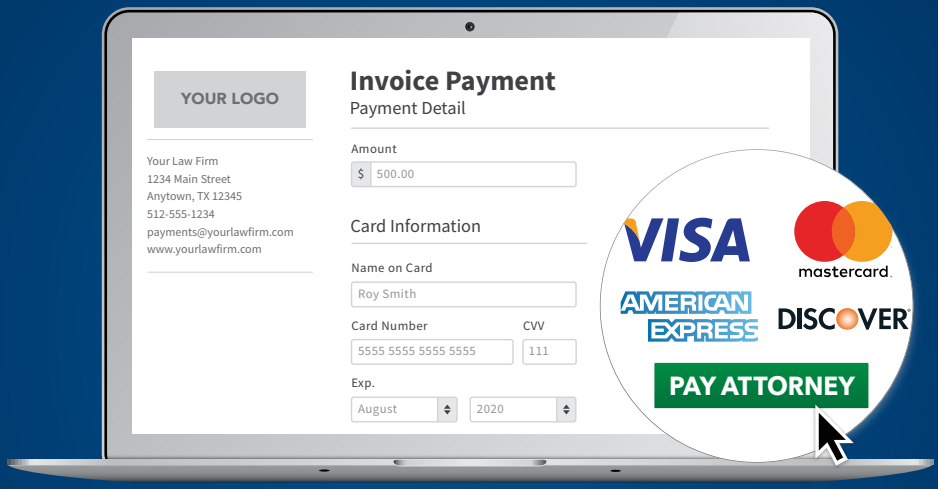
MONTANA LAWYER
NOVEMBER 2018

READY TO SERVE




4 NEW MONTANA LAWYER LEGISLATORS MAKING THEIR MARK IN 2019



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MONTANA LAWYER

NOVEMBER

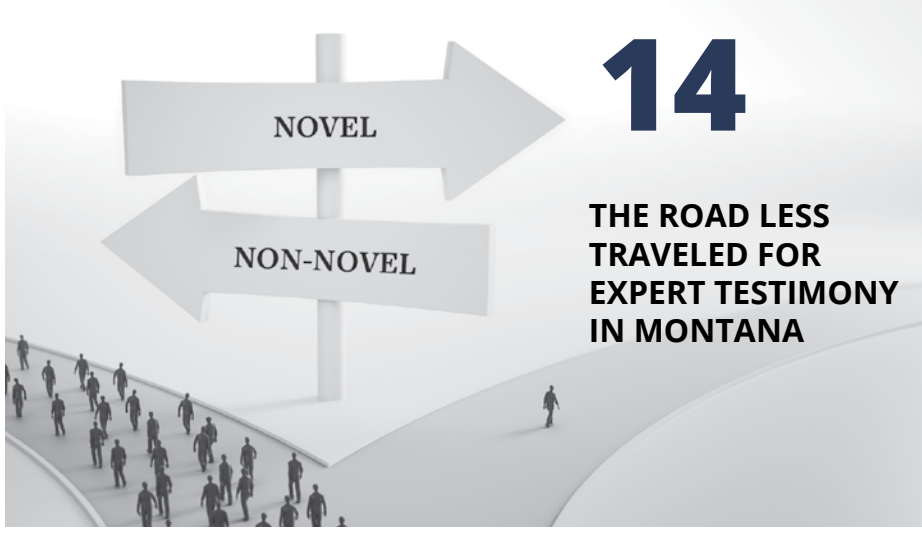
2018

IN EVERY ISSUE

ON THE COVER

Nine Montana attorneys will be among the 150 legislators descending on the Montana Capitol for three months for the 66th Montana Legislature starting Jan. 7.

FEATURE ARTICLES



Wellness of lawyers and judges is vital to profession, justice system


ERIC NORD

The "MPR Raccoon" became a social media sensation this past spring when she climbed a 25-story office building.

The death-defying feat began accidentally when workers tried to save her from the second story of a nearby building. Misinterpreting their attempts to rescue her as an attempt on her life, MPR Raccoon ran over to a nearby office building and began her ascent. Over the next few days she climbed the skyscraper until, finally, she reached the roof. Tired and hungry, she went into a baited trap. She was later released into the wild.

Lawyers sometimes act like MPR Raccoon. We get ourselves into situations which we could have avoided in the first place if we had properly read the intentions of others and accepted their assistance. Instead of admitting we make mistakes and seeking assistance, we keep going in the wrong direction (or digging a deeper hole, if you prefer that metaphor). In the end, we find ourselves exhausted and, like MPR Raccoon, in a trap.

There are various theories as to why lawyers do not seek personal or professional assistance when they need it; we may be too proud; we may think we are smarter than those around us and, therefore, we can manage our problems on our own without assistance; we may not want to appear weak or out of control for fear it will negatively impact our reputation. Whatever the reason for avoiding help, it is wrong. For the good of our profession and ourselves, we must stop avoiding the help we need.

There is ample confidential assistance for lawyers provided both through the State Bar of Montana and the American Bar Association. All we have to do is pick up a phone (Mike Larson at 406-660-1181) or do an Internet search. That part of the process is deceptively simple. The harder part of the process is being constantly vigilant of our own wellness, realizing when we are not well, and making the decision to seek assistance. We also need to look out for the wellness of those around us.

You probably have already heard a lot about wellness recently (and you are going to hear a lot more about wellness in the future), but do not tune it out. Instead, create your own strategy for wellness or, better yet, do this in conjunction with a spouse, partner, or another attorney with whom you can trust and communicate. Consider the many resources out there, both on our Bar's website as well as the ABA (for starters, consider https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.authcheckdam.pdf).

Your strategy for wellness does not have to be complicated or trendy. Parts of it can be simple, like making time for recreation (fly-fishing sounds like a great wellness program), having lunch with a friend, or exercise (punching a bag for a period of time can release a lot of stress). Also, ignore your smartphone and your computer on the weekends (do you really need to respond to your client's text message on a Saturday when it could wait until Monday?). And say "no" to clients who impose unrealistic demands on your time and talents.

Our justice system does not work without its primary components: lawyers and judges. Your wellness is therefore vital to the crucial role that you serve in administering justice. So, take care of yourself. The future of our profession, and our justice system, depends upon it.

Eric Nord is a partner at Crist, Krogh and Nord in Billings.

"You probably have already heard a lot about wellness recently (and you are going to hear a lot more about wellness in the future), but do not tune it out. Instead, create your own strategy for wellness or, better yet, do this in conjunction with a spouse, partner, or another attorney with whom you can trust and communicate."

Expressing gratitude — it could be good for both body and mind

JOHN MUDD

Each November, three holidays — Election Day, Veterans Day and Thanksgiving — serve as reminders of the importance of gratitude. This month we express gratitude for our democracy and our ability to participate in it, gratitude for those who have served our republic in the armed forces, and gratitude for fall's great harvest.

But as we gather with friends and family, this season also provides a wonderful opportunity to take a step back and think about the many things in our own lives, both personal and professional, for which we are grateful.

And doing that seemingly small thing can have real impact in our lives.

A developing body of research confirms that gratitude is actually good for you. Even the simple practice of taking a few moments each day to express that gratitude, in whatever way you may choose, can relieve stress and provide real benefits to your health.

Professor Robert Emmons of the University of California at Davis, is one of the nation's leading experts on gratitude. His research has found that practicing gratitude can actually reduce an individual's lifetime risk for depression, help you exercise more and even reduce your blood pressure.[1]

That's something worth considering in a profession where close to 30 percent of us are experiencing some level of depression and nearly 20 percent are suffering from anxiety.2

So this month, as we are surrounded by traditional public displays of gratitude, perhaps we should all take a moment and commit to developing our own personal practice of being grateful. It just might be good for us.

"A developing body of research confirms that gratitude is actually good for you. Even the simple practice of taking a few moments each day to express that gratitude can relieve stress and provide real benefits to your health."

1 UC Davis Health (November 25, 2015). Gratitude is Good Health. https://www.ucdmc.ucdavis.edu/welcome/features/2015-2016/11/20151125_gratitude.html

2 Hazelden Betty Ford Foundation (February 3, 2016) Hazelden Betty Ford Foundation Release First National Study on Attorney Substance Abuse, Mental Health Concerns. https://www.hazeldenbettyford.org/about-us/news-media/press-release/2016-aba-hazelden-release-first-study-attorney-substance-use

MONTANA LAWYER

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Applicants sought for US magistrate judge

Applications are now being accepted for a full-time United States magistrate judge for the Missoula Division of the District of Montana.

The appointment is to replace the Honorable Jeremiah Lynch, who is retiring. The appointment is expected to take effect on Aug. 3, 2019.

The current annual salary of the position is $191,360. The term of office is eight years.

A merit selection panel composed of attorneys and other members of the community will review all applicants, conduct interviews if necessary, and recommend to the district judges in confidence the five applicants it considers best qualified. The court will make the appointment following an FBI full-field background investigation and an IRS tax check of the applicant selected by the court for appointment. The individual selected must comply with the financial disclosure requirements pursuant to the Ethics in Government Act of 1978.

To be qualified for appointment an applicant must:

- be and have been for at least five years a member in good standing of the bar of the highest court of a state, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, or the U.S. Virgin Islands.
- be competent to perform all the duties of the office; be of good moral character; be committed to equal justice under the law; be patient and courteous; and be capable of deliberation and decisiveness;
- be less than 70 years old; and
- not be related to a judge of the district

Application forms are available online at www.mtd.uscourts.gov. Applications must be submitted by the applicant and **must be received by Dec. 14, 2018.** Applicants must submit an original and 10 copies of the application. Completed applications must be submitted to the panel at the following address:

Merit Selection Panel, c/o Tyler P. Gilman, Clerk, United States District Court, Russell Smith Courthouse, 201 E. Broadway, Missoula, MT 59801.

For more information on the magistrate judge position, contact Clerk of Court Tyler P. Gilman at 406-829-7154, tyler_gilman@mtd.uscourts.gov, or at the above address.

Cognitive impairment is subject of free Dec. 5 CLE

The State Bar of Montana is presenting a free webinar CLE on cognitive impairments and the challenges of retirement for lawyers.

The webinar, at noon on Dec. 5, will be presented by Shari R. Gregory and Bryan R. Welch, both attorney counselors with the Oregon Attorney Assistance Program. It is approved for 1 ethics CLE credit.

An estimated 250,000 of America's practicing attorneys are over age 55. With Americans living longer than ever and people increasingly postponing retirement, that number is expected to triple over the next 20 years, and cognitive impairment will likely be a concern for more attorneys.

Register at www.montanabar.org.

SBMT members save $150 on ABA TECHSHOW

The State Bar of Montana is partnering with the American Bar Association this year to offer a special reduced rate for ABA TECHSHOW 2019.

This discount only applies to registrants who qualify for the Standard registration and will save you $150. You can register online and include the unique discount code EP1918 at checkout to receive the discount.

ABA TECHSHOW has over 31 years of experience bringing lawyers and technology together. Legal work today is dependent on technology to manage day to day activities, to practice more competently, and to service clients more effectively. ABA TECHSHOW teaches you how technology can work for you. Through the expansive EXPO Hall, CLEs, presentations, and workshops, you will be able to get your questions answered and learn from the top legal professionals and tech innovators, all under one roof. Regardless of your expertise level, there's something for you at ABA TECHSHOW.

Celebrate over 31 years of legal technology and innovation. Network with legal technology experts from around the globe, Feb. 27 to March 2, 2019, at the Hyatt Regency Chicago. Don't forget to visit www.techshow.com for current information on ABA TECHSHOW 2019, the best place for bringing lawyers and technology together.

Retirement party for Judge Ritter set for Dec. 18

There will be a retirement party for Montana Associate Water Judge Doug Ritter Tuesday, Dec. 18, in Bozeman.

The party will be from 6 to 8 p.m. at Lindley Park Center, 1102 Curtiss, in Bozeman. Attendees are welcome to bring an appetizer to share. Beer and iced tea will be provided.

Ritter was appointed to the Montana Water Court in 2013 and reappointed in 2016. He was a senior water master prior to his appointment, having served as a water master since 1992. He graduated from the University of Montana School of Law and has a history degree from Montana State University.

Yellowstone district judge race flagged for a recount

Billings voters went to the polls to elect two new judges in November. The official winner of one of those races may not be known until December.

In the new Department 8 judge position in the 13th Judicial District, Ashley Harada led Juli Pierce by 119 votes with more than 60,000 votes cast, or less than a 0.2 percent margin. If the margin is less than 0.25 percent, a candidate can petition for a recount with no bond required. A petition must be filed within five days of the Nov. 28 official state canvass.

Collette Davies won the race for the district's other new judge position.

Davies, 48, a partner at Bishop, Heenan & Davies in Billings, defeated Thomas Pardy, Billings' deputy city attorney, 57 percent to 43 percent. Davies and Pardy were the top two candidates among five in the primary elections.

A total of 36 district court judge

See JUDGE Page 28

9 apply for new 4th Judicial District judge position

Nine attorneys have applied with the Judicial Nomination Commission for a new 4th Judicial District judge position. They applicants are:

- **Brenda Constance Desmond,** standing master in the 4th Judicial District, Missoula
- **Karen Paula Kane,** assistant attorney general, Child Protection Unit supervisor, Missoula
- **Lisa B. Kauffman,** attorney, Montana Office of the Public Defender, Missoula
- **Jason Troy Marks**, Missoula County chief deputy county attorney
- **Donald James McCubbin Jr.,** Missoula County deputy county attorney, senior attorney (criminal)
- **Patrick A. Quinn**, attorney, Montana Department of Public Health and Human Services, Missoula
- **Jeffrey Thomas Renz**, retired clinical professor, Blewett School of Law
- **Tracy Labin Rhodes**, owner, Tracy Labin Rhodes PLLC, Missoula
- **Shane Anthony Vannatta**, shareholder attorney, Worden Thane, Missoula

The applications are posted at http://courts.mt.gov/supreme/boards/jud_nomination. Comments can be submitted until 5 p.m. Dec. 20 by mail to Judicial Nomination Commission, c/o Lois Menzies, Office of Court Administrator, P.O. Box 203005, Helena, MT 59620-3005; email to mtsupremecourt@mt.gov; or by phone at 406-841-2972.

The commission will forward the names of three to five nominees to Gov. Steve Bullock for appointment.

Langton announces he will retire next year as Ravalli County district judge

Ravalli County District Judge Jeff Langton has announced he will retire effective next April.

District Judge Jeff Langton

Judge Langton, 65, currently the longest serving state district judge in Montana, announced his retirement in a Nov. 14 letter to Chief Justice Mike McGrath of the Montana Supreme Court.

At the time of publication, the process to find his replacement had not yet begun.

Judge Langton was first elected in 1992. He was re-elected in 1998, 2004, 2010, and 2016. A 1978 graduate of the University of Montana School of Law, he practiced law in Hamilton from 1978 to 1993 when he took office.

During his time on the bench, he has served as co-chair of the Montana Supreme Court Commission on Self-Represented Litigants and chair of the Montana Sentence Review Division. He currently serves on the Criminal Jury Instructions Commission.

A Victor native, Judge Langton earned a bachelor's degree in history with high honors from the University of Montana in 1975 and authored a local history of Victor, "The Victor Story," published in 1985.

CAREER MOVES

Suenram joins Kovacich Snipes as associate

The Law Firm of Kovacich Snipes, P.C. in Great Falls, Montana is pleased to announce that Jacy D. Suenram has joined the firm as an associate attorney.

Suenram received Bachelor of Arts degrees in Communication Studies and Psychology in 2014 from the University of Montana and a Juris Doctorate Degree from the Alexander Blewett III School of Law - University of Montana in 2017.

Suenram

Prior to accepting the associate position with Kovacich Snipes, she clerked in the United States District Court, Great Falls Division, for the Honorable Brian Morris. She is admitted to practice law in all Montana state courts and before the U.S. District Courts for the District of Montana.

Her professional efforts will be focused on the firm's plaintiffs' civil litigation practice, including personal injury, wrongful death, toxic tort, workers' compensation, and environmental litigation.

Tyson McLean joins McLean Law Firm

Kris A. McLean Law Firm in Florence is pleased to announce that Tyson A. McLean has joined the firm after graduating from Lewis & Clark Law School and successfully passing the July 2018 Montana bar exam.

McLean

During law school, Tyson interned at the Deschutes County District Attorney's Office and Lewis & Clark Law School's Small Business Legal Clinic. He was also an associate editor for Lewis & Clark Law School's law review publication, Environmental Law.

Tyson is a Montana native and grew up in the Bitterroot Valley. He attended Washington State University where he earned his bachelor's degree in criminal justice and was a founding member of Sigma Phi Epsilon Fraternity. He then obtained his Master of Arts degree in sociology at the University of Montana where he also worked for its Criminology Research Group.

He served Montana for over six years working for the University of Montana and then the Montana Department of Justice before he moved to Portland, Ore., to attend law school. He is excited to be back in Big Sky Country. His practice areas will include general civil litigation, business law and criminal law. You can contact him at Tyson@krismcleanlaw.com; or 406-360-4956

Harby is a shareholder at St. Peter Law Offices

Jason Harby has become a shareholder at St. Peter Law Offices. Jason is a 2015 graduate of the University of Montana School of Law and a Montana native. He obtained a Master of Law in Taxation (LL.M) with honors from the University of Washington School of Law in 2016. Jason graduated with high honors from the University of Montana in 2010 with a degree in economics. His practice focuses primarily on the representation of for-profit and nonprofit developers in the acquisition and construction of affordable multifamily housing projects financed through Low Income Housing Tax Credits, Tax Exempt Bonds, HUD and RD Loans, and other financing sources.

Harby

His practice also includes general estate planning as well as federal estate tax, gift tax, and generation skipping transfer tax planning, estate and trust administration, entity formation and taxation, business planning, corporate and commercial transactions, real estate transactions, employee benefits, general tax planning, and tax controversies and procedure. Jason is admitted to practice before the Montana Supreme Court, the United States District Court for the State of Montana, and the United States Tax Court. In his spare time, he enjoys skiing, mountain biking, backpacking, fly fishing, hunting, rafting, and spending time with his family. He can be reached at 406-728-8282 or jason@stplawoffices.com.

Sarabia joins Brown Law Firm's Billings office

The Brown Law Firm P.C. has announced that Michael P. Sarabia has joined the firm as an associate at its Billings location.

Sarabia grew up in Billings and graduated from in 2004 at Montana State University – Billings. He earned his Juris Doctorate from The University of Iowa in 2008, and went on to earn a Master's Degree in 2012 as well as a Ph.D in English Literature in 2015, also from The University of Iowa.

Sarabia

Prior to joining Brown Law Firm, he clerked for the Honorable Michael G. Moses of Montana's Thirteenth Judicial District, and went on to practice commercial, business, and general civil law for two years at another firm in Billings. At Brown, Michael primarily practices in the area of civil defense litigation.

The firm has offices in Billings and Missoula.

HAVE NEWS TO SHARE?

The Montana Lawyer welcomes news about Montana legal professionals including new jobs, honors, publications, and other accomplishments.

Please send member news and photo submissions to editor@montanabar.org. Email or call 406-447-2200 with questions.

ACHIEVEMENTS

Bishop

Hayhurst

Goicoechea

Racicot

4 Montana attorneys inducted into American College of Trial Lawyers

Randy Bishop, Sean Goicoechea, Matt Hayhurst, and Tim Racicot have become Fellows of the American College of Trial Lawyers, one of the premier legal associations in North America.

Bishop is a partner at Bishop, Heenan & Davies and an adjunct professor at the University of Montana Alexander Blewett III School of Law. Goicoechea is a partner at Moore, Cockrell, Goicoechea and Johnson, P.C. in Kalispell. Hayhurst is a partner at Boone Karlberg P.C. in Missoula. Racicot is an assistant United States attorney in Missoula.

The induction ceremony took place during the ACTL's 2018 Annual Meeting in New Orleans.

Fellowship in the college is by invitation only after careful investigation, to experienced trial lawyers of diverse backgrounds, who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' trial experience before they can be considered for fellowship.

Membership cannot exceed 1 percent of the total lawyer population of any state or province. There are currently approximately 5,800 members in the United States and Canada, including active Fellows, Emeritus Fellows, Judicial Fellows (those who ascended to the bench after their induction) and Honorary Fellows. The college maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings.

Gray elected as fellow of American Academy of Appellate Lawyers

Gray

Kyle Anne Gray has been elected as a Fellow of the American Academy of Appellate Lawyers.

Gray is an attorney at the Billings office of Holland & Hart. One of only four AAAL members in Montana, she was inducted at the AAAL's 2018 Annual Meeting in October.

Membership in the AAAL is by invitation only, limited to 500 members in the United States, and offered to experienced appellate attorneys who have demonstrated the highest excellence in appellate service and integrity.

APPOINTMENTS

Gov. Steve Bullock has appointed the following people to state boards and commissions:

Missoula attorney Bob Minto to the Montana Family Education Savings Program Oversight Committee.

Minto is the founder of attorney malpractice insurer ALPS Corporation and the owner of Minto Management and Consulting. He was appointed based on his knowledge, skill and experience in accounting, risk management, investment management or as an actuary.

Hal Harper of Helena to a new four-year term on the Montana Supreme Court's Judicial Nomination Commission.

Harper is one of four governor-appointed lay members on the commission, which also consists of two lawyers appointed by the Supreme Court and a district judge elected by the district judges.

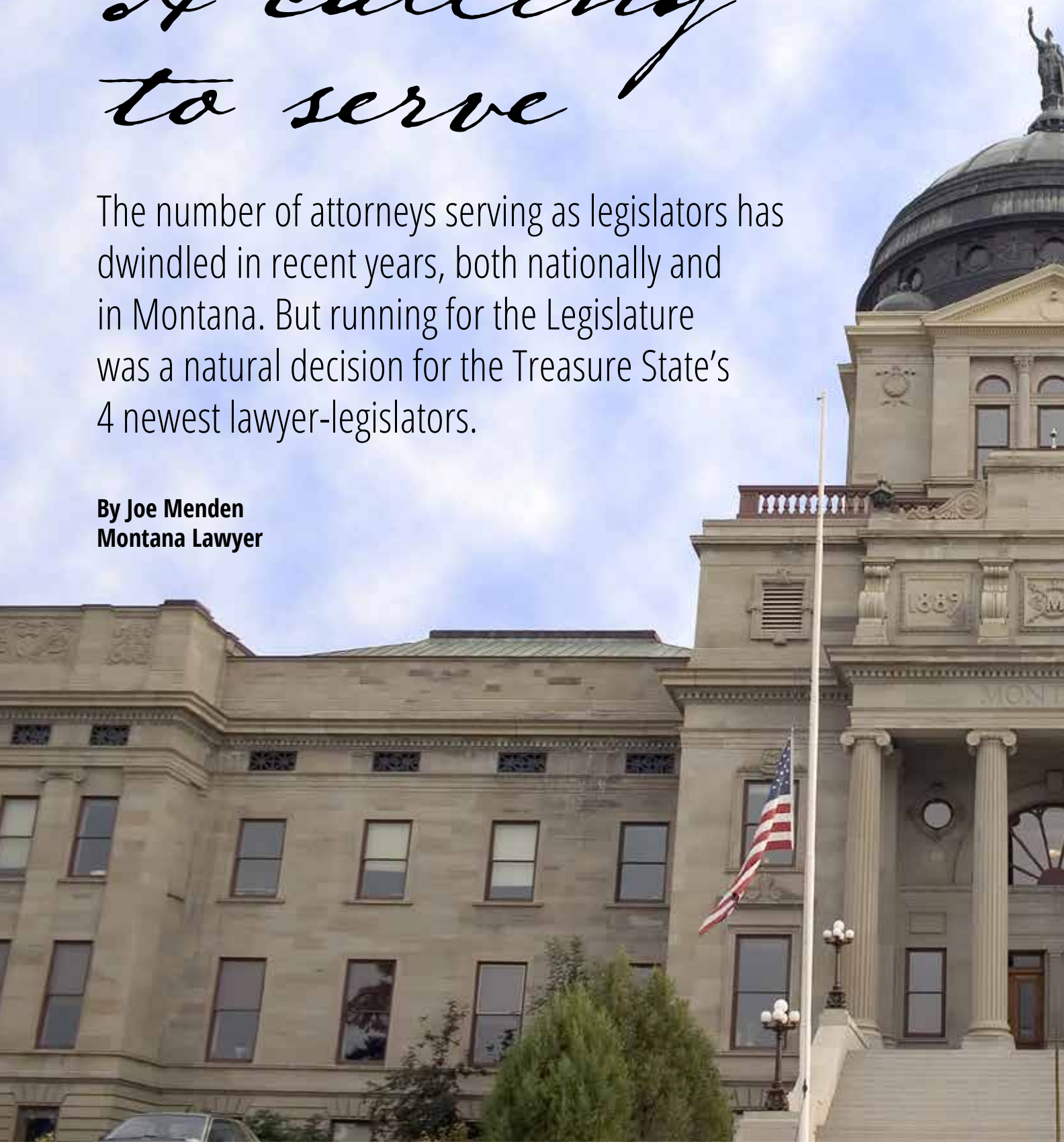
Missoula attorney Kristina Lucero to the Montana Board of Pardons and Parole.

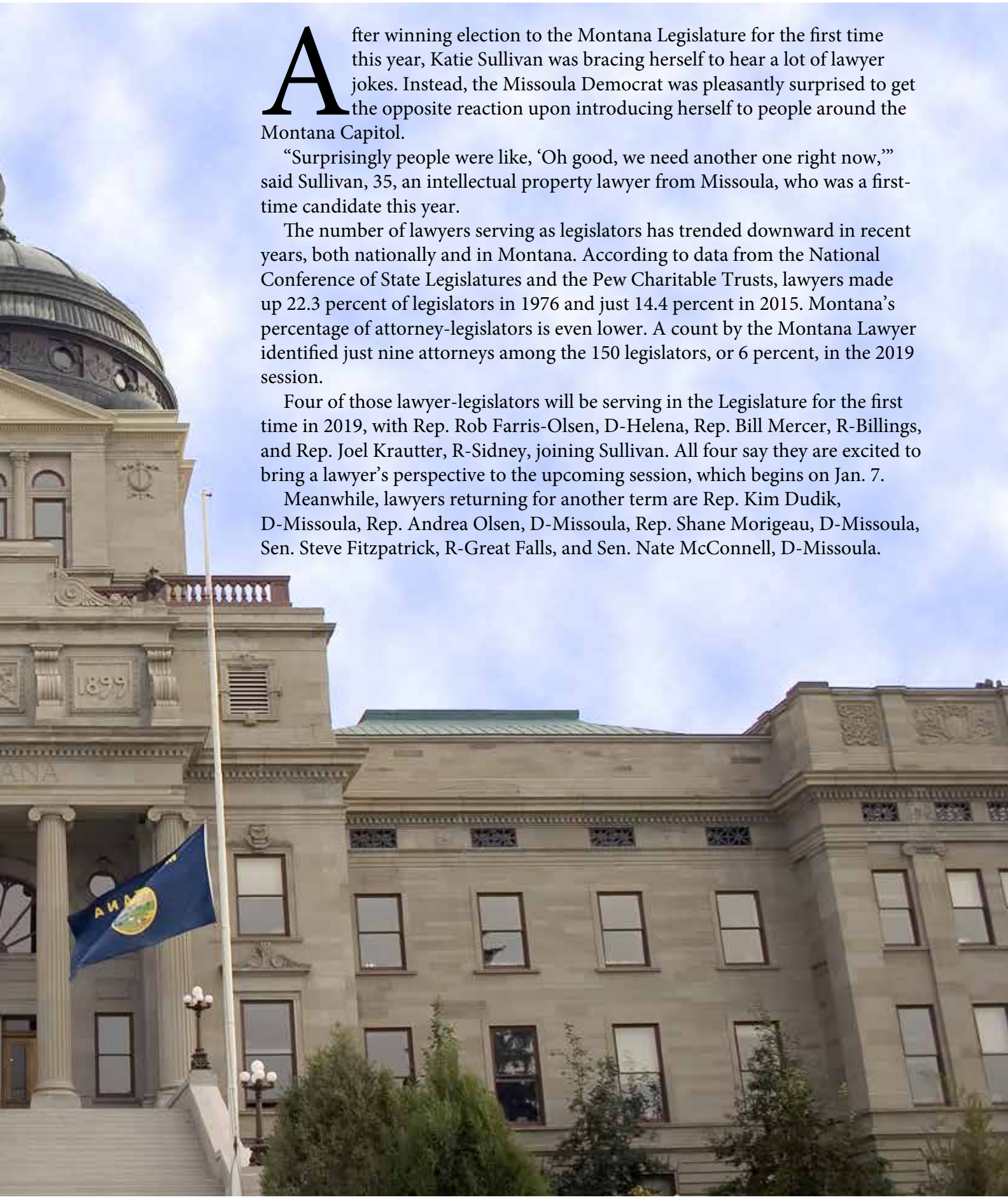
Lucero was appointed for her extensive work experience in corrections, the criminal justice system or criminal law, and her expertise and knowledge of American Indian culture. She has been a member of the board and has been an assistant public defender, tribal prosecutor and a reviewer for the Children's Bureau.

A calling to serve

The number of attorneys serving as legislators has dwindled in recent years, both nationally and in Montana. But running for the Legislature was a natural decision for the Treasure State's 4 newest lawyer-legislators.

By Joe Menden
Montana Lawyer





After winning election to the Montana Legislature for the first time this year, Katie Sullivan was bracing herself to hear a lot of lawyer jokes. Instead, the Missoula Democrat was pleasantly surprised to get the opposite reaction upon introducing herself to people around the Montana Capitol.

"Surprisingly people were like, 'Oh good, we need another one right now,'" said Sullivan, 35, an intellectual property lawyer from Missoula, who was a first-time candidate this year.

The number of lawyers serving as legislators has trended downward in recent years, both nationally and in Montana. According to data from the National Conference of State Legislatures and the Pew Charitable Trusts, lawyers made up 22.3 percent of legislators in 1976 and just 14.4 percent in 2015. Montana's percentage of attorney-legislators is even lower. A count by the Montana Lawyer identified just nine attorneys among the 150 legislators, or 6 percent, in the 2019 session.

Four of those lawyer-legislators will be serving in the Legislature for the first time in 2019, with Rep. Rob Farris-Olsen, D-Helena, Rep. Bill Mercer, R-Billings, and Rep. Joel Krautter, R-Sidney, joining Sullivan. All four say they are excited to bring a lawyer's perspective to the upcoming session, which begins on Jan. 7.

Meanwhile, lawyers returning for another term are Rep. Kim Dudik, D-Missoula, Rep. Andrea Olsen, D-Missoula, Rep. Shane Morigeau, D-Missoula, Sen. Steve Fitzpatrick, R-Great Falls, and Sen. Nate McConnell, D-Missoula.

Register online: **www.montanabar.org**

SCHEDULE

FRIDAY MORNING

6 to 7 a.m.: Registration & Welcoming Remarks
(Breakfast Included)

7 to 8 a.m.: Being in Conflict: The Softer (But Harder) Side of Resolving Disputes — *Glenn Tremper*

8 to 9 a.m.: Effective Appellate Briefs — *Ben Alke*

FRIDAY EVENING

4:30 to 5:30 p.m.: Best Practices in Litigation — *Russell Fagg*

5:30 to 6:30 p.m.: Construction Law — *CJ Johnson*

SATURDAY MORNING

7 to 8 a.m.: Legal Issues Facing Our Veterans — *Judge Pinski*

8 to 9 a.m.: Montana Rules of Professional Conduct — *Hon. Leslie Halligan*

SATURDAY EVENING

4:30 to 5:30 p.m.: Legislative Update — *Ed Bartlett & Bruce Spencer*

5:30 to 6:30 p.m.: Owners' Associations: The Good, The Bad and The Really, Really Ugly—Part Deux — *Mindy Cummings and Alanah Griffith*

SUNDAY MORNING

7 to 9 a.m.: Supreme Court Update — *Chief Justice Mike McGrath and Justice Ingrid Gustafson*

FACULTY

Chief Justice Mike McGrath, *Montana Supreme Court, Helena*

Justice Ingrid Gustafson, *Montana Supreme Court, Helena*

Hon. Leslie Halligan, *4th Judicial District Court, Missoula*

Hon. Gregory Pinski, *8th Judicial District Court, Great Falls*

Ben Alke, Esq., *Goetz, Baldwin & Geddes P.C., Bozeman*

Ed Bartlett, Esq., *Ed Bartlett, LLC., Helena*

Mindy Cummings, Esq., *Griffith & Cummings, PLLC, Big Sky*

Russell Fagg, Esq., *Russ Fagg and Associates, P.L.L.C., Billings*

Alanah Griffith, Esq., *Griffith & Cummings, PLLC, Big Sky*

C.J. Johnson, Esq., *Johnson & Johnson, PLLC, Missoula*

Glenn Tremper, Esq., *Glenn E. Tremper, PLLC, Great Falls*

Bruce Spencer, Esq., *Bruce M. Spencer, PLLC, Helena*

REFUND POLICY: Refunds are 75% if cancellation is 7 days or more before the seminar. Refunds are 50%

if cancellation is less than 7 days. No refunds for cancellations on or after the date of the seminar.

Cancellations or substitutions may be made by calling 406-447-2206.

No refunds will be made on printed course books after December 17, 2018.

LODGING & SKIING

Rooms have been blocked at Big Sky Resort; please make your reservations before Dec. 16, 2018, to get discounted room rates. You may call the resort at 1-800-548-4486 and reference 2019 CLE & Ski to make reservations.

Reserve Your Discount Lift Tickets Online!

Visit **https://bit.ly/CLEandSKI** to get the discounted lift ticket rate of $97 per adult per day.

REGISTRATION

	Price A	Price B
Early Bird (Paid by Dec 17):	$385	$360
Paid after Dec. 17:	$410	$385

PRICE A is for attorneys practicing five years or more and non-attorney registrants.

PRICE B is for attorneys practicing under five years and members of the State Bar Paralegal Section.

Fill out the form and submit no later than Jan.11, 2019

Name(s): _____

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I would like a printed course book for $35 ❒

Mail with payment to: CLE Registration, State Bar of Montana, P.O. Box 577, Helena, MT 59624

Questions? mgallagher@montanabar.org; 406-447-2206

Following are brief profiles of the four new attorney legislators, their outlooks for the session and how they think their backgrounds will help them in the lawmaking process.

KRAUTTER

Rep. Joel Krautter, HD 35

Netzer Law Firm, Sidney

At 31, Krautter will be among the younger legislators this session. His age, he said, is informing some of the legislation he hopes to pursue – particularly student loan issues and the struggles rural areas in Montana face in recruiting and retaining college graduates and young professionals.

He said lessons can be learned on that front from the medical profession and from what states like South Dakota have done to attract lawyers to rural areas, and he has been working with other lawyers and law students on crafting legislation.

"All the professions that rural communities depend upon are struggling to bring college graduates back to town," he said. "What kind of a program can we look at to let college graduates know that If they're willing to invest in rural Montana, Montana's willing to invest in them with some incentives and help? We just have to find the right approach for Montana."

This year was Krautter's second run for the Legislature. Two years ago, he fell short in a bid to unseat the incumbent in his district. He said the name identification and campaign experience he gained in 2017 were a big help this year when the seat came open.

He also spent a lot of time meeting the people in his district – knocking on doors in the towns, but also driving to farms and ranches. The strategy paid off, he said, as he won both the rural precincts as well as the precincts in towns.

Krautter thinks that with the failure of Initiative 185 in the November election, Medicaid expansion will be a big issue for the session. He pointed out that oil and gas development is a big issue in eastern Montana, and people in his district see a big divide between Montana's development and that of North Dakota and Wyoming. "Increasing development could help funding a lot of programs that need to be funded," he said.

Another important issue for Krautter is mental health and suicide. According to the Centers for Disease Control the Montana's suicide rate is nearly double the national average. "We have to figure out what we can do to try and turn that problem around."

Whether they are serving in the Legislature or not, Krautter said, lawyers can play a role in the lawmaking process. Attorneys have a unique perspective, he said, one that sometimes is helpful to their legislators, and he hopes they will feel free to reach out to their legislators on issues they care about.

"I decided to run because I care about the direction Montana goes and I want to be a problem solver," the Deer Lodge native said. "It's a natural extension of what (lawyers) do every day in trying to solve clients' complicated problems. I want to try and make a difference for my district and the state."

Rep. Bill Mercer, HD 46

Holland & Hart, Billings

Though this was his first time running for elected office, Mercer is no stranger to public service, or to the political world.

Mercer, 54, spent his first 21 years in practice as a federal civil servant, culminated by eight years as the U.S. attorney for Montana in the George W. Bush administration. During that time, he grew accustomed to working proactively to identify and fix problems. He has found the past eight years in private practice to be a more reactive process, a contrast he says became increasingly apparent to him.

"I am increasingly excited about being involved in writing statutes," Mercer

MERCER

said. "I think most Montana lawyers have encountered times a statute or rule is imprecise or a court has misconstrued what the legislature intended. Now that I've been more focused on Montana law I've got some things I will bring to the process that I think are worth evaluating. I hope that I hear from other lawyers, some of whom I've already spoken to, who have ideas on how we can improve statutory language.

"Lawyers every day have a front row seat on the outcomes from this legislative process. I think to the extent that lawyers see things that they believe are in need, I hope they pass that along, to me or to whomever they think can effectively address them."

Two of the biggest issues he sees on the Legislature's plate are the battle over the budget and what to do about health care.

"The governor's asking for a lot of increased spending. I envision that being a big issue," he said. "The majorities in both chambers, I think, are made up of people who'd describe themselves as limited-government conservatives. I think there will be real concern about the size and scope of government. That'll be a really hot topic.

He said the position he took on Medicaid expansion during the campaign hasn't changed — he wouldn't have voted for it in 2015, and he won't vote for it now.

"I know the other 149 folks have a variety of positions," he said. "My crystal ball's not very good on where that's going to end up."

See LEGISLATORS Page 26

Professor Cynthia Ford

"Two roads diverged in a wood, and I — I took the one less traveled by, And that has made all the difference."

– Robert Frost, "The Road Not Taken"

When Daubert is the way: The road less traveled by

This month's subject continues with the issue of reliability of the methodology used by experts in a specialized field of knowledge. In my last column,[1] I discussed Montana's approach to admissibility of expert testimony under M.R.E. 702. Although the federal courts apply the *Daubert*[2] standard to all proffered expert opinions, Montana has a hybrid approach, and thus is more like Robert Frost's Vermont.[3] While our version of Evidence Rule 702 retains its original language, the federal version has been amended several times to reflect *Daubert*, so that now there is a significant difference between the two current rules. Furthermore, the Montana Supreme Court has expressly rejected *Daubert* as the sole test for "non-novel" expert testimony while endorsing it for "novel" expert methodology.

Thus, Montana lawyers dealing with the admissibility of expert opinion face a Frostian fork in the road. This month's column deals with the road less traveled by: assessing expert testimony based on novel methodology by the *Daubert* test. The next column will identify the much less rare types of non-novel expert opinions which require different analysis. After that, I will address the everthorny admissibility of hearsay through an expert. Finally, the last column on expert testimony will circle back to the question of who is qualified to opine under Rule 702, which is an entirely different subject from the reliability-of-methodology issue which Rule 702 and *Daubert* address.

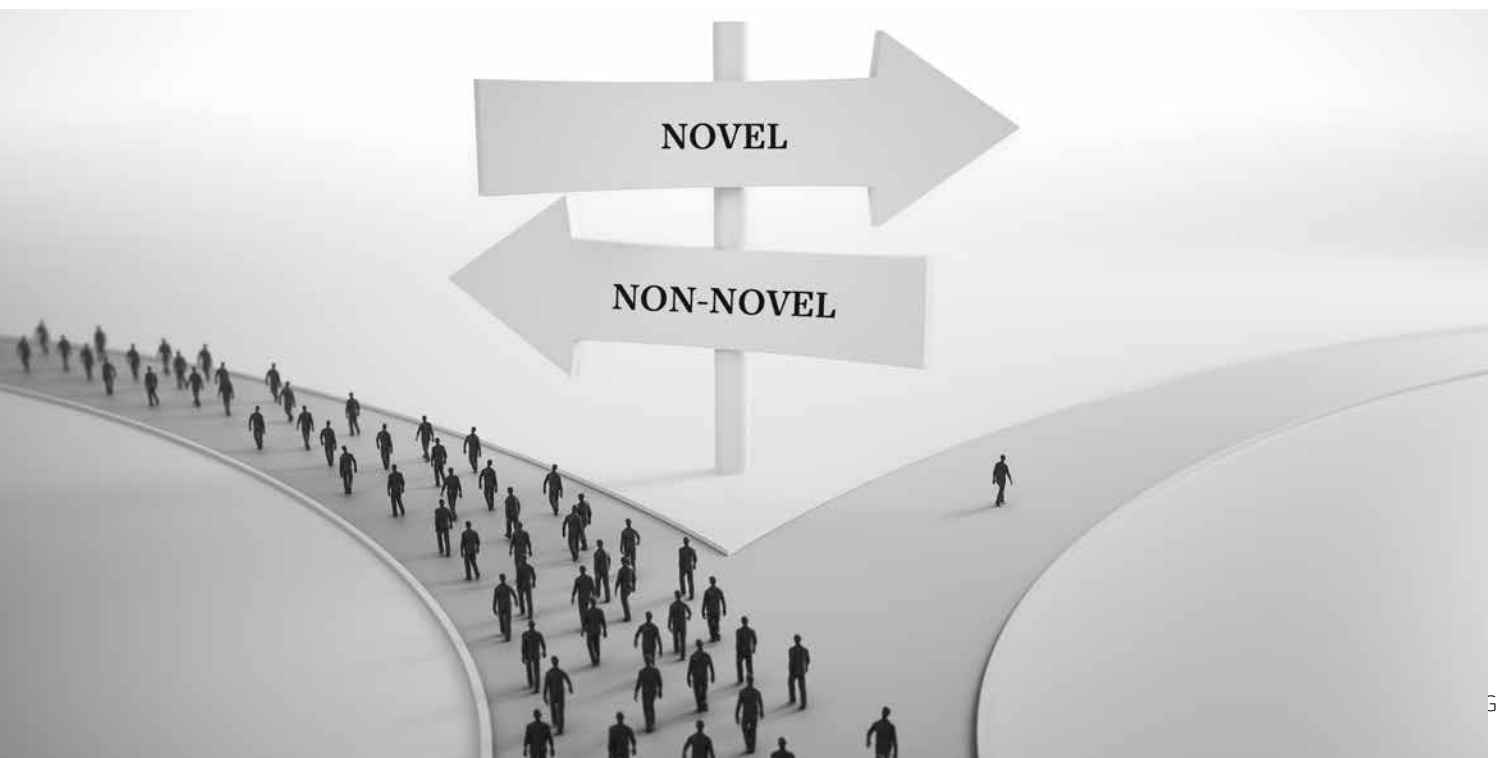
Daubert per se applies only to novel methods

As detailed in the last column, the Montana Supreme Court first applied the *Daubert* standard to scientific expert testimony in *State v. Moore*[4], decided only one year after the U.S. Supreme Court *Daubert* decision. In *Moore*, where the evidence involved forensic DNA analysis, the Court flatly and without qualification, said "we, therefore, adopt the *Daubert* standard for the admission of scientific expert testimony."[5] Only four years later, in *State v. Cline*[6], the Court took a giant step backwards, creating two separate forks for assessing expert methodology:

> Certainly all scientific expert testimony is not subject to the *Daubert* standard and **the *Daubert* test should only be used to determine the admissibility of novel scientific evidence**. (Emphasis added).

275 Mont. at 55 (1996). Two years after that, the Court reiterated its rejection of *Daubert* as the exclusive test for admissibility of expert testimony:

> The Ninth Circuit Court of Appeals, after citing to this part of the *Daubert* decision, concluded that the requirements of *Daubert* "apply to all proffered expert testimony—not just testimony based on novel scientific methods or evidence." *Claar v. Burlington* Northern Railroad Co. (9th Cir.1994), 29 F.3d 499, 501 n. 2 (citing *Daubert*, 509 U.S. at 592 n. 11, 113 S.Ct. at 2796 n. 11).
>
> We disagree with this interpretation of *Daubert* and reassert our holding in *Cline* that the *Daubert* test should only be used to determine the



admissibility of novel scientific evidence. *Cline*, 275 Mont. at 55, 909 P.2d at 1177.

Hulse v. State, 289 Mont. 1, 29, 961 P.2d 75, 91 (1998).

The Court unanimously reaffirmed this bifurcated approach most recently in 2015:

> ¶ 21 In contrast to its status in the federal system, *Daubert* is not generally applicable in Montana. In *State v. Moore*, (1994), we observed that *Daubert* was consistent with our previous precedent "concerning the admission of expert testimony of novel scientific evidence," and we adopted *Daubert* "for the admission of scientific expert testimony." *Moore*, 268 Mont. at 42, 885 P.2d at 471. We later clarified, however, that ***Daubert* does not apply to all expert testimony; instead, it applies only to "novel scientific evidence**." *State v. Cline*, (1996); see *Hulse* v. DOJ, Motor Vehicle Div., (1998) (reasoning that because "the HGN test is not novel scientific evidence," a district court "need not employ" *Daubert* to determine the admissibility of the test results). (Emphasis added, citations omitted).

McClue v. Safeco Ins. Co. of Illinois, 2015 MT 222, ¶ 21, 380 Mont. 204, 210, 354 P.3d 604, 609.

Thus, the key question for Montana litigators, whether offering or objecting to expert testimony, is whether the subject of that testimony is "novel scientific evidence" or not. The only way to divine which side of the "novel" line, and thus which road (*Daubert* or not-*Daubert*) to travel, is to sift through the Montana cases. I have attempted to do that in this and the next column.

'Novel' methodology is 'the road less traveled by'

The Bible observes that "there is no new thing under the sun." Ecclesiastes, 1:9. The Montana Supreme Court does not go quite that far, but close. As the Court itself has stated:

> We have adopted the various factors set forth by the United States Supreme Court in *Daubert v. Merrell Dow Pharms*., for assessing the reliability of proffered expert testimony, but we limit *Daubert*'s application to only novel scientific evidence. *State v. Damon*, 2005 MT 218, ¶ 18, 328 Mont. 276, ¶ 18, 119 P.3d 1194, ¶ 18. **We assess novelty from a very narrow perspective.** *Damon*, ¶ 18. (Citations omitted, emphasis added).

State v. Clark, 2008 MT 419, ¶ 42.[7] In fact, after reading my way through a myriad, if not all,[8] the relevant Montana cases, I have concluded that in fact "very narrow" equals only one "novel" technique: narrow, indeed. I will provide more detail about what that novel technique is, but first will discuss how the line is drawn.

Drawing the line: Novel or not?

The first case to draw a line between "novel" and "non-novel" methods was the same case which established the split analysis, *Cline*. Shawn *Cline* was convicted of robbery, burglary and assault based on a break-in at the Kountry Korner Cafe[9] west of Bozeman. Part of the evidence admitted against him was a fingerprint of his right thumb, located on an envelope in the cafe's money drawer. *Cline* explained this fingerprint with two alternative theories: that he had worked at the café about a year before the break-in (so his fingerprint stemmed from that time), and that shortly before the burglary, he had given an envelope to his sister-in-law who still worked at the café. (She testified that he had never given her any envelope; the café manager testified that *Cline* had never had access to the till during his employment). At trial,

> the District Court allowed Michael Wieners, a FBI fingerprint technician, to testify as to the age of *Cline*'s fingerprint found on the pie tin deposit envelope. Wieners testified that "I think this is a fresh latent print probably about a month or two old. But, again, there is leeway either way." *Cline* claims that because there is no reliable scientific procedure to evaluate the age of a fingerprint, Wieners' testimony significantly undermined his defense theory that the fingerprint was laid prior to the break-in under innocuous circumstances unrelated to the break-in.
>
> … *Cline* argues on appeal that the prejudicial affect [sic, ouch] of Wieners' testimony outweighed the probative value of the information. *Cline* further argues that Wieners' testimony did not meet the criteria for the introduction of scientific evidence in criminal cases.

275 Mont. at 54.

On appeal, the Supreme Court distinguished between the two fingerprint issues in the case, holding only the aging technique to be novel, thus requiring a *Daubert* analysis:

> It must also be noted that **we do not consider fingerprint evidence in general to be novel scientific evidence.** However, in the present case the issue is whether it is possible to determine the age of a fingerprint utilizing magnetic powder. We apply the *Daubert* standard to this case because **we consider fingerprint aging techniques in this context to be novel scientific evidence**. Certainly all scientific expert testimony is not subject to the *Daubert* standard and the *Daubert* test should only be used to determine the admissibility of novel scientific evidence.

275 Mont. at 55. Unfortunately, the *Cline* Court did not explain how it reached its conclusion that fingerprint aging was novel scientific evidence while fingerprint identification was not.

Later cases demonstrate that the two factors which matter most to the Court in deciding whether a particular method are novel or not are its scientific history and its prior use in courts both in Montana and around the country. In 2003, the Court stated (out loud) that

"there is no set standard for determining whether a scientific technique is novel," but went on to identify some factors which seem to matter:

> ¶ 38 In *Hulse*, we concluded that the Horizontal Gaze Nystagmus (HGN) test was not novel scientific evidence, noting that for several decades, law enforcement officials had used the HGN test, and that as early as 1986, the admissibility of the HGN test had been considered in other jurisdictions. We cited with approval the Minnesota Supreme Court comment that "the HGN test 'can hardly be characterized as an emerging scientific technique' because nystagmus has long been known and the tests have been in common medical use for many years." *Hulse*, ¶ 68 (citing *State v. Klawitter* (Minn.1994), 518 N.W.2d 577, 584).
>
> ¶ 39 Likewise, we concluded in *Southern* that microscopic hair comparison evidence was not novel scientific evidence—noting that since 1978 we had considered several cases wherein witnesses had testified on such evidence and that comparing hair samples with a microscope had been done for decades — and therefore *Daubert* standards were not applicable to determine its admissibility. Southern, ¶ 59.
>
> ¶ 40 While it is clear from our prior decisions that **there is no set standard for determining whether a scientific technique is "novel," we have consistently given credence not only to previous treatment of the technique by other cases and jurisdictions, but also to how long the technique or theory has been used in the scientific community.** (Emphasis added).

State v. Ayers, 2003 MT 114, ¶¶ 38-40.[10]

In *Ayers*, the State effectively used its expert to convince the trial judge, and ultimately the Supreme Court, that the "Likelihood [of paternity] Ratio" ("LR") was not novel so that *Daubert* did not apply:

> Applying those standards here, we conclude that the LR is not a novel scientific technique.
>
> ¶ 41 First, according to Dr. Basten, the widely used paternity statistic known as "paternity index" or "probabilities of paternity" is basically the same thing as a "likelihood ratio." A "paternity index" calculation considers the genetic evidence from a mother, child, and putative father and compares the hypothesis that the putative father is the father versus the hypothesis that another man is the father. According to Dr. Basten, while the specific equations might be slightly different between a paternity index (dealing with mother, child, and putative father) and the LR in a criminal investigation (suspect, victim and evidence stain), both involve the same theory: "you're calculating the probability of what you see, evidence or data, given different ideas as to how it came about."
>
> ¶ 42 In *State v. Weeks*, the State presented statistical analysis based on a paternity test to prove the defendant had sexual intercourse without consent with his thirteen-year old stepdaughter who became impregnated. *Weeks* (1995), 270 Mont. 63, 891 P.2d 477 (The statistical analysis determined the defendant was 154,000 times more likely to be the father of his stepdaughter's baby). Dr. Basten, having reviewed *Weeks*, explained that the paternity index used in that case was basically a LR.
>
> ¶ 43 During the pre-trial hearing, Dr. Basten told the court that **in at least six previous cases, his testimony was based on the LR**, including a Montana case tried in 1998, *State v. Swan*, Fourth Judicial District Court, Missoula County, Cause No. 12594 (neither the admission of DNA evidence, nor the LR were appealed in that case). Moreover, Dr. Basten also testified in Garcia, 197 Ariz. 79, 3 P.3d 999, where the Arizona Supreme Court concluded that interpretation of mixed DNA samples using statistical formulas for calculating LR's were generally accepted by the relevant scientific community and were therefore admissible under *Frye v. United States* (D.C.Cir.1923), 293 F. 1013.
>
> ¶ 44 Second, we take note of **many journal articles** written on the topic of presenting DNA results which incorporate discussion of the LR. See, e.g., Jonathan J. Koehler, On Conveying the Probative Value of DNA Evidence: Frequencies, Likelihood Ratios, and Error Rates, 67 U. Colo. L.Rev. 859 (1996); William C. Thompson, DNA Evidence in the O.J. Simpson Trial, 67 U. Colo. L.Rev. 827, 828 (1996); Jonathan J. Koehler, Why DNA Likelihood Ratios Should Account for Error (Even When A National Research Council Report Says They Should Not), 37 Jurimetrics J. 425 (1997). (Emphasis added).

State v. Ayers, 2003 MT 114, ¶¶ 40-44.

In *State v. Bowman*[11], the court held that an expert's opinion on the cause of death of an allegedly poached elk was not based on novel science, even though only one laboratory in the world (where he worked) studied wildlife forensics:

> The study of animal anatomy is not a new concept. It coincides with the study of human anatomy and can be dated back to, at the very least, Hippocrates (377–460 B.C.). In addition, schools of veterinary science date back to the mid-18th Century in Europe and about the time of the Civil War in America.
>
> ¶ 40 Aside from the lengthy history surrounding the study of animal anatomy and the development of veterinary schools, Stroud's education, his studies, and his work experience, in the area to which he testified,

is extensive. His education includes a Doctor of Veterinary Medicine and a Master of Science in veterinary science pathology. In addition, Stroud has participated in one study, involving seals, where numerous bullet wounds were observed and another study involving deer, "[t]hat was specifically to determine wound ballistic characterization using various firearms." Further, at the Lab he "primarily deal[s] with either cause of death or pathologic examination of evidence from wildlife ... [including] birds, eagles, hawks, owls, waterfowl, wolves, deer, elk, marine mammals, even fish." Lastly, he has completed about 10,000 necropsies, or autopsies, on wildlife ranging from whales to elk, deer, wolves, and many different birds.

2004 MT 119, ¶¶ 39-40. Although there is "no set standard for determining whether a scientific technique is 'novel,'" a synthesis of these cases shows that to successfully argue for the application of *Daubert*, the opponent should show both that the expert's methodology is recent in origin, and that it has not been used in very many, if any, court cases.

The obvious caveat is that the opponent urging a *Daubert* analysis should not agree that the contested methodology is not novel. Sadly, that is exactly what sabotaged the argument in *Damon v. State*. *Damon* involved a PBT, also known as a Preliminary Alcohol Screening Test (PAST), that revealed defendant's blood alcohol content (BAC) to be 0.274. After a pretrial hearing on the admissibility of the PBT, the judge allowed it into evidence at trial. Damon was convicted and designated a persistent felony offender. On appeal, he challenged the reliability of the test and its admission. The Supreme Court observed that:

> ¶ 23 **Both parties in this case admit that the scientific technology used in the Alco–Sensor III to measure alcohol represents nothing new or novel.** The instrument itself has existed since the 1970's. An Austrian scientist initially discovered the fuel cell technology used in the Alco–Sensor III PBT in the 1960s. We held in *Southern* that microscopic hair comparison was not novel because hair sampling with a microscope had been done for decades. *Southern*. ¶ 59. **Likewise, a PBT or PAST using fuel cell technology does not represent a novel scientific technique that requires a court to apply the *Daubert* factors.** (Emphasis added).

State v. Damon, 2005 MT 218, ¶ 23.[12]

The List?[13] of novel methodologies in Montana

OK, here is the breaking news, at last. There is only one expert methodology that the Montana Supreme Court so far has held to be "novel," requiring the application of *Daubert* per se:

> 1. Fingerprint identification (*Cline*):
>
> It must also be noted that **we do not consider fingerprint evidence in general to be novel scientific evidence.** However, in the present case the issue is whether it is possible to determine the age of a fingerprint utilizing magnetic powder. We apply the *Daubert* standard to this case because **we consider fingerprint aging techniques in this context to be novel scientific evidence**. Certainly all scientific expert testimony is not subject to the *Daubert* standard and the *Daubert* test should only be used to determine the admissibility of novel scientific evidence.

State v. Cline, 275 Mont. 46, 55, 909 P.2d 1171, 1177 (1996). Of course, as new methodologies are developed and offered in Montana cases for the first time, they too may be deemed "novel" and the suggestions below would apply to them as well as to fingerprint aging. The converse is also true: what was "novel" at the time one case was decided, requiring a *Daubert* analysis, may eventually ripen into "non-novel" once that method has met the *Daubert* standard repeatedly. A party who wants to use fingerprint aging, for example, could research both the current scientific literature and other case law across the country to see what has happened to the technique in the 14 years since *Cline*. If lots of scientists or courts have approved the technique in the interim, a proponent could use those facts to escape *Cline* and *Daubert*. (FYI: I did do a quick literature check in October 2018, and it seems that fingerprint aging still would be considered "novel," requiring a *Daubert* analysis.[14]

All the other cases I have seen categorize the methodologies involved as "non-novel," so that *Daubert* does not govern their admissibility. Instead, what I have dubbed the "Montana test" applies, but that is not without its own difficulty, as we will see next month.

How to use Daubert in a "novel method" case

In *Cline*, the Montana Supreme Court referred back to *Moore*[15], the case in which it originally had held that *Daubert* applied in Montana state court, as guidance for trial lawyers and judges:

> We noted that Rule 702, Fed.R.Evid., still requires the district court to screen such evidence to ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable. *Moore*, 885 P.2d at 470.
>
> To guide the trial court's assessment of the reliability of the scientific evidence offered, we adopted in *Moore* the following four nonexclusive factors: (a) whether the theory or technique can be and has been tested; (b) whether the theory or technique has been subjected to peer review and publication; (c) the known or potential rate of error in using a particular scientific technique and the existence and maintenance of standards controlling the technique's operation; and (d)

> whether the theory or technique has been generally accepted or rejected in the particular scientific field. *Moore*, 885 P.2d at 470-71 (citing *Daubert*, 113 S.Ct. at 2796-97).

State v. Cline, 275 Mont. at 55–56. These four factors come directly from the U.S. Supreme Court decision in *Daubert*:

> Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset, pursuant to Rule 104(a), whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. We are confident that federal judges possess the capacity to undertake this review. Many factors will bear on the inquiry, and we do not presume to set out a definitive checklist or test. But some general observations are appropriate.
>
> Ordinarily, a key question to be answered in determining whether a theory or technique is scientific knowledge that will assist the trier of fact will be whether it can be (and has been) tested….
>
> Another pertinent consideration is whether the theory or technique has been subjected to peer review and publication….
>
> Additionally, in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error, … and the existence and maintenance of standards controlling the technique's operation…
>
> Finally, "general acceptance" can yet have a bearing on the inquiry…
>
> The inquiry envisioned by Rule 702 is, we emphasize, a flexible one. Its overarching subject is the scientific validity and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission. The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.

Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 593–95 (1993).

It is possible to satisfy *Daubert* without expressly addressing each of these factors. In *Cline*, where the Montana Supreme Court held that the fingerprint aging opinion was based on "novel scientific evidence," requiring *Daubert*, it affirmed the admission of the evidence even though Judge Olson had not expressly applied *Daubert*:

> In this case, the State established the necessary foundation regarding the issue of determining the age of fingerprints. Wieners referenced and quoted a number of scientific treatises on fingerprint technology. The treatises established that while the age of a latent print cannot be established with complete accuracy, experienced examiners can proffer an opinion regarding the age of a latent print based on the examiner's experience and investigation. The District Court, although not applying the *Daubert* criteria, correctly found that this was an area where experts could disagree, that the testimony would be subject to cross-examination, and that the credibility of the witnesses and the weight of their testimony should be for the jury to decide, not the court. Rulings on the admissibility of evidence are left to the sound discretion of the trial court. *Moore*, 885 P.2d at 471 (citing *State v. Stewart* (1992), 253 Mont. 475, 479, 833 P.2d 1085, 1087). We conclude that the District Court did not abuse its discretion in allowing Weiners' testimony regarding the age of the fingerprint.
>
> 275 Mont. at 56.

The best practice, however, is to actually present evidence specifically addressed to each of the factors identified in *Daubert* and adopted by the Montana Supreme Court in *Moore* and *Cline*. Because most of us[16], lawyers and judges alike, came to law school without extensive scientific or technical backgrounds and certainly haven't developed those during our litigation careers, it makes sense for each party's expert to do this work. Of course, the answers provided by the proponent's and opponent's experts will be contradictory, but both should address (ideally in a "*Daubert* hearing" on a motion in limine)

1. The expert's familiarity with the methodology behind the proffered opinion;
2. Whether that method can be tested, and why or why not;
3. If in fact that method has been tested;
4. The results of any testing of the methodology;
5. Whether the technique has been subject to peer review and publication, explaining when and where it was published, what peer review prior to publishing occurred, and what further peer review resulted from the publication;
6. Whether/what standards exist for the technique's operation, and how they are maintained;
7. The known or potential rate of error for the methodology;
8. The degree of acceptance of this methodology in the field of expertise.

I have developed this set of subjects from the explicit factors articulated in both *Daubert* and the Montana cases. As *Daubert* itself recognizes, those factors are not exclusive, so an advocate should also include any other evidence that tends to prove or disprove the ultimate issue: whether the technique is reliable or not. Because of the universal use of *Daubert* in the federal courts, and its adoption by some states, there are a host of practice articles which elaborate in much more on establishing and challenging sufficient reliability of an expert's methodology under *Daubert*.

Novel or not: Montana judges urged to err on side of admission

The U.S. Supreme Court's decision in

Daubert was meant to, and did, broaden admissibility of expert opinions even where the methodology was not generally accepted in the field, which was the requirement previously imposed by the supplanted *Frye* decision. Similarly, the Montana Supreme Court has urged the district courts to lean on the side of admitting rather than excluding evolving methodologies, even as the court must guard against the clearly unreliable:

> When we adopted the *Daubert* test in *Moore*, we specifically noted the continuing vitality of *Barmeyer* as that case pertained to the scientific evidence. In *Barmeyer* we held that "it is better to admit relevant scientific evidence in the same manner as other expert testimony and allow its weight to be attacked by cross-examination and refutation." *Barmeyer*, 657 P.2d at 598 … In *Barmeyer*, we rejected the "general acceptance" test, holding that it was not in conformity with the spirit of the new rules of evidence. (Citations omitted, emphasis added).
>
> *Cline*, 275 Mont. at 55.
>
> In adopting the *Daubert* test, we concluded that "before a trial court admits scientific expert testimony, there must be a preliminary showing that the expert's opinion is premised on a reliable methodology." *Moore*, 885 P.2d at 471. We noted, however, that such an inquiry must remain flexible.
>
> "Not every error in the application of a particular methodology should warrant exclusion. An alleged error in the application of a reliable methodology should provide the basis for exclusion of the opinion only if that error negates the basis for the reliability of the principle itself." *Moore*, 885 P.2d at 471 (quoting *United States v. Martinez (*8th Cir.1993), 3 F.3d 1191, 1198).
>
> *State v. Cline*, 275 Mont. at 55–56.

The Court reiterated its preference for admission of evidence even where some question exists about the methodology or its application:

> ¶ 48 We have noted that criticisms of specific applications of procedures or concerns about the accuracy of test results does "not render the scientific theory and methodology invalid or destroy their general acceptance. These questions go to the weight of the evidence, not the admissibility." *Weeks*, 270 Mont. at 83, 891 P.2d at 489 (citation omitted). Moreover, we have consistently stated that "it is better to admit relevant scientific evidence in the same manner as other expert testimony and allow its weight to be attacked by cross-examination and refutation." Southern, ¶ 50 (citing *Barmeyer v. Montana Power Co.* (1983), 202 Mont. 185, 193–94, 657 P.2d 594, 598, overruled on other grounds by *Martel v. Montana Power Co.* (1988), 231 Mont. 96, 752 P.2d 140). See also, *State v. Moore* (1994), 268 Mont. 20, 42–43, 885 P.2d 457, 471, overruled on other grounds by *State v. Gollehon* (1995), 274 Mont. 116, 906 P.2d 697 (even though the foundation for the State's expert witness was "shaky," the district court did not err in ruling the defendant's objection to the DNA evidence went to the weight, and not the admissibility, of the evidence). Finally, "[n]ot every error in the application of a particular methodology should warrant exclusion. An alleged error in the application of a reliable methodology should provide the basis for exclusion of the opinion only if that error negates the basis for the reliability of the principle itself." *Moore*, 268 Mont. at 42, 885 P.2d at 471 (citation omitted).
>
> ¶ 49 While we recognized in *Weeks*, 270 Mont. at 84, 891 P.2d at 489 *409 (citation omitted), that "courts must be mindful that the probative value of statistical probabilities evidence is not outweighed by any unfair prejudicial effect," we conclude that admission of Dr. Basten's conclusions using the LR did not unfairly prejudice *Ayers*. At both the hearing on his motion in limine and the trial, Ayers had the opportunity to cross-examine Dr. Basten concerning the computer program he used to run the formula, his methodology, and his application of various sampling error standards. While Ayers identified two expert witnesses at the pre-trial hearing, Ayers chose not to present an expert at trial to refute or challenge Dr. Basten's calculations, methodology, or formulas.
>
> ¶ 50 We conclude that the issues concerning Dr. Basten's techniques/methods went to the weight of the evidence, not its admissibility. Based on the foregoing, we further conclude the District Court did not abuse its discretion when it allowed Dr. Basten to testify using the LR.
>
> *State v. Ayers*, 2003 MT 114, ¶¶ 48-50.

Hulse, the HGN case discussed above, also contained a map for lawyers and judges:

> Certainly, if a court is presented with an issue concerning the admissibility of novel scientific evidence, as was the case in both *Moore* and *Cline*, the court must apply the guidelines set forth in *Daubert*, while adhering to the principle set forth in *Barmeyer*.
>
> However, if a court is presented with an issue concerning the admissibility of scientific evidence in general, the court must employ a conventional analysis under Rule 702, M.R.Evid., while again adhering to the principle set forth in *Barmeyer* [liberal admissibility: see below].
>
> *Hulse v. State*, *Dep't of Justice, Motor Vehicle Div.*, 1998 MT 108, ¶ 63.

Fighting expert evidence which is admitted despite its novelty

Both the U.S. and Montana Supreme Courts have acknowledged the concerns that the flexible *Daubert* standard would allow in more expert opinions than the stricter general-acceptance-necessary

standard which preceded *Daubert*. Justice Blackmun responded directly:

> Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. …Additionally, in the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free to direct a judgment, Fed.Rule Civ. Proc. 50(a), and likewise to grant summary judgment, Fed.Rule Civ. Proc. 56. (Citations omitted).

Daubert v. Merrell Dow Pharm., 509 U.S. 579, 596 (1993). The Montana Supreme Court similarly endorsed impeachment rather than wholesale exclusion of expert testimony:

> In *Barmeyer* we held that **"it is better to admit relevant scientific evidence in the same manner as other expert testimony and allow its weight to be attacked by cross-examination and refutation."** *Barmeyer*, 657 P.2d at 598
>
> *State v. Cline*, 275 Mont. at 55.

In the "novel" fingerprint aging context, the opposing lawyer should first object to admission the expert's opinion using the *Daubert* factors both in cross-examination of the proferred expert and in the direct of the opponent's expert. If the judge overrules the objection, those same tools should reappear at trial, as grounds for a jury argument that the expert's opinion should be discounted or disregarded altogether because the methodology is "novel" and unreliable.

Conclusion

The rarity of "novel" methodology, necessitating a straight application of *Daubert*, shows that this branch of the expert methodology trail is indeed the road less traveled by. Although more types of expert opinions based on developing methodologies may be held "novel" in the future, the only technique which has been categorized as novel so far is fingerprint aging.

In the next column, we will explore the far more numerous cases holding that particular methods are not novel, and decide whether "that [classification] has made all the difference."

Cynthia Ford teaches Civil Procedure, Evidence, Family Law, and Remedies. She coached the Trial Team for 20 years, and regularly serves on the faculty of the Advanced Trial School at the School of Law.

Endnotes

1 "*Daubert*, or not *Daubert*?" Montana Lawyer, August 2018.

2 *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

3 I speak of Vermont in the poetic sense, perhaps especially appropriate now that we are in leaf season. I have done no research into Vermont's state court approach to expert testimony, because this is the "***Montana*** Lawyer."

4 268 Mont. 20, 885 P.2d 75 (1998).

5 268 Mont. at 42.

6 275 Mont. 46, 909 P.2d 1171 (1996).

7 347 Mont. 354, 366, 198 P.3d 809, 819.

8 No warranty here, boss. If you DO know of a case holding a technique to be "novel" so that *Daubert* alone applies, please let me know: Cynthia.ford@umontana.edu.

9 Why not the "Kountry Korner Kafe" as long as you are going that far?

10 315 Mont. 395, 406–07, 68 P.3d 768, 777.

11 321 Mont. 176, 89 P.3d 986 (2004).

12 328 Mont. 276, 282, 119 P.3d 1194, 1199.

13 If a single entry constitutes a "list."

14 For example, the abstract of a May 2016 online article from Forensic Science International, https://www.sciencedirect.com/science/article/pii/S0379073816301074, includes these highlights:

Numerous court cases show disparities in the management of fingermark dating issues.

This lack of consensus is due to the absence of a validated fingermark dating method.

Research about fingermark dating is ongoing and some approaches show promise.

Based on these approaches, a methodological framework for dating issues is proposed.

Data from cases and research should interact to develop a relevant dating methodology.

15 268 Mont. 20, 885 P.2d 75 (1998).

16 For example, I have double majors in the very-useful (actually, I am not being ironic as to life in general) areas of Medieval English Literature and Philosophy.

Give your readers an information roadmap

Abbie Nordhagen Cziok

Editor's Note: *This is the first installment of a new legal writing column that will be appearing regularly in the Montana Lawyer.*

I always dreaded the required reading in my legal writing classes. The books and articles all repeated the same predictable truisms and tricks: incomplete sentences are those that are incomplete; clear writers write clearly; never start sentences with "and." And so on. So I've been pleased after sifting through a number of legal writing books that there are publications that don't just blindly recite these truisms, but that rely on research and cognitive science to identify valuable guiding principles.

One such "rule" (though all rules can be artfully broken, like mixing navy and black) that I continually run across is that readers absorb information best if they understand the information's significance immediately. This rule or principle is explained most effectively in one of my favorite books — clarification: favorite *legal writing* books because I'm not a Vulcan — "Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing," by Stephen V. Armstrong and Timothy P. Terrell.

The principle that should guide our writing is that we should present information so that its significance is clear to readers immediately.

This principle is one that we all inherently know is important. It is why we title pleadings and use point headings. We know we have to orient our readers. But how can we apply this rule in a more purposeful, intentional way? Well, as the "Thinking Like a Writer" folks also explain, we should apply any principle, including the one explained above, to all "levels" of a document: (1) the organizational level, (2) the paragraph level, and (3) at the level of sentences and individual words.

Again, the principle that should guide our writing is that we should present information so that its significance is clear to readers immediately. First, at the *organizational level*, this means that we should include roadmaps so that when readers see information in the body of a document, they understand how it fits into the larger structure.

Second, applying this principle at the *paragraph level* means that when starting a new paragraph, a new concept should never be introduced at the beginning of the first sentence in a paragraph. That's like throwing water in a reader's face; they weren't expecting to integrate new information yet. Instead, pick the most important theme from the last paragraph, and incorporate it into the beginning of the first sentence in the subsequent paragraph. We need to build up readers' confidence and remind them that they already know things before springing something new on them. Linking paragraphs in this way strings together concepts purposefully so that readers are never confused.

Third, this principle also applies at the level of *sentences and individual words*. Like the paragraph tip above, sentences — particularly long, involved, wordy sentences like the one you are currently reading — should include new information at the end. Readers are never prepared to digest new information without a palate cleanser, if you will. So present familiar information first and new information last. Additionally, this principle explains why synonyms can be so dangerous. If I go through a brief calling the units in a building "apartments" and then suddenly refer to the structure as a "duplex," readers may worry they missed something.

I hope we can all learn together in the coming months as I continue to read new books and pull out the information that I find helpful. Go forth and write many sentences.

Abbie Nordhagen Cziok is an associate with Browning, Kaleczyc, Berry & Hoven in the Helena office. She likes rock climbing, skiing, and one space after a period.

Guidelines to closing your law practice

Mark Bassingthwaighte

A lawyer can decide to close his or her practice for any number of reasons. Disability, retirement, disbarment, a move out-of-state, or a career change are the more common ones we hear. While the specific steps that need to be taken can vary significantly depending upon the reasons behind the closure, this article seeks to provide some general guidance on the principal issues that will arise. At the outset, understand that in many instances the process of properly closing a law practice can easily take six to 12 months and sometimes longer because the obligations to protect client confidences as well as the interests of the client make closing a law practice more difficult than closing other types of businesses. Finally, note that jurisdictional rules do differ and a review of your local rules and ethics opinions, perhaps coupled with a call to your local bar counsel would be well advised early in the process.

The first step one should take after making the decision to close is to determine what files can be finalized prior to closing and then seeing that enough time is set aside to enable you to follow through. This does mean that you will need to decide when to stop taking on new matters and when to notify staff as they will be interacting with the public as well as current and past clients once the news breaks.

The second step is to write and send a letter to all clients with active matters that cannot be closed in order to advise them of the upcoming change. Typically, these letters will inform the client of any relevant time limitations or time frames, provide instructions as to how and where they may obtain a copy of their file, and advise them to find a new attorney as quickly as possible. An offer to assist the clients in finding a new attorney by providing a few names or the phone number to a local lawyer referral service would also be appropriate. Don't overlook the importance of setting forth your file retention policy and providing post closure contact information in the event a client needs a copy of their file at some later point in time. It is for this reason that some jurisdictions also require that a similar letter be sent to past clients. Where called for, these initial letters are usually followed up with a full accounting of client funds that remain in the trust account and/or a statement of fees owed by the client.

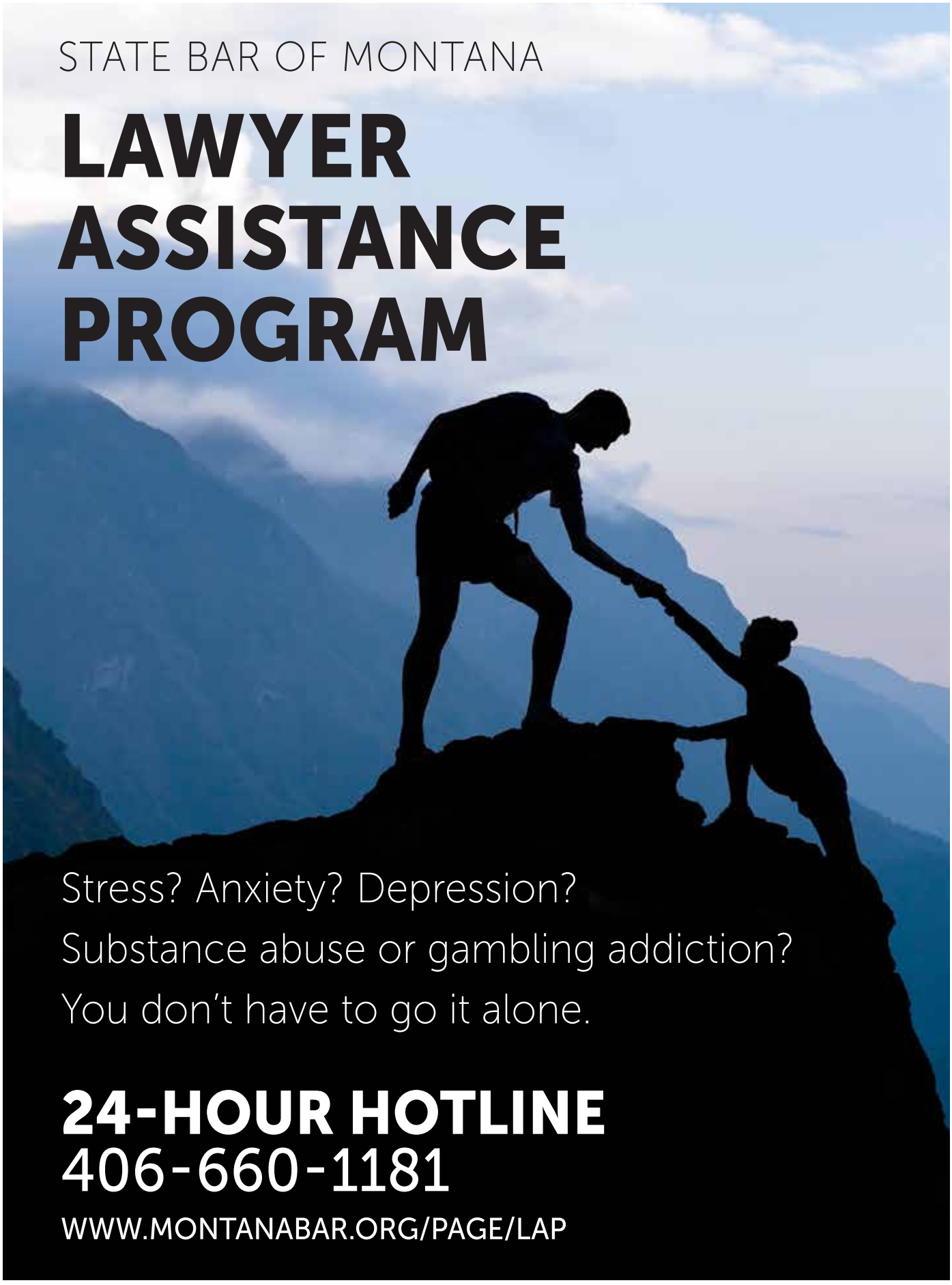
As clients respond to these letters, remember to retain your original file and return to the client any original documents and/or client property such as original wills, deeds, stock certificates, signed contracts, promissory notes, etc. Again, clients get copies of your file; you get copies of their original documents. Don't forget to document the disposition of the files in case questions come up post closure. Have clients sign an authorization to release their file to their new attorney or sign an acknowledgement that they picked up a copy of their file.

On matters that have pending court dates, depositions or hearings, talk to the client about how to proceed. A request to reset a hearing or a request for an extension or continuance may be called for and, once received, confirmation of the granted request should be sent to opposing counsel and your client. For cases before a court or administrative body, obtain client permission to submit a motion and order to withdraw as the attorney of record and at an appropriate time verify that all motions to withdraw have been granted. If the client has obtained a new attorney, make certain that a Substitution of Counsel is filed.

If, over the course of your career, you failed to review and destroy old files that no longer needed to be retained, now is the time to begin. The costs to continue to maintain closed files can be significant and you have an ethical obligation to take care of this. Don't burden a spouse by leaving this for them to deal with should your spouse outlive you.

See CLOSING Page 29

The process of properly closing a law practice can easily take six to 12 months and sometimes longer because the obligations to protect client confidences as well as the interests of the client make closing a law practice more difficult than closing other types of businesses.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Rob Farris-Olsen, HD 79

Morrison, Sherwood, Wilson & Deola, Helena

You can forgive Farris-Olsen if 2018 has seemed like a blur.

The 34-year-old Helena native who balances his work at Morrison, Sherwood, Wilson and Deola with serving on the Helena City Commission, also ran what effectively amounted to two tough campaigns for the Legislature within a month. If that weren't enough, he and his wife, attorney Erin Farris-Olsen, welcomed their second baby this year.

After losing to longtime local legislator Mary Caferro in a hard-fought primary election race for House District 81, Farris-Olsen beat out six other candidates – including two former legislators – a month later to replace former House Majority Leader Jenny Eck on the November ballot for HD 79.

Though he was unopposed in the general election, his whirlwind wasn't over. He spent the week of the election in Portland arguing a case before the Ninth Circuit. Before that was a five-day judge trial before U.S. District Court Judge Sam Haddon. The new baby was born a month before that.

Now he's gearing up for the challenge of serving in his first legislative session with a 4-month-old and a 2 ½-year old at home. "I'm hoping to find a way to balance it so that I have some time with them and I don't leave my amazing wife in the lurch," he said with a laugh.

Farris-Olsen has degrees in environmental chemistry and in environmental and natural resources and has seen the legal side of things like the Montana Environmental Protection Act and the Water Quality Act, all of which he says will help him make more informed decisions on environmental issues. He also thinks his six years practicing consumer law will be an asset for him as a legislator.

Farris-Olsen expects Medicaid to be the biggest issue before the Legislature, and he was encouraged by what he heard at a recent meeting on the topic attended by all of the Helena area's Democratic and Republican legislators.

"It sounds like everyone kind of agrees that we need to make sure Montanans are protected. It's just finding a way to get there," he said. "It sounds like there may be ways we can get there."

Another big issue for him is

FARRIS-OLSEN

infrastructure. Between the city of Helena, Lewis and Clark County and the local school district, he said, there are about a billion dollars in infrastructure needs. "Putting that on an entire community is really difficult. Finding a way to equitably pay for that infrastructure is incredibly important, because it's happening across the state, not just here."

He said his desire to make a difference in people's lives drove him to serve.

"I've always wanted to serve in public office in some capacity," he said. "As a lawyer, I can help one client at a time. I think the Legislature – and the City Commission – provide a mechanism to help more people and do better work on a broader scale."

"This was an opportunity I couldn't pass up," he said. "These opportunities in Helena rarely come up. When they're there you have to seize on them."

Katie Sullivan, HD 89

Katherine Sullivan PLLC Intellectual Property Law

Health care policy stopped being a theoretical issue and hit home in a real way for Sullivan when her her husband was diagnosed with a chronic health condition in 2016. Five days in the hospital — and about a $150,000 bill — later, and the couple became experts at navigating the health care system.

"For me, it's a huge passion I have, like a fire in my soul," she said.

It was part of what she calls a perfect storm of circumstances that came together to prompt her to run for the Legislature. She had gotten a taste of public service being on the Missoula university district's neighborhood council, She discovered that she enjoyed working with the city council in that capacity and meeting with neighbors to discuss issues.

When her district's representative, Nate McConnell, was appointed last year to complete Cynthia Wolken's Senate term – and with health care becoming such a big isue for Montana – she decided it was a great time to run.

As strong as she feels about health care, she is far from a one-issue legislator.

Property tax relief is a big issue for her constituents, and living in the university district, she is keenly aware of the importance funding higher education.

She also says her intellectual property expertise could come in handy in a number of ways, including trade secrets of chemicals used in the oil and gas industry and pharmaceutical ingredients.

Technology is another passion.

"I really would love to see how I could be helpful for rural internet access, rural high-speed internet access specifically," she said. "How do we keep young people in communities that don't have it? How do we have businesses move into communities that don't have it?"

"Also, I'm interested in data privacy and security issues," she said. "I think people are finally on board and saying, 'What can we do?' Montana's a great place to do that, because privacy is not a partisan issue."

SULLIVAN

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Attorney Terry A. Wallace receives 7-month suspension

Summarized from a Montana Supreme Court order in case No. PR 17-0245

The Montana Supreme Court has suspended Missoula attorney Terry A. Wallace for seven months, subject to reapplication, for his conduct in a lawsuit he filed in 2012.

The Commission on Practice recommended the seven-month suspension even though the Office of Disciplinary Counsel only sought a three-month suspension. The commission concluded that Wallace had multiple violations of Rules 3.1 and 3.4(d) of the Montana Rules of Profession Conduct. Chair Mick Taleff wrote that commission members "cannot recall a more egregious example of such outrageous behavior," describing his conduct as "legal bullying."

In addition to his conduct in the 2012 lawsuit, Wallace responded to ODC's complaint against him by filing a motion for sanctions against Deputy Disciplinary Counsel Jon Moog.

"Wallace's conduct is so extreme that it nearly defies description," Taleff wrote. "It is clear to the Commission that only a significant period of suspension, with a requirement that he must reapply for admission after a (hopefully) serious period of introspection, will impress upon him the unacceptable nature of his conduct."

The commission also concluded that Wallace violated Rule 3.4(c) by not attending a pretrial conference.

Attorney David S. Freedman receives 7-month suspension

Summarized from a Montana Supreme Court order in case No. PR 18-0034

The Montana Supreme Court has suspended attorney David S. Freedman for seven months for multiple violations of the Montana Rules of Professional Conduct in his handling of a civil rights lawsuit.

Freedman's client, Brian John Temple, told Freedman he wanted to appeal a summary judgment in the case, but Freedman failed to file a timely notice of appeal. U.S. District Judge Sam Haddon later held Freedman in contempt when he failed to appear at a hearing to consider Temple's motion for extension of time to appeal.

The Commission on Practice determined that Freedman had no valid justification for his inaction, and that his conduct demonstrated lack of competence, lack of diligence, and failure to recognize the scope of his representation. The commission also noted that the court censured Freedman in 2017 for multiple rules violations.

Morris reinstated on probationary status

Summarized from a Montana Supreme Court order in case No. PR 17-0243

The Montana Supreme Court on Oct. 16 granted Helena attorney Jack Morris probationary reinstatement after a three-month suspension.

In a previous ruling on Sept. 25, the court had denied Morris' petition for reinstatement until he demonstrated that he was meeting the conditions of his probationary status, including obtaining a mentor approved by the Office of Disciplinary Counsel.

Morris filed a supplement to his petition advising that Greg Beebe has agreed to act as his mentor during the two-year probationary period and that Beebe has been approved by ODC.

Judge: from page 7

races were on Montana ballots, including six contested races. In the other contested races

- Robert J. Whelan defeated Samm Cox for 2nd Judicial District judge in Butte-Silver Bow County. Whelan, 51, is a solo practitioner in Butte with experience in criminal law and civil litigation. Whelan, whose father, John J. Whelan was a 2nd Judicial District judge, will replace the Honorable Bradley Newman who did not run for re-election.
- Matthew J. Wald defeated Raymond G. Kuntz in a 22nd Judicial District judge race. Wald will replace the retiring Honorabe Blair Jones in the district covering Big Horn, Carbon, and Stillwater Counties.
- The Honorable Kim Christopher, 58, won a fourth term as 20th Judicial District judge, defeating Polson criminal defense attorney Ashley Morigeau in the Lake County district.
- The Honorable Yvonne Laird of Malta beat Glasgow solo attorney Peter Helland in the 17th Judicial District judge race. The district covers Blaine, Phillips and Valley Counties.

Gary L. Spaeth

Helena attorney Gary Spaeth died on Oct. 24 after an extended illness while at St. Peter's Hospital in Helena.

Gary was born in Billings on Jan. 13, 1945, as the oldest son to Alfred and Lucy Jane Spaeth of Silesia.

A graduate of the University of Montana School of Law, he held many government and community positions. He was the chairman of the Helena Citizens Council, chairman of the Lewis and Clark Fair Foundation, chairman for three years of the Lewis and Clark Humane Society, as well as many others.

Spaeth

He retired from the State of Montana where he was assistant chief counsel for the State Auditor's Office. He previously worked for the Department of Natural Resources and Conservation, and he served four terms in the Montana House of Representatives, where he was the chair of the House Appropriations Committee and majority whip. After Gary's retirement he spent his time, putting his knowledge of the law and government to work as a lobbyist.

Floyd Aaron Brower

Former Musselshell County Attorney Floyd Aaron Brower died on Nov. 13 in Roundup Memorial Hospital of natural causes.

He was born Lloyd Aaron Brower on July 11, 1928, in Havre. After serving in the Navy from 1946 to 1948, he worked as an auctioneer, then went on to sell cars, and ultimately became an owner of the Ford dealership in Chinook. After he sold the dealership, he went to Northern Montana College and then earned his law degree at the University of Montana.

Brower

In 1960, Floyd married Mary Sweeney in Havre, where their son, Martin, was born in 1961. The family moved to Roundup in 1965, where their second son, Clay, was born.

Practicing law in Roundup for over 50 years, he first worked for Thomas Ask and then set up his own law practice, Brower Law Firm. He served as county attorney in Musselshell County several times and acted as guardian *ad litem* for many children, helping those who could not help themselves. In 2015, the State Bar of Montana recognized Floyd for 50 years of service, and he was still an active member of the bar. Floyd belonged to the Elks Lodge and Phi Delta Phi, among other organizations.

He loved to fish and to ride horses and was an avid endurance rider, a sport he started in his 60s and continued into his early 80s. He was especially proud of his ride from the Colorado border to the Montana line and his ride from the North Dakota border to Browning.

Condolences and stories for the family may be posted online at www.cloydfuneralhome.com.

Closing: from page 24

When you originally closed the file, you should have separated all the original documents that belong to the client and returned them to the client. If you did not, do it now. In fact, a review of every file prior to destruction is a good idea as sometimes original documents were overlooked when the file was initially closed.

Remember that in most jurisdictions the file belongs to the client and some clients will want their original file as opposed to having it destroyed. This means that you can't simply decide to destroy client files absent client awareness and approval. If you did not obtain the client's instructions when you closed any given file, seek those instructions now. Many attorneys will simply send letters to their clients' last known addresses. Once you learn their wishes, carry them out. If you are going to destroy a file, make sure you follow through with the notion of destruction. "Destruction" does not mean leaving the file in a dumpster behind the office. You should incinerate or shred these files. You cannot compromise your client's confidences, even in file destruction. Again, document your actions. Track the client name, file matter, method of disposition (destroyed, returned) and date of disposition.

Turning to one specific business concern, contact your malpractice insurance carrier well in advance of closing to start learning about the options for obtaining an extended reporting endorsement (more commonly referred to as a "tail policy"). This endorsement is not a new policy. It simply provides an attorney the right to report claims to the insurer after a policy has expired or been canceled. Again, it is important to note that under most tail policy provisions the purchase of the endorsement is not one of additional coverage or of a separate and distinct policy. This means no coverage will be available for a wrongful act that takes place during the time the ERE is in effect. So if a claim arises several years post retirement out of work done in retirement – for example writing a will as a favor for a friend – there would be no coverage for that claim under the ERE. That's worth remembering.

ALPS Risk Manager Mark Bassingthwaighte, 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. Recent seminars are available at montana.inreachce.com.

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