. law enforcement, said it had traced the breach to hackers it said were "affiliated with the Chinese government," using forensic information from the hack provided by the government. The director of OPM resigned.

The breach went undetected for 343 days – it was ultimately discovered when anomalous SSL traffic and a decryption tool were observed within the network.

Though the U.S. has not talked publicly about how the breach happened, U.S. Department of Homeland Security official Andy Ozment testified that the attackers had gained valid user credentials to the systems they were attacking, likely through social engineering.

VTech Holdings

This Hong Kong digital company was the victim of one of the year's biggest hacks in November when its Learning Lodge database was compromised, permitting hackers to get adults' profile information, e-mail addresses, passwords, chat logs and audio files — and the names, home addresses, first names and birthdates of millions of children and their photographs. Some of the audio recordings were of children's voices from VTech's Kid Connect, a service that allows parents and kids to chat via a mobile phone app and a VTech tablet. The release of the information of children was particularly disturbing and garnered a lot of publicity.

So how did the information of over 6 million people get exposed? According to security researchers, the hacker used an SQL injection to gain root access to VTech's web and database servers. Users' passwords weren't properly scrambled and hashed. The MD5 algorithm that VTech used had been known to be vulnerable for a decade or more. Worse yet, the company stored customers' security questions and answers in plain text, a clear security no-no. The reported hacker said that the entire purpose of the hack was to expose the security flaws and said he would not use or publish the data.

Besides mishandling the data from a security perspective, one wonders why the company needed to store this much data to fulfill its business purposes. It is a common problem — storing data one does not need, which itself creates a potential vulnerability.

Anthem

In February, health insurer Anthem said that hackers had accessed its servers and downloaded the personal data of employees and those who were insured by Anthem. Even those who were not Anthem customers may have been impacted because

Learn more about cybersecurity, tech

The State Bar's St. Patrick's Day CLE at Fairmont Hot Springs is chock full of information on the interplay between technology and the law, including what attorneys should know about cybersecurity. Go to page 20 for more information. A one-hour webinar on cybersecurity is also available. See page 21.

Anthem handles paperwork for smaller insurers. Data stolen included names, addresses, birthdates, Social Security numbers, and employment information, including salaries. There were 79 million records compromised and dumped online — this was the largest data breach of 2015.

This breach occurred because the hackers had gained access to the login credentials of employees with system access. How? Reportedly, the credentials were obtained through a watering hole attack. A watering hole attack is a security exploit in which the attacker seeks to compromise a specific group of end users by infecting websites that members of the group are known to visit. The goal is to infect a targeted user's computer and gain access to the network at the target's place of employment.

In this case the attackers created a bogus domain name "we11point.com" (based on Wellpoint, the former name of Anthem). In this cases, the hackers set up subdomains which were designed to mimic real services such as human resources, a VPN and Citrix server. By then sending phishing e-mails, users may have been lured to infected websites and entered their log-in credentials. A number of security companies believe the hack came from Deep Panda, a Chinese-based hacking group.

The breach was undetected for nine months and was discovered when a systems administrator noticed that a legitimate account was querying internal databases but without the legitimate user's knowledge.

There are similarities between this attack and the breach of Premera Blue Cross in 2015, impacting 11 million people — are they related? Impossible to say, but another bogus domain name "prennera.com" was discovered in the Anthem investigation.

Pentagon

In July, alleged Russian hackers hacked an unclassified e-mail server of the Pentagon. U.S. officials announced that Russia had launched a "sophisticated cyberattack" against the Pentagon's Joint Staff unclassified e-mail system. The officials added that the cyber-attack compromised data belonging to 4,000 military and civilian personnel who worked for the Joint Chiefs of Staff.

As the attack was later described a "spear phishing attack," it doesn't on the face of it sound all that sophisticated. However, Department of Defense officials continued to call it the "most sophisticated" cyberbreach in U.S. military history. Officials spent 10 days scrubbing the system and creating mock hacking scenarios before giving military personnel access to it again. The spear phishing attack targeted the personal information of scores of users. What may have made this attack sophisticated is

Breaches, page 19

Fastcase's Ed Walters to speak on copyrighting the law

The law is not copyrightable.

At least that's what Ed Walters of Fastcase believes. To back up that belief, Fastcase has filed a lawsuit against Casemaker in the U.S. District Court in Atlanta. According to our friend and colleague Bob Ambrogi, "Casemaker's parent company, Lawriter, has an agreement with the Georgia Secretary of State designating it as the exclusive publisher of the Georgia Rules and Regulations and giving it the right to license that content to other publishers."

It seems pretty crazy that Casemaker thinks it has an exclusive right to provide court data to the public. Just because some states don't have the budget dollars to post court information online for the public shouldn't mean that the service provider owns the data.

ABA TECHSHOW 2016, March 16-19 in Chicago, is honored to have Ed as a speaker at this year's conference. He will be speaking with Adam Nguyen on what's-sure-to-be a fascinating session titled "Data is the New Oil – Lessons from

Standard Oil, Smart Diapers, and Uber for Law Firms."

— John W. Simek, Sensei Enterprises

Dean's Roundtable to discuss teaching tech in law school

It's TECHSHOW's 30th anniversary and this year, for the first time, an academic specific event is going to be tied to the conference. This special half-day conference, will take place on the morning of March 16. It's an opportunity for law school faculty and administration, law students and practitioners to discuss the "how and what" of teaching technology as well as develop a framework for adding an academic track to the 2017 program. Law students are particularly encouraged to attend the event and the show.

Pricing for law student admission to TECHSHOW itself is only \$100 but registration is free for the Roundtable. Attend the Deans Roundtable for free.

In July, 2014 and again in April, 2015, the University of Missouri – Kansas City hosted two conferences on Law Schools, Technology and Access to Justice. These conferences were supported by the

ABA TECHSHOW discount

State Bar of Montana members get a substantial discount on ABA TECHSHOW registration. To learn more, see the ad on page 29.

Ewing Marion Kauffman Foundation and brought together academics, legal technologists and members of the Access to Justice community. One of the stated goals of the conferences was to produce a specific direction for the teaching of technology in law schools. A set of principles, referred to informally as the Kansas City Principles, were developed and state as follows:

If you are planning to attend the ABA TECHSHOW, the Dean's Roundtable will be a great way to start the event!

Teaching Technology in the Academy: Are We Finally at the Tipping Point?, A Law School Roundtable discussion held in conjunction with the 2016 ABA TECHSHOW, will be hosted by IIT-Chicago Kent School of Law, it will be held March 16, 9 a.m. to noon.

There is no charge for registration.

Message, from page 3

barriers from alternative service providers and will enact regulatory models for these providers as the economy for these services expands, with or without the guidance and assistance of the organized Bar. ABA Resolution 105 is an effort to begin providing reasoned guidance and reminds the profession that it must remain relevant by actively addressing changes in the practice in a

way that makes protection of the public and promotion of the rule of law the core principles of any new regulatory models. If we do that, the profession will prosper.

President-Elect Bruce Spencer and Bar staff are organizing the annual May Trustees Long Range Planning meeting to continue exploring ways the Bar can help members address changes in the practice and will be including presentations from Legal Zoom, Avvo, Rocket Lawyer, Clio, MyCase, Agile Data Solutions and

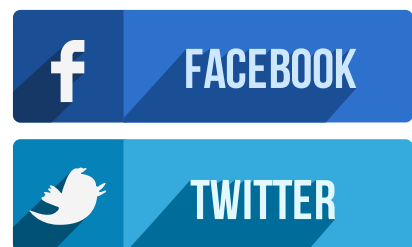
Montana Legal Services Association. We hope to have an engaging discussion with these service providers and MLSA about their vision of the future of legal services and the regulations that may follow. It is the duty of Bar leaders to examine and struggle with these issues. We may not reach a consensus on the approach your Bar should take, but we should all agree to maintain a seat at the table and provide the guidance that only a profession can.

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House of Delegates divided on regulatory objectives

A divided American Bar Association House of Delegates at its mid-year meeting approved a group of model regulatory objectives for states to use if they choose to develop or expand nontraditional legal services.

The final vote on Resolution 105 was adopted through a voice vote after a nearly two-hour debate. While setting out broad principles, such as protection of the public, transparency of services and delivery of affordable and accessible legal services, the proposal was criticized for encouraging delivery of legal services by non-lawyers and companies not guided by principles of the legal profession.

The proposal was one of more than two dozen resolutions approved by the House of Delegates, which determines association-wide policy, at the ABA Midyear Meeting in San Diego. The resolution drew about 45 requests to speak on behalf of the resolution and another 35 against it although most waived the right to speak.

The resolution acknowledges the new developments in the legal marketplace and sets out 10 regulatory principles to guide each state's highest court as it assesses existing regulatory frameworks and any other regulations related to non-traditional legal service providers.

"We must embrace change in terms of how it will help the public that we are sworn to serve," said Judy Perry Martinez, who chairs the ABA Commission on the Future of Legal Services. She added the resolution is "neutral" to the concepts of alternative business structures and fee splitting.

In other action, the House approved:

■ Resolution 100 encouraging informed and voluntary use of alternative dispute resolution as a means to resolve health care disputes. The hope is that ADR would help settle disputes

and reduce the cost of health care, attributed for about 17 percent of the U.S. economy.

■ Resolution 102 urging legislatures to repeal or amend all statutes criminalizing consensual noncommercial sexual conduct in private and between persons who have the legal capacity to consent. The resolution would not seek repeal of criminal statutes for behavior that is nonconsensual, commercial or public, or that involve individuals who lack the legal capacity to consent.

■ Two resolutions related to diversity and inclusion. Resolution 107 asks state licensing and regulatory authorities that have mandatory or minimum continuing legal education requirements to include, as a separate credit, those programs regarding diversity and inclusion for the legal profession. Resolution 116 urges U.S. public companies to diversify their boards to more closely reflect the diversity of society and the U.S. workforce.

■ Two resolutions dealing with the Uniform Bar Examination, administered by the National Conference of Bar Examiners. Resolution 109 urges bar admission authorities to adopt such an exam in their jurisdictions. Resolution 117 asks these groups to consider the impact on minority applicants in deciding whether to adopt the Uniform Bar Examination.

■ Resolution 110 urging the U.S. Supreme Court to record and make available video recordings of its oral argument.

■ Resolution 115a embracing the Revised Uniform Athletes Agents Act, developed by the National Conference of Commissioners on Uniform State Laws as an appropriate path to follow for those states seeking to adopt laws governing sports agents who seek to represent student athletes.

Breaches, from page 17

that the hackers used "an automated system, rapidly gathered massive amounts of data and within minutes distributed all the information to thousands of accounts on the Internet." Encrypted social media accounts were used to coordinate the attack. If true, that might qualify this attack for the adjective "sophisticated."

Ashley Madison

The Ashley Madison dating site breach impacted 37 million people and gave high-value entertainment fodder to pundits everywhere. This was an unusual hack, in that it seemed to be rooted in the moral convictions of the hackers, called The Impact Team. They wanted the site, whose tagline is "Life is short. Have an affair," to take the site down.

They also wanted Avid Life Media's "EstablishedMen.com" site taken down. When the site's owner refused to take the sites down, the data was made public in spurts.

The breach was reported in July, and data compromised included emails, names, home addresses, sexual fantasies and credit card information. All of the user data was released on Aug. 18, 2015. More data (including some of the CEO's emails) was released on August 20, 2015. The release included data from customers who had earlier paid a \$19 fee to Ashley Madison to allegedly have their data deleted. It turned out to be a boon to divorce lawyers everywhere. No doubt many members were shocked to find out that most of the women on the site were "bots" — employees who pretended an interest in an affair as part of inducing

additional payments to Ashley Madison — and of course users had no clue that they had agreed to the use of bots when they accepted the terms of service.

The data was made vulnerable by a bad MD5 hash implementation. We are not sure how the hack actually happened but The Impact Team itself said this: "Nobody was watching. No security. Only thing was segmented network. You could use Pass1234 from the internet to VPN to root on all servers."

In an interesting side note, as of Jan. 1, 2016, Ashley Madison's membership has supposedly increased by more than 4 million since the breach. Go figure.

Sharon D. Nelson and John W. Simek are the president and vice president of Sensei Enterprises, Inc., a legal technology, information security and digital forensics firm based in Fairfax, Virginia.

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

St. Patty's Day CLE will help attorneys harness technology to improve practice

Seminars on Hidden Profitability, Trends in Environmental Law also on schedule for March

Learn how you can use technology to make yourself a far more effective lawyer by attending the St. Patty's Day CLE March 11 at Fairmont Hot Springs.

This CLE brings together acclaimed experts on the interplay between the practice of law, network and cyber security, and digital forensics. The seminar will offer a deeper exploration of these topics than traditional CLEs.

Another reason you might want to attend — the seminar is approved for 6.25 Ethics CLE credits.

Brendan O'Connor, a senior security adviser at Leviathan Security Group in Seattle, will discuss the nuts and bolts of ensuring that your practice is secure — from document management and preparation to client and attorney communications.

In the afternoon session, Sherri Davidoff, CEO of LMG Security and the co-author of "Network Forensics: Tracking Hackers Through Cyberspace," and Karen Sprenger, chief operations officer at LMG Security, will discuss proving your case with digital forensics.

Davidoff and Sprenger will discuss how to develop your digital forensics case strategy, preserve electronic evidence such as emails, deleted files, text messages and more, and present technical evidence in a compelling way that judges and juries understand. Along the way, we'll show you how to cross-examine a technical witness, and highlight common evidence-preservation mistakes that you can use to poke holes in opponents' cases.

Hidden Profitability

This CLE on Friday, March 18, will provide the tools you need to unlock the hidden value in your firm.

Faculty are: Steve Crossland, Board Chair of Washington LLLT and past president Washington State Bar Association; Jesse Laslovich, chief legal counsel to Montana's Commissioner of Securities and Insurance; Paula Littlewood, executive director, Washington State Bar Association; R. Allan Payne CEO, Doney Crowley P.C.; Tammie Lund Smith, Paralegal; and moderator Jacqueline R. Papez, Doney Crowley P.C.

Trends in Environmental Law

This CLE on Thursday, March 24 in Helena brings together

professionals from various different backgrounds to discuss current and emerging issues in the practice of environmental law in Montana. Some of the highlights include a panel discussion on Innovations and the Endangered Species Act; and Montana Updates and Perspectives on the controversial clean Power Plan.

Faculty are: Jack Connors, Doney Crowley PC; Sonya Germann, Montana Department of Natural Resources and Conservation; Anne Hedges, Montana Environmental Information Center; Victoria Marquis, Crowley Fleck, PLLP; Jacqueline Papez, Doney Crowley PC; Mark Phares, Montana Department of Natural Resources Conservation; Ben Reed, Montana Department of Justice; Mac Smith, Doney Crowley PC; Carolyn Sime, Montana Sage Grouse Habitat Conservation Program; Chris Stoneback, Crowley Fleck, PLLP; Mike Uda, Uda Law Firm; and Zach Zipfel, Montana Fish, Wildlife, and Parks. Moderators are Frank Crowley of Doney Crowley and Martha Williams of the Alexander Blewett III School of Law.

Upcoming CLE of Interest

March 4 — Missoula, St. Patrick Hospital – Estate Planning End of Life and Health Care Planning, 4 CLE

March 11 — Fairmont — Annual St. Patrick's Day CLE, 6.25 Ethics CLE

March 18 — Helena — Hidden Profitability CLE, 6.0 CLE credits

March 24 — Helena — Trends in Environmental Law, 6.5 CLE credits, including 1.0 Ethics

March 30 — Webinar — TBD

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

April 6 — Wednesday Webinar — TBD

April 8 — Great Falls — MTLA Spring CLE

April 12 — Wednesday Webinar — Reference Based Pricing, presented by the Health Care Law Section's Steve Kreitner

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

April 22 — Bozeman — Family Law, General Practice

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

May 6 — Helena — TBD

May 13 — Missoula — Bench Bar Conference

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

June 8 — Helena — Montana Bankers Association CLE

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

Continuing Legal Education

Online recorded CLE catalog a convenient way to earn credits

Need some last minute credits to round out your 2016 CLE requirements?

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

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

The bar's recorded CLE content is

updated continually. Some of the most recent additions include:

Estate Planning, presented by Missoula elder law attorney Lou Villemez, originally presented, Feb. 24, 1 self-study CLE credit.

Cybersecurity in the Law and the Effect of Cybercrime on Attorneys, presented by attorney Erin MacLean of Freeman and MacLean of Helena and Deb Micu of Micu consulting, originally presented Feb. 17, 1 self study CLE Ethics credit.

Montana Child Support Enforcement Division Requirements

Revisited, presented by Montana CSED Administrative Judges Robin Hall and Caroline Riss, originally presented Feb. 10, 1 self-study CLE credit.

Investigating Health Care Fraud in Montana, presented by Montana Assistant Attorney General Chris McConnell and Assistant U.S. Attorney Megan Dishong of Missoula, originally presented Jan. 7, 1 self-study CLE credit.

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



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* Not necessary for State Bar-sponsored CLE

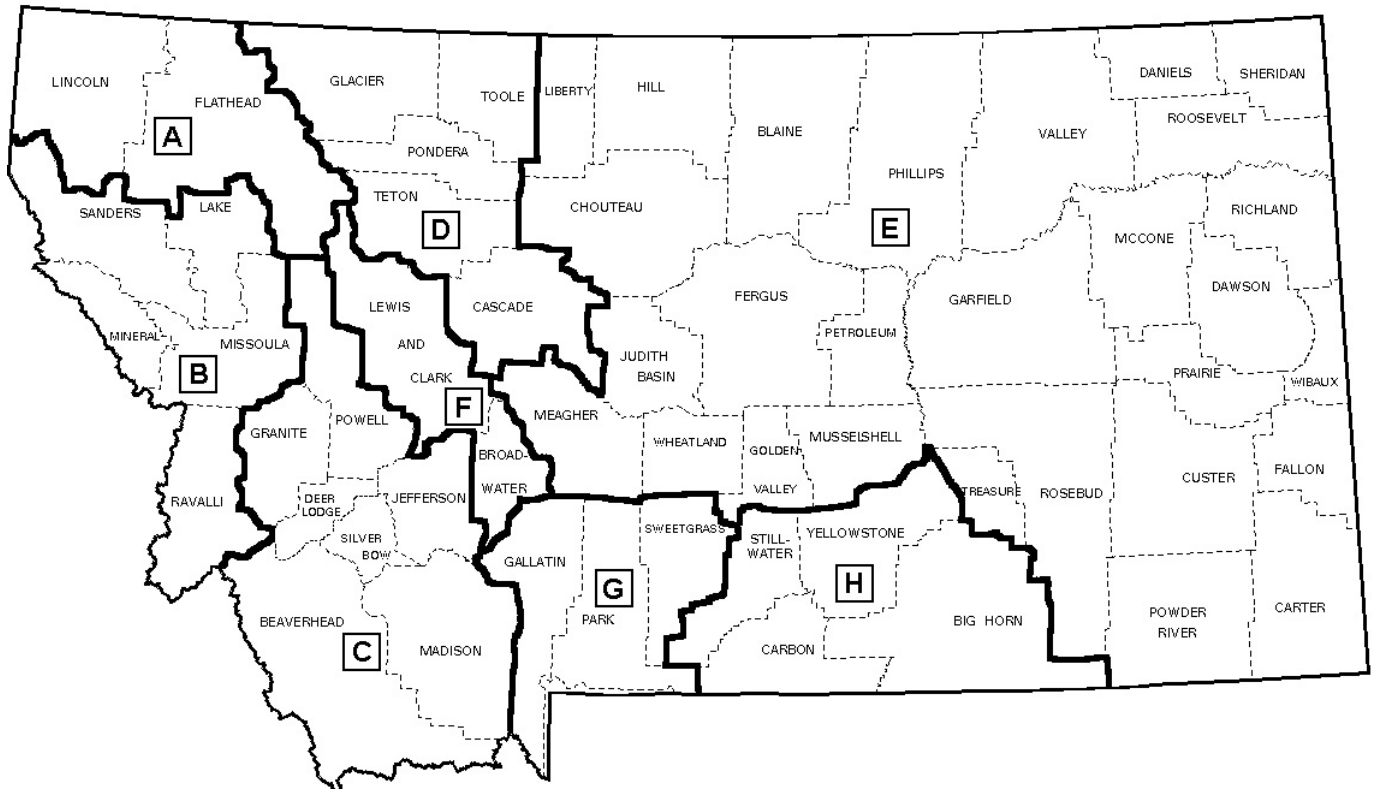
State Bar of Montana elections begin

Election season is under way for State Bar positions. Letters have been sent to those whose terms are expiring. A copy of the nominating petition is on page 25, and at www.montanabar.org. See schedule below for details. The following positions are up for election: Trustees for Areas A, B, C, D, and G; ABA Delegate; President-Elect.

2016 election calendar

- March 2 — Letters to Areas A, B, C, D, and G trustees, and ABA Delegate whose terms are expiring, enclosing nominating petition and deadline for returning to bar
- April 4 — Filing deadline for original nominating petitions (Postmarked or hand-delivered 60 days before election)
- April 8 — Ballots to printer
- May 2 — Ballots mailed to Bar members
- May 23 — Ballots postmarked or hand-delivered
- June 3 — Ballots counted, affidavit signed by canvassors; Winners and losers notified by executive director

State Bar Trustee Areas



2016 Nomination Petition

State Bar President, ABA Delegate and Trustee Election

I, _____, residing at _____,
am a candidate for the office of () President-Elect; () Area A Trustee; () Area B Trustee; () Area C Trustee; () Area D Trustee; () Area G Trustee; () State Bar Delegate to the ABA at the election to be held on June 3, 2016. I am a resident of Montana and an active member of the State Bar of Montana. I request my name be placed on the ballot. The term of office of the President-Elect is one year. The term of office of the ABA Delegate and of the Trustee is two years.

Signature _____

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

NAME

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Return this petition to State Bar of Montana, P.O. Box 577, Helena MT 59624, postmarked no later than April 4, 2016.

Ballots will be mailed to Bar members on May 2, 2016, and must be returned to the Bar by May 23, 2016.

Think you don't need malpractice insurance? 'Going bare' could be costlier than you knew

Mark Bassingthwaite, Esq.
mbass@alpsnet.com

I will admit I honestly don't understand why a lawyer would ever decide to not buy a malpractice policy; but many lawyers do just that and the reasons I hear are many. Some justify their decision by declaring that malpractice premiums are not affordable. "Just look at what doctors have to pay," they'll tell me. Others have decided that if they ever get sued they'll just declare bankruptcy in order to avoid the loss. Then there are those who choose to self-insure thinking that the premium savings will more than offset any possible loss. I've even had attorneys tell me they've chosen to protect their assets in others ways. And then there's this one. "Having a malpractice policy simply invites claims. No insurance means no one will ever sue me because there's no deep pocket." I just shake my head over the naivety of that belief.

As lawyers we are to protect the interests of our clients. In addition, lawyers and those in their employ can and will make a mistake from time to time. None of us is perfect. In fact, even good lawyers who do great work can still get sued. It happens. We've handled such claims. The question, however, is this. Should a significant misstep ever occur on one of your client matters, what might the fallout be? Think about the answer as a member of our learned and honorable profession. Clearly if and when a significant misstep occurs, the client will be harmed in some fashion. Now put yourself in the client's shoes and ask yourself who should be held responsible, particularly if a financial loss is part of the equation? You know darn well what the answer is. After all, if a lawyer representing you on a personal injury matter blew a statute that resulted in a lost opportunity for any kind of recovery you would expect to be made whole, and you know it. You see, insuring for malpractice isn't

about protecting yourself. It's about protecting your clients should something go wrong, and that's the way it's supposed to be.

Now let's talk about a few specifics. While numbers vary between the states and over time, approximately 4 to 5 percent of lawyers practicing in the U.S. will face an allegation of malpractice in any given year. A significant number of these allegations will resolve without any loss being paid; but this doesn't mean the claim has no impact. Time and money are going to be in play. Claims can easily take 6 to 24 months to resolve. Defense costs on a claim with any merit at all can break that \$100,000 mark before you know it. But that's not all. Lawyers who are sued often see their income drop for a period of time, particularly if they're self-insured and forced into devoting precious time defending themselves or if the situation has made it into the local news. Making matters worse, if the claim becomes something of a topic among the local bar and part of the story is that the involved lawyer is "bare," it's pretty much a given that good referrals from other lawyers are going to drop off.

Next, let's discuss the affordability issue. While I get that the term "expensive" is relative to one's financial reality, legal malpractice policies are nowhere near as expensive as some medical malpractice policies. In addition, the initial premium is going to be much less than what lawyers who have been in practice and insured for a number of years will be charged. This is simply due to the fact that coverage will start from the date a policy is first purchased because you can't buy coverage for work you've done in the past. In other words, newly insured lawyers have limited exposure because they don't have a substantial amount of covered legal work under their belts yet. The odds of a covered claim arising from a newly insured practitioner are going to be much lower than

those for a lawyer who has been insured and in practice for 10 years or more. Yes premiums will rise for a period of years as the newly insured lawyer does more and more work, but all things being equal, it should stabilize about six years in.

Finally, let's take the "It's the right thing to do" argument off the table for a moment and just focus on the financial risks and realities in order to address those who buy into the de facto self-insure approach. If you count yourself as a member of this group, are you religiously setting aside whatever you would have spent on premiums to deal with an allegation of malpractice? All I can say is that I've never come across a situation where that was happening; and truth be told, unless that pool is well into the six digits it's not going to be enough to put on a good defense, let alone cover a sizeable loss. Leverage those dollars and buy a policy. You will never be able to build a pool of funds in the small firm self-insure model that comes close to the amount of coverage (not to mention peace of mind) that those same dollars could buy. But of course, we can't take the "it's the right thing to do" argument off the table because we are professionals who still have the privilege of self-regulation and our rules require that we protect the interest of our clients. The most cost-effective way to do so is through the purchase of an appropriate level of malpractice coverage.

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

cheaper, and more effective processes. Every lawyer must sort through issues and facts to find those that support the case and e-discovery turns out to be much the same, focusing on what relates to the case by eliminating what doesn't early on.

Preservation means "don't delete or alter" electronic data. If you don't need extraneous items like metadata, get the IT staff or client to make a copy of the data by custodian and time period. Put that data somewhere with protection so that no one can get to it without permission. On the other hand, collection means "select the most likely relevant" electronic data. That does not mean every single data item preserved. Review should be done on this smaller data set and be supported by software that makes review fast, accurate, and self-checking. For instance, if you mark one email privileged then other email should be found with similar content. Production should be easy for the producing party and match the format needed by the receiving party. Focus on what comes out of each phase and make certain the transitions happen smoothly. Don't try to understand the technology in each phase, the proof lies in the output of each phase. You don't need to know how to make a soufflé to know when you taste a good one.

Accept that e-discovery will not be perfect but will be far more effective than human review of thousands of pages over days or weeks. Human error rate, plus inordinate amounts of time, ensures inefficiency. If you are concerned the technology might miss something important, focus on what you are looking for rather than avoiding the technology. If a search for data based on the concept "Alice Smith prescription medicine" doesn't produce what you think might be hidden within 100,000 emails, redefine your search. Perhaps, "Mrs. Smith dosage" or "Smith drug order" might work better. This is where a smart vendor will offer helpful support. Let the technology do the work and don't let a vendor convince you that every search requires hours of vendor staff time.

Understand the best e-discovery software and vendor cannot make these processes fast and easy. However, don't let the vendor turn the project into a mystifying, cost-escalating nightmare that swallows the entire case. Expect to ask questions and make adjustments to the process. Demand that the vendor answer the questions in a language you can understand. If you come away from a conversation dazed, confused, and worried, you have the wrong vendor. Switching vendors midstream should not set the project back, and good vendors will help you down the road as you continue to use their processes in other cases.

One vendor recently took over a project with more than a million emails in the preservation phase from another vendor. Despite the terminated vendor's assertion that the new vendor would fail, the project moved to completion at one-third the cost projected by the terminated vendor. This resulted in a successful e-discovery process for the lawyers and instilled confidence in e-discovery as a system. More importantly, it proves that you can change vendors midstream.

E-discovery on the majority of cases should not cost tens of thousands of dollars. The right technology, used correctly by cooperating counsel, can make e-discovery proportional to cases once thought to be too small for technology. Get bids from

About the authors

Joel Henry is a practicing attorney as well as a professor of computer science and adjunct professor of law at the University of Montana. He serves as president of Agile Data Solutions Inc., an e-discovery service and software provider based in Missoula. Agile's clients come from across the U.S. giving Joel a broad base of experience in both the technology and law involved in solving client email and document review challenges.



Michael Pasque is a candidate for Juris Doctorate in 2016 at the Alexander Blewett III School of Law at the University of Montana. He works with the UM Office of Legal Counsel at UM and is a client support specialist with Agile Data Solutions. He too has gained great insight into the challenges of finding digital evidence in large amounts of data.



multiple vendors, but don't let the low bid automatically win. Ask what your client gets from each phase of e-discovery and what your firm must do within the process. This should shine light on how the process will or will not work, and make transparent the effort needed by your legal team. If one vendor can handle the entire process, preservation to production, ask for a specific price for each phase. This will expose whether the vendor has a well-designed process, if the vendor truly has one.

Basic knowledge of e-discovery can be easily gained without drowning in technical jargon. Attorneys can do this, just as we learned to use Fastcase, Westlaw, and Lexis. In the end, the time needed turns out to be reasonable. After all, just because many of us drive cars, few of us actually qualify as automotive engineers.

Conclusion

E-discovery should not be a nightmare to avoid but rather a cost-effective and accurate way to find key facts and information about a case. A working knowledge overcomes fear of technology. Understanding how to get the most from vendors, instead of them getting the most from you, will help immensely. With knowledge of the process and acceptance that human review simply does not set the gold standard, you can make e-discovery a process that supports the focus of your work — the law. Sure, one article and one e-discovery case cannot make you an expert, but you need not be an e-discovery expert to cooperate with opposing counsel and leverage a vendor to provide a solution that makes sense for your case.

Sleep well, and wake up with a smile. E-discovery, and document review in general, do not live under the bed until darkness falls, emerging as your worst nightmare. Understanding, cooperation, the right vendor, and the right expectations allow you to rest easily, only worrying about the legal aspects of your work. We are on our own there!

Urban Leo Roth

Urban Leo Roth, 85, passed away from complications of a broken hip, Jan 9 in Phoenix, surrounded by his loving family.

Born May 6, 1930, in Billings, Urban attended the University of Maryland and received his BA at MSU, now the University of Montana, in 1956. In 1957, he was awarded his law degree from the University of Montana and was admitted to the State Bar of Montana. From 1957-1958, he clerked for the Chief Justice of the Montana Supreme Court.



Roth

Urban married Donna Evans (Roth) in Helena and were happily married for 50 years.

In 1958, Urban joined Poore and Poore, a law firm originally founded in 1914 and one of the oldest law firms in Montana. Several years after joining the firm, Urban became a full partner when the firm became Poore, Roth & Robinson, P.C. He practiced law until retiring in the 1990s to Flathead Lake. Urban spent his retirement years as a part-time attorney providing pro bono and mediation services, traveling around the world with his wife, golfing, playing tennis, skiing, playing cribbage and enjoying friends, family and life on Flathead Lake in the summers and winters in Arizona.

Urban loved the practice of law. He was admitted to practice before all Montana Courts, U.S. Tax Court, Federal District Court for Montana, 9th Circuit Court of Appeals and the United States Supreme Court. Urban was a member of the American Panel of Arbitrators, American Arbitration Association, Fellow of American College of Trial Lawyers,

Member of American Board of Trial Advocates (President Montana Chapter), Secretary of the Montana State Bar 1963-1964 and was listed "Best Lawyers in America" in Commercial and Products Liability Litigation.

Urban's love of the law exposed him to many facets of practice. He was author of "Effect of Recording Federal Oil and Gas Lease Options" and "Acquisition of Mining and Mine-Related Rights Through Eminent Domain", as well as many other Law Review articles. He was the Chief Negotiator for State of Montana for the Reserved Water Rights Compact Commission, when he successfully compacted with the Fort Peck Reservation to resolve reserved water rights on that reservation. Possibly his most enduring case, where he served as Special Assistant Attorney General of Montana, was *Montana v. United States*. Urban argued successfully before the Supreme Court of the United States in 1980, with a 6-3 decision in 1981, which set precedent that stands today. The case addressed the Crow Nation's ability to regulate navigable waters, hunting of migratory birds, and fishing on the Big Horn River on tribal lands by a non-tribal member, and concerned the tribes' treaty rights and sovereign governing authority on Indian reservations. The legacy of this case permits regulation of many non-Indian operations on tribal land, including a tribes' right to regulate bingo enterprises. It established two conditions under which a tribe can regulate the activities of non-tribal members. This 1981 decision has continued as a precedent in nearly every legal case involving the jurisdiction of the tribes over non-tribal members.

Urban is survived by his beloved wife, Donna and sons Bryan, Brett, Bradley, Patrick, Urban, Jr. and Hans.

Daniel C. Murphy

Daniel C. Murphy died on Jan. 27, 2016, in Denver after a long and courageous battle with lymphoma.

Dan was born on Dec. 18, 1948, in Butte to Irene (McGee) and James "Jaula" Murphy. He was the youngest of three siblings. He was raised on the Flats and educated in local Catholic schools, where he was known as "Big Murph" to the grade school nuns. He received his undergraduate degree from the University of Notre Dame in 1971, a Master of Arts degree from the University of Virginia in 1972, and a Juris Doctorate from the University of Montana Law School in 1976.

Dan met success early in his career in private practice when he made partner in the Helena law firm of Gough, Shanahan,

Johnson & Waterman. In the early 1980s, Dan joined Meridian Minerals, a subsidiary of the Burlington Northern Railroad, where he served as general counsel. Most recently, he was general counsel for Tuff Shed, Inc. Dan lived in Denver for the past 30 years, and though he greatly enjoyed the many friends and the big city lifestyle he had, he was always proud of his Butte heritage.

Dan was an avid reader with a passion for history. He was also a lover of the arts, especially classical music, and often traveled to hear symphonies in New York and other cities. He was a world traveler and had friends in many different countries.

A giving man, he supported a number of charities and community groups, including teaching English as a second language to those seeking citizenship.

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Gerald Navratil

Gerald Navratil, a former Catholic priest who had a nearly 40-year career in law after leaving the priesthood, died Feb. 12 at age 79.

According to his obituary, Navratil was ordained a Catholic priest in 1963. After leaving the priesthood in 1970, he earned a master's degree in sociology, before getting a law degree from the University of Montana School of Law in 1976.



Navratil

Jerry married Maryellen Kopp on Sept. 8, 1971, and they remained married until Jerry's death.

He was in private practice until 1990, when he was elected Dawson County attorney, a position he held for 12 years. He moved to Sidney, serving as Sidney city attorney. He lived in the O'Brien family farm in Sidney, which he restored, repaired and improved, and where he raised chickens.

He was born July 26, 1937, in Glen Ullin, ND, the seventh son of Joseph and Catherine (Seeberger) Navratil. He was raised in a very loving family environment on the Navratil farm, and never lost his attachment to farm life.

He was a lifelong Catholic and Democrat. In the latter role he fought long and hard for all the principles that political party stood for -- social justice in particular. He ran unsuccessfully for the Montana Legislature in 2006. As a Catholic he believed in the inherent goodness of people, and tried to exemplify the Catholic principles which formed his early life. He did his best to serve the community of which he was a part.

He enjoyed choral singing wherever he lived, including singing in the Fractured Follies in Glendive. He served as Chair of Community Concerts in Sidney for five years, and was instrumental in bringing NPR to Glendive.

In the 1980s he organized a Montana Chapter of CORPUS, an organization of married Catholic priests which created many friendships across Montana.

Lawyer Referral & Information Service

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

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

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

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

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

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

David Stenerson

David Edward Stenerson, 66, of Hamilton, passed away Tuesday, Feb. 23, 2016, from a sudden illness. David was born Aug. 10, 1949, in Billings to Marion and Kay (Walsh) Stenerson, the youngest of four children.



Stenerson

He graduated from Billings Central High School in 1967 and attended Eastern Montana College in Billings for two quarters. Due to his driving record the Billings city judge strongly encouraged him to join the service before he got in real trouble.

Dave had joined the Naval Reserve in his senior year in High School and took the Judge's advice and went active duty. He was a Brown Water River Rat with the Mobile Riverine Force from April 1968 and honorably discharged November 1969. Most notably, he was awarded a

Purple Heart, and later a Silver Star for throwing an enemy grenade off his boat, saving many lives. Dave served our country with honor.

After his stint in Vietnam, he worked as a laborer while going back to college. He married his high school sweetheart, Debra Neiss, on Dec. 18, 1971. They moved to Missoula where Dave graduated with a Journalism Degree from University of Montana in 1974. He then became Editor of the Sidney (MT) Herald, where they welcomed their daughter, Rachelle, on June 18, 1976. She was the joy of his life. They relocated back to Missoula in 1978 so Dave could pursue his Master's Degree in Journalism. His thesis was "Cameras in the Courtroom" and before he could finish the Montana Supreme Court ruled that cameras were indeed allowed. He should have realized right then and there that law was in his blood, but he returned to carpentry and drywall for the next 10 years.

In 1985 he enrolled in the University of Montana Law School and received his Juris Doctorate in 1989 at the age of 36. He then worked for the Missoula County Public Defender's Office for a short while, and was a contract public defender with Ravalli County until 1999. Dave and Debbie divorced in 1999.

Dave married his soulmate and life partner Diane Gerhardt on July 9, 1999, and they began working side by side as Stenerson Law Office, PC, for the next seven years. In July of 2006 both Dave and Diane continued their journey together with the State of Montana, Office of the Public Defender in the Hamilton office. Dave was named Regional Deputy Public Defender for Region 2, covering Missoula, Ravalli and Mineral Counties in 2011, charged with directing a staff of 35 (attorneys, support staff and investigators). He truly loved his mission in life and worked hard to ensure equal access to justice for the indigent — right up to the end.

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 the Montana Legal Services Association is unable to serve a client due to a conflict of interest, a lack of available assistance, or if client income is slightly above MLSA 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 CLE sponsored by the State Bar. State Bar Bookstore Law Manuals are available to you at a discount and attorney mentors can be provided. If you're unfamiliar with a particular type of case, Modest Means can provide you with an experienced attorney mentor to help you expand your knowledge.

Questions?

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



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CLASSIFIEDS Contact | Joe Menden at jmenden@montanabar.org or call (406) 447-2200.

ATTORNEYS

ATTORNEY: Montana Department of Natural Resources and Conservation seeks to hire a Natural Resources Attorney. Ideal candidate will have at least 3 years of experience in natural resource, property and administrative law. See the full listing at the State of Montana Careers website or contact Kelly Bishop at (406) 444-6673 or kbishop@mt.gov. Closes 3/11/2016.

ASSISTANT CITY ATTORNEY: The City of Great Falls is searching for an attorney with the ability to conduct effective legal representation of the City. Must be licensed to practice law in the state of Montana, have a Juris Doctorate or equivalent from an accredited college or university. Five years experience as a licensed attorney and experience with litigation and municipal law desired. Position is open until filled. Application, job description and benefits at <http://www.greatfallsmt.net/hr/assistant-city-attorney>. 406-455-8466. EOE

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

LITIGATION ATTORNEY: Crowley Fleck PLLP seeks a litigation attorney with 2-4 years experience to practice in our Billings, Montana office. Successful applicant must be licensed in Montana, have a strong academic record, solid research and writing capabilities. Competitive salary and benefits. All applications will be held in confidence. Please submit your cover letter, resume, writing sample and law school transcript to Crowley Fleck PLLP, Attn: Joe Kresslein, P.O. Box 2529 Billings, MT 59103-2529 or via email to jkresslein@crowleyfleck.com. Visit our website at www.crowleyfleck.com.

PARALEGALS/LEGAL ASSISTANTS

LEGAL ASSISTANT/PARALEGAL, Kalispell: Hammer, Quinn & Shaw, a busy litigation practice serving clients throughout Northwestern Montana, is seeking a legal assistant/paralegal for full-time employment. Three to Five years' experience in a defense litigation practice is preferred. Strong attention to detail; excellent grammar skills; and proficiency in WORD required. Salary DOE. Submit cover letter, resume and references to twshaw@attorneysmontana.com.

LEGAL ASSISTANT / PARALEGAL (Bozeman): Must be able to work in a fast-paced deadline driven environment with attention to detail; ability to manage multiple priorities. Experience in a legal environment is preferred but not required. Candidate should have excellent communication skills, verbal and written; proficient with MSOffice and Adobe Acrobat. Duties include word processing; preparation of legal documents; editing; proofing; exhibit organization and all other attorney support as needed. Competitive pay and benefits including health insurance and paid time off. E-mail resume & cover letter to: Clientservices@lawmt.com. No phone calls, please.

PARALEGAL/LEGAL ASSISTANT: Ragain & Cook, PC (www.ragaincook.com) is seeking an experienced paralegal/legal assistant to join our personal injury and civil litigation team. Excellent communication skills, knowledge of local, state and federal court rules, and strong organization abilities are required. We offer a competitive salary, benefits and a great place to work. Please send resumes to joe@ragaincook.com.

LEGAL ASSISTANT/PARALEGAL: Kalispell law firm seeks a legal assistant/paralegal for full time, long-term employment in a medical malpractice defense litigation practice. Attention to detail and advanced computer proficiency required; medical background or experience in the medical field is strongly preferred. Salary DOE. Generous benefits package offered. Visit www.mcgallaw.com for full details.

REFERRALS

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

ATTORNEY SUPPORT/RESEARCH/WRITING

DATA ANALYSIS / LITIGATION SUPPORT: Extract, analyze, summarize large data sets; Independent attestation of data accuracy; Professional CPA presentation of data on behalf of counsel; Expert testimony regarding data collection and reporting methodology; Agreed upon procedures. 15 years financial experience including: Auditor for Deloitte & Touche (Seattle Office); Litigation Support Branch Chief; Work with KFLD, DoJ, and the Pentagon; Comptroller for the Montana Army National Guard; Contracting Officer (PCO); Controller for \$1B insurance company; Director of Financial Reporting for \$1B hospital; Operations Officer for \$3B government contracting group; Member of AICPA Information Management & Technology Assurance practice group; Member of the

Montana State Society of CPAs; Level 3 DAWIA certification in government contracting; Data base developer for \$3B government financial services organization. DATA WORKS OF HELENA, P.C., 7 West 6th Avenue, #517, Helena MT 59601; brad@dataworksofhelena.com; (406) 457-5399.

ENHANCE YOUR PRACTICE with help from an AV-rated attorney with 33 years of broad-based experience. I can research, write and/or edit your trial or appellate briefs, analyze legal issues or otherwise assist with litigation. Please visit my new website at www.denevilegal.com to learn more. mden-evi@bresnan.net, 406-210-1133

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

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

OFFICE SPACE/SHARE

MISSOULA: Large downtown Missoula office available, part of office share with two tax attorneys. Located in the historic Higgins Building above Opportunity Bank. Office share includes conference room, waiting room, phone and copier. Call Rick Baskett at 549-1110 or Andrew George at 728-4310 for more information, or email: andrew@georgelaw.us.

THOMPSON FALLS: Live in paradise and office share in two office building next to courthouse. Good opportunity for new solo practitioner with referrals and support staff available. Busy county in need of more legal counsel. If interested email Timothy G. Goen at nwmtlaw@blackfoot.net.

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

MEDIATION

TIMOTHY J. MCKITTRICK: More than 30 years of arbitration and mediation experience. Certified member of the American Arbitration Association. Contact information: Timothy J. McKittrick, P.O. Box 1184, Great Falls, MT 59403; Phone: (406)

727-4041; Email: kitty@strainbld.com.

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

DOUG WOLD, 50 years' experience practicing law and trying cases. Certified and experienced mediator. No charge for travel in western Montana. 406 883 2500.

CONSULTANTS & EXPERTS

RISK ASSESSMENT: Capital City Case Management, Inc of Helena is a team of professionals with expertise in risk assessment, reporting, testifying in court & offering information & assistance. In business since 2000, CCCM specializes in providing fiduciary services to the elderly and disabled across Montana. Services include: Guardianship, Conservatorship, Trustee, Court Visitor, Personal Representative, & Money Management. Cindy Nickol, 406-431-2184, capcitycm@capcitycm.com

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

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

COMPUTER FORENSICS, DATA RECOVERY

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

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