

MONTANA LAWYER

State Bar
— of —
Montana

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Publisher | *John Mudd*

Editor | *Joe Menden*

406-447-2200; fax: 442-7763

email: jmenden@montanabar.org

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A remarkable life of service to the public and the profession



The Honorable Leslie Halligan is a 4th Judicial District judge. Before her appointment as district judge, she served as a standing master in the 4th Judicial District and as a deputy county attorney in Missoula County.

As I write this message, our nation recognizes the 50th anniversary of the assassination of Dr. Martin Luther King Jr., a minister and civil rights activist, who through his inspirational leadership sought justice, democracy and equality through peaceful protests.

As lawyers, we play a vital role in the preservation of society. This principle is recognized in the Preamble to the Rules of Professional Conduct. *Preamble, 14.* As a member of the legal profession, a lawyer not only serves clients, but is an officer of the legal system and a public citizen having special responsibility for the quality of justice. *Preamble, 2.* As lawyers, we must embrace the concepts of justice and work to maintain the public trust. Because, as recognized by Dr. King, *"Injustice anywhere is a threat to justice everywhere."* (Letter from Birmingham Jail).

"As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. ..." *Preamble, 7.* In an era of increasing public distrust, it is essential for lawyers to strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service. *Preamble, 8.*

In my career, I have known many distinguished lawyers who have served our profession and continue to exemplify these ideals of professionalism. Today, I would like to recognize Robert H. "Ty" Robinson, who faithfully served our profession and the public until his recent passing at the age of 102. Ty lived a remarkable life of service. Even as a young man, he was involved in school, civic, Masonic and Scouting organizations. He played basketball from 1937-1939 under Coach George "Jiggs" Dahlberg, graduating with a B.A. in history and political science in 1940. Ty served in the U.S. Border Patrol and in the U.S. Navy in the Pacific Theater, before returning to the University of Montana where he earned his Juris Doctorate Degree in 1948. Ty began his legal career as in-house counsel for the Missoula Merc. In 1954, he joined Jim Garlington and

Sherman Lohn in forming the present law firm of Garlington, Lohn & Robinson, from which he retired in 1987. Ty will be remembered for his integrity, humility, intellect and compassion, and for his wealth of stories extolling the development of Montana through influential clients and leaders, including the Copper Kings. No doubt, Ty influenced state policy through his lobbying efforts, while working to establish democratic principles and advance justice for all people. His unwavering commitment to the legal profession, to Montana and the community at large will serve as his enduring legacy. He, like other iconic members of the State Bar of Montana, have established a strong foundation for the advancement of justice in our state. To honor the life of Ty Robinson, and many other distinguished members of our Bar, I encourage you to strive to improve the law and the legal profession, and exemplify the legal profession's ideals of public service.

By living the ideals declared in our Rules of Professional Conduct, we will enhance the public trust and enhance our system of justice. In the words of Dr. King, "Let us rise up tonight with a greater readiness. Let us stand with a greater determination, and let us move on in these powerful days, these days of challenge, to make America what it ought to be."



Robert H. "Ty" Robinson
January 25, 1916
~
March 27, 2018

Many changes to the practice, but many things remain the same



John Mudd began as executive director of the State Bar of Montana in January of 2018. He is a long-standing member of the Bar's Professionalism Committee.

"Cryptocurrency," "Blockchain," "Bitcoin." While some remain locked in the debate over the correct pronunciation of "gif," these new terms have stormed into our technological consciousness, threatening our conceptual understanding of something as fundamental as currency, and calling us to a new understanding of what the future may hold for the practitioner. I confess to having read many an article on the subject more than once, straining to wrap my mind around just what is happening here.

In this month's Montana Lawyer, Jerrod Bevan of Helena takes us into a world of cryptocurrencies that has reignited "mining" in Butte and demands attention for lawyers in realms ranging from securities regulation to family law. Keeping with our cyber theme, Sharon Nelson and John Simek guide us through the dark woods of ransomware and provide some practical tips to prevent your firm from being taken hostage by hostile forces.

Emerging from behind our screens, Tyson Logan provides us a needed moment of Zen, and Jay Lansing reflects on the question of when it is time to move on from practice.

With all that is changing around us in the profession, it's also good to know some things are staying the same. Montana lawyers continue to donate record amounts of their time and talent for the betterment of society through *pro bono publico* service — over 165,000 hours at an estimated value of over \$25 million in 2017. That's truly something to celebrate! In fact, if you know an attorney worthy of recognition through the Bar's Neil Haight Pro Bono Award, or any of our other awards, nominations are open and due May 31.

In the meantime, I hope you enjoy the April issue of the Montana Lawyer.

All my best,
John



STATE BAR OF MONTANA

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NAMES & FACES

Chin launches Peaks and Valleys law firm in Missoula

Janel F. Chin is excited to announce the opening of Peaks and Valleys PLLC to further pursue her commitment to providing comprehensive legal guidance



Chin

to clients navigating the peaks and valleys of their lives.

Chin continues to bring energy and pragmatic insights to her practice of law focused on providing family, estate planning and probate legal services at a reasonable cost. She and her young family are active volunteering locally for the Missoula County Public Schools, Rattlesnake PTA, the Missoula Community Foundation, La Leche League of Missoula, and her daughter's Girl Scout troop.

She can still be reached by phone at 406-207-6462. Her new email address is peaksandvalleyslegalservices@gmail.com.

Tarlow & Stonecipher welcomes Phillips to its practice

The law firm of Tarlow Stonecipher Weamer & Kelly PLLC recently welcomed E. Lars Phillips to its practice.

Phillips attended Gonzaga University and graduated with degrees in political science and philosophy. After graduation, he worked for the Petroleum Brownfields section of the Montana Department of Environmental Quality, investigating petroleum releases throughout the state. He graduated from the University of Montana School of Law in 2016.

While in law school, Phillips served as editor-in-chief of the Montana Law Review, and interned for Judge Donald W. Molloy of the U.S. District Court,



Phillips

District of Montana. During his second year of law school, he successfully argued before the Montana Supreme Court in *Marble v. State*, a matter involving the interpretation of Montana's post-conviction statutes. After graduation, Phillips clerked for Montana Supreme Court Justice Patricia Cotter. He then was appointed by Chief Water Judge Russ McElyea to serve as a water master on the Montana Water Court.

Phillips has enjoyed providing pro bono assistance to the Montana Innocence Project and received the organization's Champion of Justice Award in 2017. He continues to be involved with the Montana Law Review, serving on the Montana Law Review Advisory Board.

Phillips is engaged in the firm's civil litigation practice and is admitted to practice in Montana state courts. He can be reached at 406-586-9714, or LPhillips@lawmt.com

Odegard Braukmann Law welcomes Dufrechou to firm

Odegard Braukmann Law has announced that Jay Dufrechou joined the firm on Feb. 1. Dufrechou will join Lucas Wallace in the firm's Helena office, located in the Empire



Dufrechou

Block Building, 30 W. 14th St., Suite 204. He will focus primarily on representing injured workers in workers' compensation claims. The firm is excited to grow its Helena office and for the opportunity to better serve residents of the Helena region, as well as to continue to grow its statewide workers' compensation practice and multi-state personal injury practice.

Dufrechou is a 1980 graduate of Stanford University and a 1984 graduate of the law school at the University of California, Berkeley. He is licensed in the state and federal courts for Montana and California. He came to Montana in 1999 to join the Montana Workers' Compensation Court as a staff attorney, a position he held until 2005. He was in

private practice under Dufrechou Law Firm, P.C., in Helena, primarily representing workers' compensation claimants. He also holds a doctoral degree in transpersonal psychology, which informs his work as a mediator in work compensation disputes. He can be reached at jay@oblawmt.com or 406-259-2222.

HONORS

Cox elected as a fellow in the American Academy of Appellate Lawyers

Randy Cox, a partner at Boone Karlberg P.C. in Missoula, was recently elected as a Fellow in the American Academy of Appellate Lawyers.

The Academy, which is by invitation only, recognizes outstanding appellate lawyers and promotes the improvement of appellate advocacy and the administration of the appellate courts. Membership is open only to a person with a reputation of recognized distinction as an appellate lawyer. Membership is limited to 500 members in the United States. To be eligible, a nominee's practice must have focused substantially on appeals during at least the last 15 years.

American Board of Trial Advocates selects Hayhurst

Matt Hayhurst, a partner at Boone Karlberg P.C., has been selected as a member of the Montana Chapter of the American Board of Trial Advocates.

ABOTA is a national organization of experienced trial lawyers and judges who display skill, civility, and integrity and who are dedicated to preserving and protecting the constitutional right to jury trial as guaranteed by the 7th Amendment.



Cox



Hayhurst

9th Circuit Judge Reinhardt dies at age 87

Montana Lawyer

Judge Stephen Reinhardt, a prominent liberal judge of the U.S. Ninth Circuit Court of Appeals, has died.

Appointed by President Carter 37 years ago, Reinhardt died unexpectedly after suffering a heart attack on March 29. He was 87.

Fellow jurists said he was “deeply principled, fiercely passionate” about his work. Judge Sidney R. Thomas of Billings, chief judge of the Ninth Circuit, said they lost a friend and a colleague.

“Judge Reinhardt is rightly considered to be one of the giants of the law. He earned his reputation by virtue of a brilliant legal mind, an unmatched work ethic and deeply held principles. He resolutely pursued justice as he saw it,” Thomas said.

Judge Reinhardt was involved in many high-profile cases, including sitting

on the 2002 panel that found the Pledge of Allegiance unconstitutional because it included the words “under God.” His noteworthy opinions and dissents include:

Compassion in Dying v. State of Washington, in which Reinhardt authored the en banc opinion affirming the district court’s decision that Washington state’s law prohibiting physician-assisted suicide illegal violated due process and an individual’s constitutionally protected liberty interest to determine the time and manner of one’s own death. The Supreme Court later reversed the decision in *Washington v. Glucksberg*.

Planned Parenthood Fed’n of Am., Inc. v. Gonzales, in which Reinhardt authored the opinion affirming the district court’s decision that the Partial-Birth Abortion Ban Act of 2003 was unconstitutional, finding that the Act lacked the

constitutionally required health exception, imposed an undue burden on a woman’s ability to obtain pre-viability abortions, and is unconstitutionally vague. The Partial-Birth Abortion Ban Act subjects a physician who knowingly performs a partial-abortion to civil and criminal penalties. The Supreme Court ultimately reversed the Ninth Circuit’s decision in *Gonzales v. Carhart*.

Newdow v. Rio Linda Union School Dist., in which Judge Reinhardt, dissenting, found that the recitation of “under God” in the Pledge of Allegiance” violated the Establishment Clause. The case involved parents and their children who attended public schools with a policy to recite the Pledge of Allegiance, alleging that it violated the Establishment Clause. A Ninth Circuit panel by a 2-1 majority found that the Pledge of Allegiance was constitutional.

Worden Thane P.C. welcomes Joel Henry to the team.



JOEL HENRY

INTELLECTUAL PROPERTY/
DATA PRIVACY & SECURITY

In the spirit of creating opportunities and advancement for the Missoula community and surrounding areas while looking toward a positive future, we are excited to welcome Joel Henry, Ph.D. to the Worden Thane team.

With both a doctorate in Computer Science and a law degree, Joel advises start-up and growing companies with his extensive understanding of technology, business, and intellectual property law.

With years of experience in the field of computer science, Joel will be a valuable addition to Worden Thane and a vital resource to the community and state with his cutting edge knowledge of technology and the law that surrounds it.

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LEGAL REPRESENTATION WITH
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Montana attorneys set record with 165K pro bono hours donated in 2017

The Montana Supreme Court's 2018 Annual Pro Bono Report shows that more than 1,900 Montana attorneys donated 164,909 hours in free and reduced-fee legal services in 2017. The hours contributed in 2017 set a new record for Montana attorneys in providing pro bono services to people of limited means, at a value of nearly \$25 million.

"Montana's legal professionals know that our court system is the cornerstone of political and economic success for the modern world. Our Constitution ensures that the rule of law presumes the equality of all," said Montana Supreme Court Chief Justice Mike McGrath. "The civil justice system only works if

all Montanans—even those least able to afford legal services—can access our courts," he added. "These record-breaking contributions reflect the deep and continued commitment of Montana attorneys in addressing the unmet legal needs of Montana citizens, and toward justice for all."

Volunteer services help address the substantial number of civil legal problems facing low income households—often in family law matters—including adoptions, guardianships, dissolutions of marriage, parenting plans, and child support issues. Attorneys regularly provide these services to people with hardships and challenges, including the elderly, disabled veterans,

and victims of domestic violence.

"In addition to the extraordinary efforts of Montana's lawyers who have volunteered nearly \$25million in legal services, individuals involved in access to justice issues have developed creative and alternative legal service delivery models that encourage attorneys to help others," said State Bar of Montana President Leslie Halligan. "While Montana's unmet legal needs are real and aren't going away, it is gratifying to see so many attorneys and colleagues doing their part to address these issues and work for the public good."

The full pro bono report is available at www.probono.mt.gov.

Alexander Blewett III
SCHOOL OF LAW
UNIVERSITY OF MONTANA

NINE WEEK-LONG COURSES WITH CLE OPTIONS

SUMMER INDIAN LAW PROGRAM

June 4 - August 3, 2018

Spend the summer in beautiful Missoula studying Indian Law! The Blewett School of Law invites you to participate in the 11th annual Summer American Indian and Indigenous Law Program:

- Indian Law Research** | June 4 - 8
- Mastering American Indian Law** | June 11 - 15
- American Indian Children and the Law** | June 18 - 22
- Designing Effective Governmental Regulations** | June 25 - 29
- Alaska Native Law and Policy** | July 2 - 6
- Native Hawaiian Law** | July 9 - 13
- Water Law in Indian Country** | July 16 - 20
- Indigenous Peoples in International Law** | July 23 - 27
- Public Policy and the Tribes** | July 30 - August 3

All courses run from 9:00 a.m. - 12:00 p.m. with the exception of Alaska Native Law and Policy, which will meet July 2, 3, 5 and 6 from 9:00 a.m. - 12:40 p.m. CLE credit for each course can be viewed on the program webpage. CLE registration fees are \$650 for all courses.

View descriptions and registration info online at umt.edu/indianlaw

STATE BAR OF MONTANA ANNUAL AWARDS



WILLIAM J.
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KARLA M. GRAY
EQUAL JUSTICE
AWARD



NEIL HAIGHT
PRO BONO
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BOUSLIMAN
PROFESSIONALISM
AWARD

NOMINATE A DESERVING PEER

Recognize greatness in the legal profession — nominate a peer for a State Bar award

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

— Arthur Conan Doyle (“The Valley of Fear”)

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

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

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

- the Neil Haight Pro Bono Award, for someone who has provided pro bono services in aid of direct pro bono legal representation in Montana. This can be an attorney, but also can be a court employee, paralegal, psychologist, or social worker

- the Karla M. Gray Equal Justice Award, which honors a judge from any court who has demonstrated dedication and significant efforts to improving access to the Montana justice system.

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

We all know an attorney who is worthy of at least one of the above awards. If you don’t, think harder! Take a moment to appreciate your profession and the people who work within it. Surely you have experienced a moment of grace given by an adversary, an encouraging word or act, mentorship by a veteran attorney, or help when you desperately needed it. This is your opportunity to highlight that conduct.

And so that your nomination receives favorable review, here are some suggestions from the Past Presidents Committee on what makes a good nomination package:

1. A completed nomination form with the requisite contact information for the nominee and for you;

Nomination forms online

Find nomination forms and more award information at
www.montanabar.org/?page=Award_Nominations.

Nominations for all awards must be postmarked by May 31.

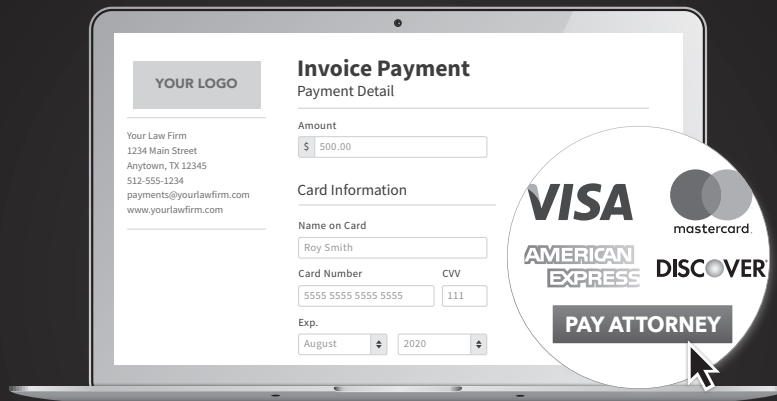
2. A statement describing the activities or qualities of the nominee that addresses the criteria for the award. Please tell the committee how the nominee has met the criteria and why the nominee is worthy of the award;

3. A copy of the nominee’s resume or curriculum vitae (if available); and

4. Letters of support for the nominee from one to two attorneys and, perhaps, a sitting judge.

Please show the committee that others share your esteem for the nominee and attest to the nominee’s qualification for the award. These letters may be forwarded separately from the nomination form, but should be postmarked by the nomination deadline.

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



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Selected recent Montana Supreme Court orders are posted online at www.montanabar.org/?page=Supreme_Court_Orders. You can read more orders, proposed rule changes, and opinions at the Montana Supreme Court's online docket at courts.mt.gov/Portals/189/orders/orders/Recent_Orders.htm.

Boundaries for Commission on Practice area redrawn; elections to be held in April for 4 areas

Montana Lawyer

The areas represented by lawyer members of the Montana Supreme Court's Commission on Practice have been redrawn.

In a March 20 order, the Montana Supreme Court changed the area boundaries, which now conform to the areas from which State Bar Board of Trustee members are elected. The court said the change was made to make the number of attorneys in each area more evenly balanced.

Current members of the commission will remain until their terms expire. The terms of members of the current Areas A and E expire on April 1. Since those two areas now will be split into four separate areas -- Areas A, B, F and G -- there will temporarily be two additional commission members. Elections for those four areas will be held in April. The elections will be administered by state district judges in those four areas.

You can read this and other recent Supreme Court orders at www.montanabar.org/?page=Supreme_Court_Orders.

DISCIPLINE

Morin ordered to receive admonition from COP

The Montana Supreme Court has ordered Butte attorney Tina Morin to receive a public admonition from the Commission on Practice for filing a document purported to be from her attorney, but which her attorney refused to sign.

Morin and her law firm appeared as plaintiffs in a federal court action in which U.S. District Judge Sam E. Haddon ruled that she could not appear on her own firm's behalf. She retained counsel, but counsel refused to file a brief opposing a protective order because he felt the motion had no merit. Instead, Morin personally filed a "notice to court" and supporting affidavit, to which she attached a copy of the brief on her attorney's letterhead and with his electronic signature.

Morin claimed that she did not "file" the brief, because she only attached it to

her affidavit that was filed. She asked the court to dismiss the complaint against her, saying there was nothing false or dishonest in her telling the judge that the brief attached to her affidavit was the brief her attorney refused to file.

Van de Wetering ordered to receive censure from court

The Montana Supreme Court ordered Missoula attorney Joshua van de Wetering to appear before the court for a public censure.

Van de Wetering admitted in a conditional admission that he failed to promptly inform a client he had received funds; failed to keep his client reasonably informed about the status of his funds; and failed to continuously maintain an adequate balance in his trust account during the period between his receipt of the funds and disbursement of the funds to the client.

Van de Wetering appeared for the public censure, which the court administered April 3 in its courtroom in Helena.

Alexander Blewett III
SCHOOL OF LAW
UNIVERSITY OF MONTANA

Advanced Trial Advocacy Program

May 21 - 25, 2018

This program is recommended for any lawyer wishing to improve skills with witnesses and courtroom argument whether in trial, deposition or hearing.

Tuition: \$1750 by April 16 | \$1950 after April 16

CLE: Approximately 30 credits (pending approval)

Registration: umt.edu/law-ata



Hands-On Learning

Participants will use the skills learned to demonstrate proper trial advocacy through role-playing scenarios that test each portion of the trial process.

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Disability and
Accommodation

Representing
Unpopular Clients
or Unpopular
Issues

How much do lawyers need to know about bitcoin?

Maybe more than you realize, if your practice handles tax law, estate planning or family law, among other case types

By Jerrod Bevan, Esq.
Crowley Fleck



Bitcoin's rapid rise and fall in value — and IRS' treatment of the virtual currency — may have ramifications for your clients



Bitcoin and other “virtual currencies”¹ are building legitimacy as a payment system and are capturing the public’s attention with rapidly increasing frequency. As of late February, the market capitalization of bitcoin is over \$170 billion.² Much of the attention focused on bitcoin surrounds its volatile price swings. As of the writing of this article, the value of a bitcoin has sunk to approximately \$10,000 per coin, representing a fall of almost half its value from the all-time highs set in December 2017. However, even the depressed value today represents an increase of over 1,000 percent since Jan. 1, 2017.³ By the time this is published, a bitcoin may be worth \$20,000 or \$2,000, and neither would be completely surprising. The mania surrounding bitcoin and its rapid rise in valuation has drawn comparisons to the .com bubble of the early 2000s, and even the original asset bubble, the Dutch tulip bulb bubble of 1637.⁴ While most people by now have heard of bitcoin⁵, and can conceptualize it as some sort of digital currency, very few understand the technical underpinnings and legal issues implicated. This article is intended to be a brief introduction to bitcoin for Montana lawyers, and will hopefully spark reflection on how it may affect our practices in the future.

Virtual currencies arose from a desire to have a digital payment system that didn’t require a trusted third-party to process transactions, such as a bank, credit card, or PayPal. Bitcoin is the first successful decentralized virtual currency.⁶ Decentralized meaning there is no central bank or government responsible for issuance and determining monetary policy. While the concept had been implemented previously,⁷ bitcoin is the first to withstand the fraud, hacking, and mainstream acceptance issues that plagued earlier attempts. In particular, bitcoin was able to solve what is known in computer science as the “double-spending problem,”⁸ or the ability to

confirm that a unit of virtual currency is only spent once without confirmation from a third-party intermediary. At its core, a unit of bitcoin is simply a string of 1’s and 0’s. What then, is to stop someone from spending it multiple times the same way one might send a document or photo to multiple recipients? To address this issue, bitcoin creator Satoshi Nakamoto⁹ contemplated “a peer-to-peer distributed timestamp server to generate computational proof of the chronological order of transactions.”¹⁰ To put it simply, he suggested a public ledger of transactions maintained through a global network of computers. This public ledger is called the blockchain. The blockchain, which is a record of every bitcoin transaction, serves to confirm that the same bitcoins have not been spent twice instead of using a third-party intermediary. Beyond bitcoin, blockchain is a technology with great potential, with applications ranging from medical record-keeping to land title verification.

Of particular interest to Montanans is the news that a bitcoin mining operation with an expected initial investment of \$75 million to \$100 million is being developed in Butte and Anaconda.¹¹ How does one “mine” bitcoins, as is contemplated in the Butte/Anaconda project? Any computer connected to the internet can download the bitcoin software and run what is called a node. Every node keeps a complete copy of the blockchain and is used to broadcast bitcoin transactions around the entire peer-to-peer network of computers. Some of the nodes are mining nodes, which group the outstanding

transactions into “blocks” and add them to the blockchain approximately every 10 minutes. In return for this work, the mining node that adds the new block to the blockchain is rewarded with new bitcoins.¹² This is admittedly an oversimplification of the mining process, but is a sufficient introduction to the concept.¹³

Where does bitcoin fit into our legal system?

As bitcoin gains users and mainstream acceptance, it is increasingly capturing regulators’ attention. To know how and where bitcoin should be regulated, we have to start with the base question, what is bitcoin? We call it a virtual currency, but is it actually currency? Black’s Law Dictionary defines currency as “[a]n item (such as a coin, government note, or banknote) that circulates as a medium of exchange.”¹⁴ Virtual currencies are accepted as a medium of exchange, albeit with a significantly more limited audience than U.S. dollars. Microsoft, Overstock.com, and Expedia are some of the larger retailers that accept bitcoin as payment for goods and services.¹⁵

The IRS has taken the position that bitcoin, and other “virtual currencies” are *not* currency.¹⁶ The IRS treats bitcoin as property, and the general tax principles applicable to property transactions apply to bitcoin.¹⁷ This means a taxpayer who receives compensation in the form of bitcoin must include the fair market value of the bitcoin on the day of receipt as gross income. Further, if the taxpayer uses the bitcoin for payment of goods or services and it has changed value since receipt,

The IRS treats bitcoin *as property*, and the general tax principles applicable to property transactions apply to bitcoin. A taxpayer who receives compensation in the form of bitcoin must include the fair market value of the bitcoin *on the day of receipt* as gross income.

the taxpayer has realized a taxable gain or loss in the amount equal to the fair market value of the bitcoin as of payment less the taxpayer's basis in the bitcoin spent. The IRS has shown interest in increasing enforcement activity related to virtual currency transactions, as they contend only 800 taxpayers reported gains related to bitcoin from 2013-2015 when at least 14,355 users either bought, sold, sent or received at least \$20,000 worth of bitcoin on a single exchange during that time period.¹⁸ Because of this discrepancy, the IRS was able to secure a John Doe summons to serve upon Coinbase, the most popular virtual currency exchange, seeking to identify its customers.¹⁹

The Commodity Futures Trading Commission (CFTC), the agency of the government tasked with regulating futures and options markets, publicly declared bitcoin and other "virtual currencies" to be a "commodity" subject to oversight under the Commodity Exchange Act (CEA) in 2014.²⁰ Specifically in the context where "contracts for future delivery are presently or in the future dealt in."²¹ Therefore, the CFTC gains jurisdiction where bitcoin is used in a derivatives contract, or if

there is fraud or manipulation involving a virtual currency traded in interstate commerce. Beyond those instances, the CFTC generally does not oversee "spot" transactions involving virtual currencies. Spot exchanges of U.S. and foreign virtual currencies are regulated largely through state money transfer laws. As of Dec. 1, 2017, after working closely with the CFTC on enhancements to contract design and margin requirements, the Chicago Mercantile Exchange (CME) and CBOE Futures Exchange (CFE) self-certified new contracts for bitcoin futures products, meaning investment products with bitcoin as the underlying asset are now available to the retail investor.²²

Perhaps the most interesting development, at least from a securities lawyer's perspective, is the relationship between bitcoin and the Securities and Exchange Commission. The SEC has taken a far more hands-on approach than the CFTC and is active in communicating the risks surrounding bitcoin to the public. As early as November 2013, then-SEC Chairwoman Mary Jo White advised the Senate Homeland Security Committee on "[w]hether a virtual currency is a security under the federal securities laws[.]"²³

The virtual currency activity most often catching the SEC's eye is the initial coin offering (ICO). The ICO has gained popularity in recent years as a way for companies to raise capital. The ICO has some similar characteristics to the more commonly known initial public offering (IPO), where a company using blockchain technology will issue a customized virtual currency coin, usually referred to as a "token," in exchange for bitcoin or another established virtual currency as a way to raise capital for the enterprise.²⁴ Such ICOs have usually not been offered in a manner compliant with securities laws. The reasons range from pure ignorance to a belief the offered tokens are not securities. However, in July of 2017, the SEC published a report on the ICO of the Decentralized Autonomous Organization (DAO), where DAO offered its own tokens in exchange for Ether, another popular virtual currency.²⁵ The SEC analyzed whether tokens issued by the DAO constituted "investment contracts" under the U.S. Supreme Court's long-established standard in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946). Ultimately, the SEC concluded the tokens were indeed securities, due to meeting the *Howey* test

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where an investment is a security “if there is an investment of money in a common enterprise with a reasonable expectation of profits to be derived primarily from the entrepreneurial or managerial efforts of others.”²⁶ In a recent conversation with Montana State Auditor Matt Rosendale and Deputy Securities Commissioner Lynne Egan, both echoed the *Howey* test as the standard the state would use to determine whether a virtual currency would fall under the scrutiny of Montana securities laws.

Current SEC Chairman Jay Clayton recently went so far as to warn market professionals, including lawyers, who advise clients on ICOs that he has instructed SEC staff “to be on high alert for approaches to ICOs that may be contrary to the spirit of our securities laws and the professional obligations of the U.S. securities bar.”²⁷ For lawyers with clients considering raising money via an ICO, it is critical to provide guidance on compliance with the applicable state and federal securities laws.

Conclusion

Although bitcoin and other virtual currencies may not seem like a topic that needs to be on every lawyer’s radar, their adoption has been rapid and the ramifications far-reaching. Estate planning lawyers should inquire whether their clients own any virtual currency and make a plan for how beneficiaries can access them. Bitcoins are usually kept in an electronic wallet accessible with a passphrase. Unlike most passphrases, there are no options for recovery if forgotten or lost. By one estimate, about 3.79 million bitcoins have been “lost,” and are out of circulation forever.²⁸ Surely many of the lost bitcoins are due to forgotten passphrases and owners who have died without making arrangements for access to their digital assets. Family lawyers should be aware of virtual currencies as a potential source of contention in property division, especially when price volatility can make valuation difficult. Accountants and tax lawyers should advise their clients on the tax consequences of virtual currency transactions. It is widely believed that there are no tax consequences for spending virtual currency, which is not the current view of the IRS. Commercial and in-house attorneys need to counsel clients raising capital through ICOs to the applicable securities

laws. While the SEC concluded that the DAO tokens referenced above constituted an unregistered offering of securities, it declined to bring an enforcement action, instead issuing its investigative report as an advisory opinion. However, the SEC’s recently formed Cyber Unit has signaled its intention to enforce securities rules on future noncompliant ICOs.²⁹ The legal landscape surrounding virtual currency is developing, and the issues presented will almost certainly increase. As lawyers we should all keep an eye on this new and fascinating technology and analyze how it can and does affect our practice.

Jerrold D. Bevan is an associate in the Helena office of Crowley Fleck PLLP. He is a graduate of the Northwestern University Pritzker School of Law. His practice focuses on corporate and securities law. You can reach him at jbevan@crowleyfleck.com.

Endnotes

- 1 “Virtual currency” is the term most often used by U.S. regulatory authorities to describe the technologies referenced in this article. The Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) has defined virtual currency quite broadly as “a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency ... [particularly, it] does not have legal tender status in any jurisdiction.” Bitcoin is more properly referred to as a cryptocurrency, which is a subset of virtual currency that uses cryptography to secure its transactions, control the creation of additional units, and to verify the transfer of assets.
- 2 <https://coinmarketcap.com/>.
- 3 Rizzo, P. (Jan. 3, 2017). Bitcoin Price Tops \$1,000 in First Day of 2017 Trading. Retrieved Feb. 5 from <https://www.coindesk.com/bitcoin-price-1000-january-1-2017/>.
- 4 See, e.g., Davis, G. (Feb. 6). Bitcoin: Digital gold or fool’s gold? Retrieved Feb. 8, from <https://vanguardblog.com/2018/02/06/bitcoin-digital-gold-or-fools-gold/>.
- 5 This article will focus on bitcoin, the largest virtual currency by market capitalization. However, for the most part much of the information disseminated will be applicable generally to most virtual currencies.
- 6 Brito, J., & Castillo, A. (2013). Bitcoin: A primer for policymakers. Mercatus Center at George Mason University.
- 7 e.g., Digicash, E-gold, and Cybercash.
- 8 David Chaum, Achieving Electronic Privacy, Scientific American Mag. (Aug. 1992), at 96–101.
- 9 It is now commonly accepted that “Satoshi Nakamoto” is not the actual name of bitcoin’s creator, but the pseudonym of the person or group of people who first conceptualized and coded the bitcoin software. In honor of its creator, the smallest spendable unit of bitcoin, 0.00000001 bitcoins is called a “Satoshi.”

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12 Acheson, N. How Bitcoin Mining Works, Retrieved Feb. 26, from <https://www.coindesk.com/information/how-bitcoin-mining-works/>

13 For those who wish to delve deeper into the technical mechanics of virtual currencies, the best place to start would probably be the original white paper by Satoshi Nakamoto describing bitcoin, available at <https://bitcoin.org/bitcoin.pdf>.

14 Currency, Black’s Law Dictionary (10th ed. 2014).

15 Moreau, E. (Feb. 1). 13 Major Retailers and Services that Accept Bitcoin. Retrieved Feb. 5 from <https://www.lifewire.com/big-sites-that-accept-bitcoin-payments-3485965>.

16 Notice 2014-21, 2014-16 I.R.B. 938.

17 Id.

18 United States v. Coinbase, Inc., No. 17-CV-01431-JSC, 2017 WL 5890052, at 4 (N.D. Cal. Nov. 28, 2017).

19 Id.

20 Testimony of CFTC Chairman Timothy Massad before the U.S. Senate Committee on Agriculture, Nutrition and Forestry (Dec. 10, 2014), available at <http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-6>.

21 7 U.S.C.A. § 1a(9).

22 CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange (Dec. 1, 2017), available at <http://www.cftc.gov/PressRoom/PressReleases/pr7654-17>.

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27 Clayton, J. (Jan. 22) Opening Remarks at the Securities Regulation Institute, text available at <https://www.sec.gov/news/speech/speech-clayton-012218>.

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How to protect your firm from being infected by the ransomware epidemic

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

Remember the good old days of ransomware? You would get an email saying you owed the IRS money and could pay it via a helpfully included link. Lots of people did this because it was only a couple hundred dollars. And who wants to duke it out with the IRS? The same dull-witted people fell for the email claiming that someone at your home had downloaded music or movies illegally (much more likely true than the first scenario) and you needed to pay a fine so no one would come after you (or your spouse/child) for a much greater sum. Again, the price was relatively small and many people paid.

The likelihood that a lawyer would fall for these primitive versions of ransomware was small. Fast forward to the days of Cryptolocker, which began in 2013. This ransomware Trojan attacked computers running Microsoft Windows, propagating itself by getting a user to click on an attachment or a link contained in an email. Click on the link or attachment and “Winner, Winner, Chicken Dinner” the malware invisibly downloaded and began to encrypt your files. The malware encrypted files stored locally on the computer system as well as on any mapped network drives, such as those files on your server, connected flash drives and other external USB drives.

You then got a message on your screen indicating that you would be given the decryption key to unlock your data for a reasonable sum of \$300 to \$500 – no checks or credit cards though – the payment of choice was and still is usually bitcoins. Curiously enough, there has been considerable honor amongst this brand of criminal who normally provide the decryption key once the ransom is paid. Not 100 percent but most victims report that they did get the decryption key, though it took them as much as a

week to decrypt all their data. The bad news is that the ransoms have gone up. It is not uncommon to see ransoms in the \$1,000 plus range now.

Before we understood Cryptolocker well, many backups (especially in solo and small firms) were engineered in such a way that they were too easily infected and encrypted. This immediately caused IT folks to re-engineer backups so that they were not vulnerable to attack by ransomware meaning that you could restore the encrypted files from your backup and not pay the ransom. But we still regularly see backups that have not been re-engineered thereby endangering all of the law firm’s files. The simple solution for most solo/small firm lawyers? Unplug the external USB hard disk after the backup job completes. Just make sure you have at least two USB hard disks and rotate them in case you are attacked while one disk is connected. Another solution is to use agent-based backup implementations. This is our customary solution.

After some period of time, standard enterprise level security suites began to get a handle on Cryptolocker (and its variants) and were able to detect and stop the malware from infecting machines. We began to see a lot less of Cryptolocker.

But along came Cryptolocker’s evil cousin, Cryptowall, and the fight to defeat Cryptowall – (and all its variants) has proven to be much harder. Frankly, it has had many IT consultants tearing their hair out. Criminals have gotten smarter too, often spoofing sender email addresses that make the recipient think they are receiving the email from a court or a reputable law firm. And the English and grammar are much better too!

Computer Business Review reported that in January 2016 ransomware accounted for 18 percent of all malware payloads delivered via spam and exploit kits globally. Ten months later ransomware increased to 66 percent of malware

payloads. That’s a 267 percent increase in just 10 months.

This is consistent with the deluge of calls we have received over the last several years about data encrypted by ransomware. It is a scourge that shows no sign of abating. Standard enterprise security suites have been unable to slow the tsunami of variants, which seem to be multiplying like rabbits.

The news doesn’t get any better either. It is so easy to build your own ransomware or buy the service from someone else. On the Dark Web you can get a Ransomware as a Service for \$39. Ransomware is a \$1 billion-per-year business according to the FBI.

Proofpoint’s Adenike Cosgrove told Computer Business Review: “Ransomware has proven to be a successful business model with attackers collecting more than \$209 million from victims during the first three months of 2016 alone, and the volume of attacks was ten times higher than all of 2015. Ransom amounts have tended to be relatively fixed at \$300 to \$1,000 per machine. As long as the return on investment remains high for attackers, it seems likely that ransomware will continue to be a significant threat.”

Herewith, some guidance on how to fight ransomware, particularly for solo and small firms who cannot afford the wallet-busting protections that large firm utilize.

As we say all the time, **THERE IS NO SILVER BULLET THAT PROTECTS AGAINST ALL RANSOMWARE**. Sadly, new variants are released every day.

Besides making sure that your backup is properly engineered as described above, you need a high quality enterprise security suite installed. We like Trend Micro, Kaspersky and Webroot, but there are many good suites to choose from – talk to your IT consultant.

Let’s suppose, in spite of all you do,

that you do get hit by ransomware. Do you have a plan for proceeding? Do you have cybersecurity experts to call in? Do you know what your insurance will and will not cover? And remember that no plan survives first contact with the enemy, so be prepared to revise the plan on the fly.

You might check out CryptoPrevent, software which offers the ability to prevent (in large measure) Windows computer systems from infection by ransomware. This software is relatively inexpensive, costing \$15 or less per computer depending on the number of licenses needed. The configuration of this software has to be customized for each client, depending on the applications that will need to be allowed to run on your systems — this requires input from you. It will take some amount of time and money as each computer is manually configured.

Another “no software cost” alternative is to configure Windows policies to achieve the same operational restrictions that CryptoPrevent provides. CryptoPrevent is automatically updated, whereas the “no software cost” solution is static. You see the trade-off.

At ABA TECHSHOW, we asked our very knowledgeable faculty colleague, IT consultant Ben Schorr, about CryptoPrevent and he noted that clients (understandably) don’t like the manual intervention required by CryptoPrevent to whitelist applications. He had especially run into problems where automated software updates were not permitted by CryptoPrevent, requiring more manual work. Ben shook his head and commiserated with us on the difficulty of advising solo and small firms on how best to defend themselves against this kind of ransomware while keeping costs down.

We became aware recently of four law firms that were successfully attacked by a Cryptowall variant in one month in Northern Virginia. Given that, we have begun recommending the installation of CryptoPrevent – or at least making clients aware that it exists so they can make the money/aggravation vs. risk decision. We warned firms that you may get “pushback” from employees who are accustomed to installing any software they want. CryptoPrevent has proven to be quite effective by **disallowing** the

Configuring Windows policies to prevent ransomware

Configuring Windows policies to prevent ransomware — the “no software cost” alternative referenced in this article — involves a few steps.

The first is disabling Microsoft Office from opening Macro-Enabled files. To do this, open the Trust Center by clicking File-->Options in any Microsoft Office program.

For Windows users, enabling User Account Controls on your Windows PC will notify you and request explicit permission for a program to install software or make changes to your computer. While there are some versions of malware that can circumvent this, this does protect your machine against those that

can’t. For instructions on how to do this on your machine, do an Internet search for “User Account Control for Windows x” where x is the version of Windows you currently use. I suggest using any guidance from support.microsoft.com.

If you are a Mac user, you can also prevent the installation of some types of malware programs by creating two accounts on your machine, an admin account and a standard user account. Use the admin account only when you need to make changes to your computer. Use the user account for your everyday work.

Sam Alpert, State Bar of Montana IT Coordinator

installation and execution of software unless it has been whitelisted. You must determine for yourself if the risk of infection is high enough that you believe this kind of precaution is warranted, even as we tell you that no solution has been 100 percent effective.

The most common way that law firms get ransomware? Employees click on an attachment or a malicious link in an email. This brings us to another important point: One of the most often-overlooked aspects of an organization’s security readiness is end-user training. It is just as important that your employees know what not to click on as it is to have security software installed to help prevent these types of malware outbreaks. Your best bet is to train your employees — every year — what NOT to click on and to educate them about the indicators that they might see which should cause them to question whether the email is suspect. And this is something law firms steadfastly refuse to do. Some firms cite the training cost (pretty minimal compared to the risk in our judgment) and others cite the loss of billable time. We have a slide in one of our PowerPoints that says simply, “Training, training, training – oh, have we mentioned training?” You can see where we come down on that issue. By the way, a single training session has been shown to reduce the risk of a successful

phishing attack by 20 percent — not a bad return on your money.

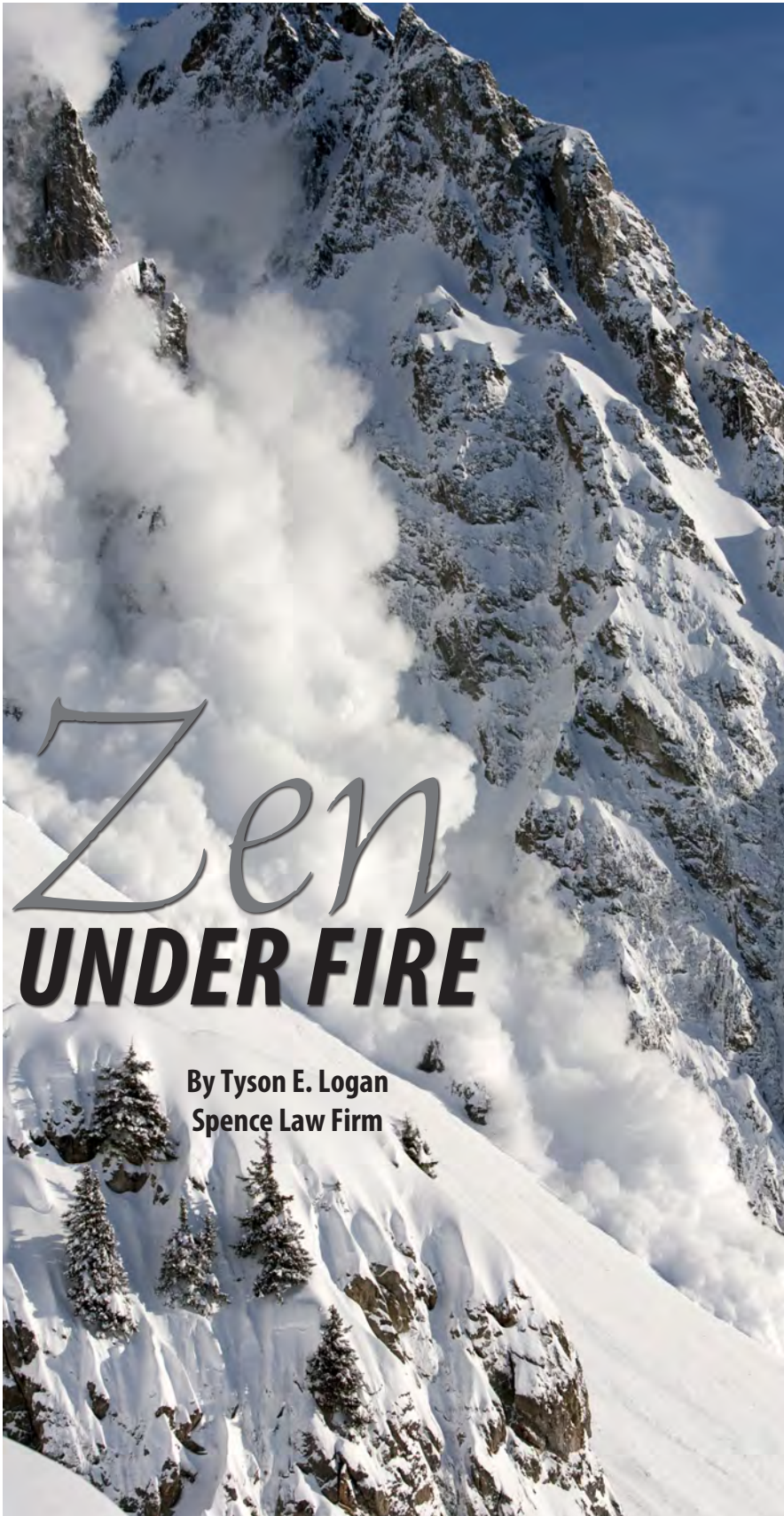
We live in a world where half of the people think “the cloud” is impacted by weather and where National Park Service rangers report that one of the questions they are asked most frequently is “Why were so many Civil War battles fought in national parks?” Very basic security education can go a long way toward defeating ransomware and other security demons.

You can also augment your training with technical solutions. There are email scanning services such as Mimecast, which convert attachments into a “safe” form such as PDF. There’s also an option to scan URLs in messages and warn of any suspicious links.

To conclude — check out the possibility of installing CryptoPrevent along with making it a part of your overall business information security protection, which also should include your firewall, IDS/IPS device, physical security, securely engineered backup, and security awareness training.

Don’t think you can wish this problem away. The new breeds of ransomware are devilish adversaries!

The authors are the president and vice president of Sensei Enterprises Inc., a legal technology, information security and digital forensics firm based in Fairfax, VA. Call 703-359-0700 or visit www.senseient.com



Zen **UNDER FIRE**

By Tyson E. Logan
Spence Law Firm

Standing atop a steep, deep, and dark back-country ski run in Jackson Hole, I am dizzy with excitement. It is a cold, stormy morning — the deepest powder day of the year. The snow is coming down so thick you can hardly see. I am surrounded by my best friends, euphoric with winter storm joy. I watch with a gluttonous grin as the first two pairs of skiers descend into the dark abyss. Cheers of joy. My ski partner drops away, so I am alone. Heart racing with adrenaline, I drop in and peel a hard left turn into the untracked wall of snow. And . . . **CRACK!**

With a heavy buckling, the slope explodes. A slab avalanche 2 ½ feet deep and hundreds of feet wide breaks above me. I'm absorbed into a sea of snow and then spit out as the wall of snow accelerates. Suddenly I am airborne, thrown over a cliff, 50 feet into the air. I look down at trees on the slope – and fall out of the sky – but the avalanche carries me, rocketing down the slope at 80 miles per hour. I have no control. My life flashes before my eyes. As I hurtle into the canyon, a thousand feet below, I reach desperately and wrap myself around a huge fir tree. The tree knocks the wind out of me but holds me. The snow goes by. I am bloody. Disoriented. Alone. But I am alive.

Mindfulness

I have learned a lot about fear, and

about life, since my avalanche. The crazy thing is, that rush of panic, that loss of control, that stress, and anxiety — that is-this-going-to-kill-me feeling — I can still feel it. I feel it as a trial lawyer, too. I feel it when I stand up in front of a jury to do an opening statement, and in all kinds of other pressure-filled moments, in and out of the courtroom. Some days I could drown from the stress. Learning mindfulness has helped me survive.

Mindfulness is “the quality or state of being conscious or aware of something.” It is being present here and now, plugging in to this moment, and engaging in the world. After years of studying mindfulness, I carry three key principles with me: *find some quiet; find some joy; and get to work!*

1. Find Some Quiet

There is an old Zen saying: “Everyone should sit in meditation for 20 minutes a day, unless you’re too busy. Then you should sit for an hour.”

Meditation has been studied extensively in recent years and is proven to have significant health benefits. Giving meditation a try does not require moving to Bhutan or becoming a monk — in even a few minutes of simple breathing exercises at home, you can begin to realize some of the benefits. If you are new to meditation, try this for starters: get up in the morning when the house is quiet, and give yourself five minutes to count your breath. That’s it! This is called breathing meditation (also called “mindful breathing”).¹ The exercise is like counting sheep. I like to do “ladders” where I will count my breath up to 10, and then go backwards, and start over again. This takes the pressure off of getting to some particular yet arbitrary number of breaths, getting distracted by a thought, and then being frustrated that I can’t reach that arbitrary number of breaths! Getting distracted is totally normal and part of the process — the key is to acknowledge thoughts that come, and then let them be there. The goal is to make an intentional choice of what you are focusing on.

¹ Take a look at the Mindful website online at <https://www.mindful.org/a-five-minute-breathing-meditation-for-more-on-this-basic-exercise>.

In breathing meditation, the focus is on the breath, but the exercise easily translates to focusing on whatever present moment we are in, whether it is dealing with a difficult opponent, or standing up in a crucial moment in trial. Mindful breathing helps calm the mind and body, lower stress, and set a more centered and focused tone for my day. It makes me a calmer, happier, and more effective person — and lawyer.²

2. Find Some Joy

It’s hard to be happy if you aren’t starting from a place of peace. That is why meditation is so important to me first thing in the morning — it allows me to start my day from a more centered, quieter, and intentional place. Building off that beginning, I strive to find — or create — joy in every day. For me there are two things I know I need to find joy: *aerobic exercise and helping people.*

Aerobic exercise has been studied extensively and has surprisingly significant effects on the brain and happiness.³ Research shows that aerobic exercise will boost not just physical fitness, but will make the brain function at its best, including making our brains more resistant to stress, anxiety, and depression, which allows us to focus and think at our peak. For me, the physiological benefits of exercise go way beyond looking or feeling better — exercise helps me clear my mind, let the past go, and carry a more positive and energized attitude into the rest of my life. I’m not saying that everyone needs to run marathons to live a good life, but some regular exercise really can be a wonder drug.

I have also found over the years that letting go of my ego and spending my time and energy giving to others makes life far more rewarding and brings me great joy. It is not all about me — it is about the world we are in together. Days when I focus (and sometimes even meditate on) other people, how I can help, what I can do to make someone else’s life better, are good days.

² For more, check out Headspace, or 10% Happier, websites with great Apps to get you started.

³ See for example, J. Ratey, MD, “Spark: The Revolutionary New Science of Exercise and the Brain” (2008).

The reality is that **life as a trial lawyer is hard work**, and though it might not kill us, the stress slowly will if we don’t dive in and ***do something about it.***

3. Get to Work!

Life is not perfect, and those of us who care about the world will always have challenges to deal with. To me, learning to thrive in the challenge — bringing some Zen to the fire we live in — is the way to a happy life. As Ryan Holiday says, “*the obstacle is the way.*”

That avalanche could have killed me, and I have been close to enough tragedy over the years to learn that life is short. Coming close to mortality is a good reminder to live life today — don’t wait for things to change. The reality is that life as a trial lawyer is hard work, and although it might not kill us, the stress slowly will if we don’t dive in and do something about it. Many of us spend too much time thinking about being stressed or worried about the outcome, and not enough time just doing, and being. So I remind myself over and over again: there is no shortcut, this is hard, but it is awesome. Start today. What can I do today that will help me find some quiet? What can I do today that will bring me some joy? Each time I get wound up with stress or caught up in the pandemonium of life, I try to remember to go back to the basics: find some quiet, find some joy, and get to work. I hope these ideas will help some of my friends out there to do the same.

Tyson Logan is a partner at the Spence Law Firm in Jackson, Wyoming. He is a passionate trial lawyer and a people person. As a teacher on the staff of Gerry Spence’s Trial Lawyers College, he has been fortunate to work with some of the best and brightest lawyers across the country.

Is it time to move on?

Longtime Billings lawyer reflects on decision to leave practice after 33 years



By Jay Lansing

In April of last year, I returned home to Billings after an oral argument before the Ninth Circuit in Seattle and told my wife that I just did not want to do this any longer. I had practiced law for over 33 years and was only 59 years old. While I did not have the money to retire and did not know what I wanted to do for the rest of my working career, I knew what I *did* not want to do.

Over the past few years, I found myself writing in my daily journal that I did not know if I could do another trial, complaining about a particularly difficult client, and wishing for it to be Saturday. Often I would wake up at 3 a.m. thinking and worrying about cases and clients and being unable to go back to sleep. An unhealthy cynicism about the criminal justice system was creeping into my thinking, and I was just generally unhappy at work. The same unhappiness tempered the happiness that I felt in other parts of my life. I did not want to become so unhappy that I would start abusing alcohol or begin not caring about my clients or the outcome of their cases.

If my practice of law was causing my unhappiness, then I needed to do something about it and fix it. The practice of law is not a profession that lends itself to being a part-time job. Our schedule is oftentimes determined by others, such as the court or the client. I had practiced almost exclusively in the area of criminal defense, and I did not think that changing my area of practice at this point in my legal career made any sense – and I did not think that such a change would result in newfound happiness.

I decided that the best course of action was to close my practice, and the quicker the better. I was concerned if I slowly closed my practice that I would be creating more problems and really changing nothing. The first task was telling my clients what I intended to do and a general explanation why. No doubt this was the hardest thing to do – hard for me and my client.

Before meeting with each client, I determined which cases I could realistically complete in the next 60 to 90 days and which cases I could not.

As to those clients whose cases I would not be able to complete, I informed them that I would do my best to assist them in securing new counsel; that I would be returning the unused portion of any retainers; and that I would do my best to make sure that I did not charge them for work which would need to be duplicated by their new attorneys. I accepted no new cases.

Admittedly, there were some sad days, such as when I had my last court appearance before Judge Susan Watters or taking off of the office walls the certificates I worked so hard for. By the end of July, I had no active cases.

This is not the solution for everyone, and please understand that I am not talking about being down in the dumps after an adverse verdict or decision. But if you are continually unhappy, if you feel trapped by the practice of law, if you are drinking too much, or if you are depressed, then you owe it to yourself, your loved ones, your clients, and the

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Employers:

- EMAIL your job directly to job seeking professionals
- PLACE your job in front of our highly qualified members
- SEARCH our resume database of qualified candidates
- MANAGE jobs and applicant activity right on our site
- LIMIT applicants only to those who are qualified
- FILL your jobs more quickly with great talent

Job Seekers:

- POST multiple resumes and cover letters or choose an anonymous career profile that leads employers to you
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By Beth Brennan

ER doc's testimony ruled hearsay rule exception

State v. Porter

2018 MT 16 (Feb. 6, 2018) (Baker, J.; Sandefur, J., specially concurring) (6-0, aff'd)

Issues: (1) Whether the testimony from an emergency room physician regarding the victim's statements made during her examination violated Porter's rights under the Confrontation Clause; and (2) whether the district court abused its discretion in determining the emergency room physician's testimony was an exception to hearsay under M.R.Evid. 803(4), as statements made for medical diagnosis or treatment.

Short Answer: (1) No, and (2) no.

Affirmed

Facts: Belgrade police took a woman to the emergency room in August 2014 after she reported being assaulted by Porter the night before. The victim had a black eye and bruises on her neck, face, and arms. At the hospital, she signed a medical release form authorizing the hospital to release her health information to the police.

An emergency room doctor examined the victim, noting injuries consistent with strangulation. Following the exam, the police arrested Porter and charged him with felony aggravated assault.

At trial, the victim did not appear or testify, despite the issuance of a material witness arrest warrant. The state put in photos of the victim's injuries and portions of her medical records, and called four witnesses, including the doctor. Over Porter's objection, the doctor testified about the "verbal history" she elicited from the victim. She testified that she diagnosed the victim with strangulation and asphyxia, suspected posterior rib fracture, a concussion, and bruising. She said that the cause of the victim's injuries was "assault by her domestic partner with strangulation," and testified that in her opinion it was a near fatal strangulation.

Procedural posture and holding:

Porter moved to exclude the doctor's testimony, arguing that the victim's statements were inadmissible testimonial hearsay. The district court denied the motion, reasoning that the statements were not testimonial. The court held the statements were admissible under the hearsay exception for statements made as part of medical examinations, M. R. Evid. 803(4). The jury found Porter guilty of felony aggravated assault, and the district court sentenced him to 15 years in prison. Porter appeals, and the Supreme Court affirms.

Reasoning: (1) Under the Sixth Amendment, testimonial statements made out of court may not be admitted as evidence in a criminal trial against a defendant unless the declarant is unavailable to testify and the defendant had a previous opportunity to cross-examine the declarant. Porter argues that the victim's statements were testimonial because she had a clear reason to believe they would be used in court against Porter. He argues that the doctor was not responding to an emergency because the attack occurred the previous evening, and that the doctor's examination should be considered a forensic examination completed for the purpose of gathering evidence for the prosecution.

The court holds that the victim's primary purpose in speaking with the doctor was to receive medical care for her injuries, not to create an out-of-court substitute for trial testimony. Her statements were therefore nontestimonial and their admission did not violate Porter's Confrontation Clause rights.

(2) Porter argues that the district court abused its discretion in admitting the doctor's testimony relating to (1) the attacker's identity, and (2) the victim's mental state as she was strangled as hearsay exceptions. Porter argues these statements were not reasonably pertinent to diagnose or treat the victim.

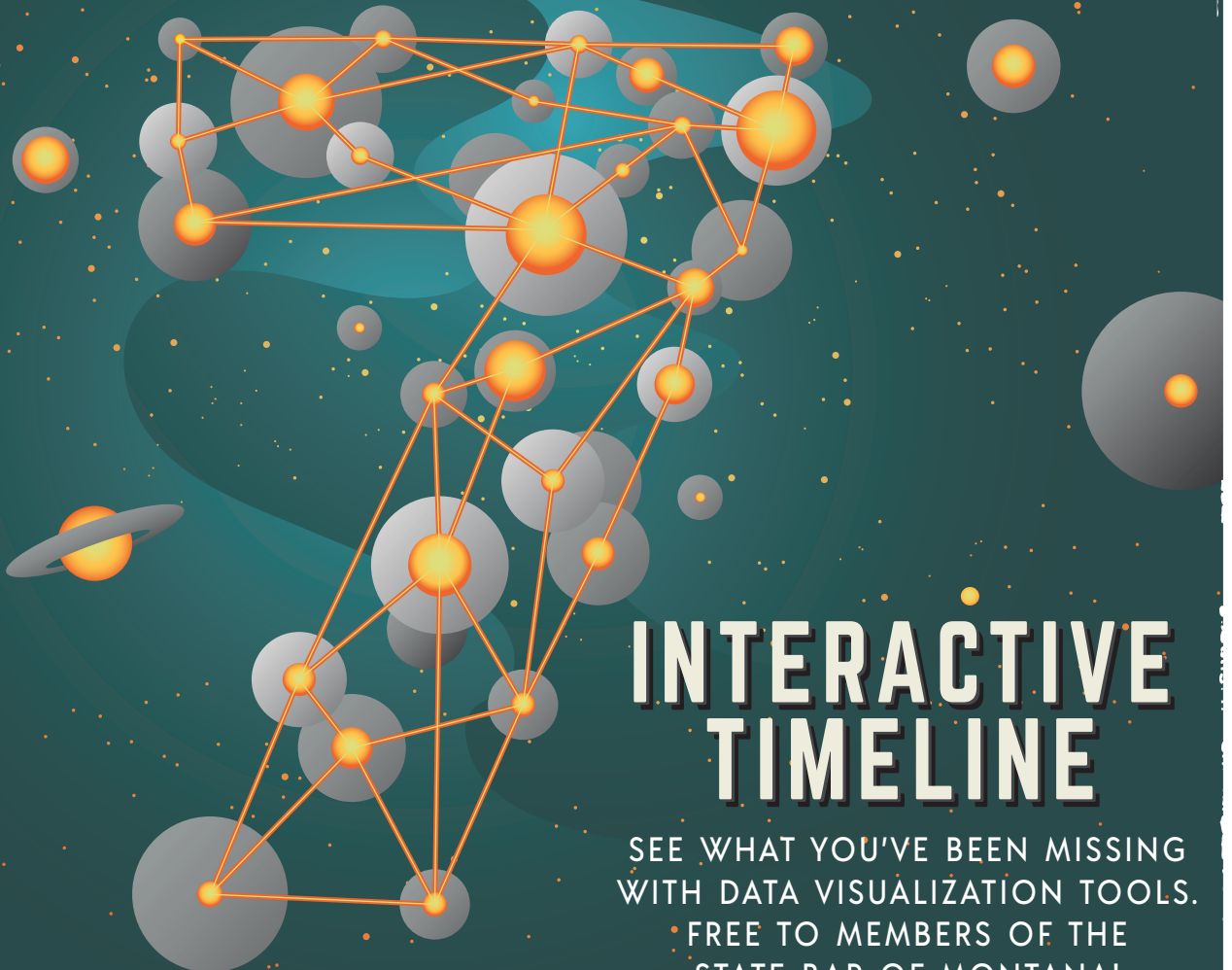
Editor's Note

The Montana Lawyer publishes selected summaries by Missoula attorney Beth Brennan of Montana Supreme Court published opinions. You can find more of her case summaries at brennanlawandmediation.com/mt-supreme-court-summaries/

To be admissible under this exception, statements must be consistent with seeking medical treatment, and they must be the type relied upon by a doctor when making decisions about diagnosis or treatment. The court holds that the doctor used the victim's statements regarding the severity of the attack to make diagnosis and treatment decisions. Moreover, the doctor testified it was her "custom and habit" to inquire into patients' state of mind during the assault. The statements identifying the victim's attacker and expressing her state of mind were reasonably pertinent to diagnosis and treatment.

Special Concurrence Justice Sandefur, joined by Justice McKinnon, concurs in the holding but cannot join the court's justification that the scope of the doctor's medical treatment included identifying an abuser and gathering evidence. Those purposes are manifestly compelling public safety and social justice purposes. However, protecting an abused patient from her abuser after she leaves the hospital and gathering evidence to facilitate his criminal prosecution do not constitute "medical treatment" within the plain meaning, and underlying circumstantial indicia of trustworthiness, of M. R. Evid. 803(4). Admission of the doctor's testimony was independently correct without the need to distort the plain meaning of "medical treatment."

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By Chief Deputy Attorney General Jon Bennion

Savings accounts created by 2015 Legislature for disabled Montanans now fully implemented

Three years ago, lawmakers in Montana passed groundbreaking legislation to open new doors for people with disabilities and their families. This new law was fully implemented in the fall of 2017 and is available to help change the lives of thousands of Montanans, including many of the people you represent.

Senate Bill 399, passed in the 2015 legislative session, allows eligible individuals with disabilities to establish "ABLE accounts" that resemble the tuition programs that have long existed under the tax code. The new ABLE accounts will allow more autonomy and control over personal saving decisions and spending on qualified disability expenses, while protecting eligibility for Medicaid, Supplemental Security Income, and other important benefits for people with disabilities.

Why does a qualified individual need an ABLE account? Without these accounts, many people with disabilities have very limited avenues to save and allow for further independence. The law recognizes the obvious — people with disabilities face added costs and burdens that aren't covered by government programs, and the state should not stand in the way of these individuals saving their own money to be used for disability-related expenses.

While there are annual contribution limits and caps on account balances, any person, such as a family member, friend or the person with a disability, may contribute to an ABLE account for an eligible beneficiary. One added benefit to Montana's program is our state law provides an income tax deduction of up to \$3,000 per year for certain contributors.

In the past, people with disabilities were essentially penalized for saving money and being financially responsible. Giving people with disabilities the power

to save their own money or use contributions from others can help them improve their living conditions with an eye toward accessibility, find appropriate transportation options so they can hold a job, or use for additional education or training to help them become more independent.

There are specific requirements set by federal law to be eligible to open an ABLE account. The first option is if the person is entitled to benefits on the basis of disability or blindness under the Supplemental Security Income program or under the Social Security disability, retirement and survivors program. The second option is for someone to submit proof that meets the criteria for a disability certification. In both cases, an eligible individual's disability must have occurred before age 26.

The implementation of SB 399 was no easy venture since no appropriation came to get it off the ground. Efforts to find the appropriate vendor for ABLE accounts were difficult. However, the state ultimately contracted with Ascensus, the same vendor that offers Montana's college tuition savings program. Accounts are easy to open and manage online, offer a variety of investing and saving options, and a dedicated call center is available for assistance.

So far, more than 70 individuals have opened an ABLE account, but there are hundreds more that are eligible and just don't know about this opportunity.

Now fully implemented, these accounts can improve the lives of Montanans across the state. If you think a client or someone you know may qualify, please have them visit mt.savewithable.com to get more information.

Jon Bennion chairs the Montana ABLE Program Oversight Committee and is the Chief Deputy Attorney General at the Montana Department of Justice.

The law recognizes the obvious — people with disabilities face added costs and burdens that aren't covered by government programs, and the state should not stand in the way of these individuals saving their own money to be used for disability-related expenses.

Innocence Project running CLE webinar series on issues related to wrongful conviction

The Montana Innocence Project is running a series of CLE webinars coming up on issues related to wrongful conviction.

Presenters include Montana Innocence Project Legal Director Larry Mansch and staff attorney Toby Cook, in addition to several special guests.



The price is \$20 for each of the remaining

one-hour webinars. Contact Montana Innocence Project Executive Director Lisa Mecklenberg Jackson at director@mtinnocenceproject.org to register. Upon registration, a link will be sent allowing you access to the online CLE on the day of the event.

■ Thursday, May 3, noon – DNA: A Potential Game Changer. This program

will examine the different kinds of biological evidence that can yield DNA, applicable standards in post-conviction matters, DNA collection techniques, and the types of testing available. 1.0 CLE credit

■ Thursday, June 7, noon – The Prevalance of False Confessions, Mistaken Eyewitnesses, and More Causes of Wrongful Convictions. 1.0 CLE credit

The series began on April 3 with a program entitled Anatomy of Wrongful Convictions, an examination of the nationwide Innocence Network, the causes of wrongful convictions, and the types of evidence that can be used to overturn them. A recording of that program is available. Contact Mecklenberg Jackson for details.

Chamber of Commerce releases 2018 Judicial Review

The Montana Chamber of Commerce has released its 2018 Judicial Review rating the Montana Supreme Court and Workers Compensation Court on the

favorability to business interests of their decisions.

The chamber included 58 Supreme Court decisions from the 2016-2017 biennium in the review, choosing cases it determined impacted Montana businesses or affected general liability standards. The review also provides a case summary for all 58 cases.

The review, however, does not analyze the decisions on their merits or the reasoning behind them – only whether they were favorable or unfavorable to business interests. It determined that the court handed down a “pro-business” decision in 72 percent of the cases. The eight justices who sat on the court during the biennium all received an individual rating.

The review also rated the Work Comp Court based on 26 judgments made by Judge David Sandler, determining he made a “pro-business” ruling 73 percent of the time.

You can download the review at <https://goo.gl/ePq61w>.

Leaving Practice, from page 20

profession to examine whether your unhappiness and all that comes with it are directly related to what you do for a living. We attend seminars about attorney wellness where we are informed about our rates for depression, alcoholism, and suicide as compared to other professions. I am keenly aware of the lasting effects of suicide as both of my parents suffered through the death of each of their fathers by suicide. And while we discuss the different resources, including counseling and treatment, available to attorneys, very little is said about simply getting out of the practice of law. I know that in some ways I felt trapped in my profession – it provided me with a level of income that I enjoyed; I did not know what other kind of work I could do; and I worried I would be considered a failure if I quit.

My wife and I have now moved to Florida where my wife is working and I am looking for my new career. I do not know how the rest of my life will play out, but I'll figure it out. If I wake up now in the middle of the night it's because I have to use the bathroom again. I have no regrets. I am proud of what I have done in my legal career, the people I have helped over the years, and the reputation I worked hard to earn. There are some attorneys who can do hundreds of trials in their career and others who want to practice into their 70s and 80s. That is not me and that may not be you. I did my best for as long as I could.

There is a poem by Ms. Saxon N. White Kessinger titled “There Is No Indispensable Man,” who at one point lived in Montana. The poem is an exercise in understanding your humble position in the world, and she suggests taking a

bucket and filling it with water and

“Put your hand in it up to the wrist,

Pull it out and the hole that's remaining

Is a measure of how you will be missed.”

She concludes the poem by recommending that one should just do the best that they can and be proud of themselves, recognizing that no one is indispensable.

In August, I closed the office door behind me and pulled my hand out of the bucket of water. On Sept. 26, the State Bar of Montana welcomed 67 new members at the swearing-in ceremony at the Montana Capitol. Wishing happiness for everyone.

Jay Lansing is enjoying his new life in Florida after 33 years practicing law in Montana.

Visit www.montanabar.org to register for State Bar CLE events. Just click in the Calendar on the bottom right portion of the home page to find links to registration for CLE events. You can also contact Meagan Gallagher at mgallagher@montanabar.org.

Still in need of credits for CLE reporting season? Many spring seminars are on tap

A full slate of topical and informative CLE seminars is on tap this spring. Upcoming seminars include:

Indian Wills CLE

Missoula Wednesday, April 18

Learn about the federal law and process for disposition of Indian trust assets at the Indian Wills CLE.

A live webcast of this CLE will be available, and will count for live CLE credit. Please email mgallagher@montanabar.org for information on how to register.

Bench Bar CLE

Friday, April 27, Missoula

The popular Bench Bar CLE, approved for 7.5 CLE credits, 1.5 ethics, will be on.

The faculty includes two current and Montana Supreme Court Justices Beth Baker, Ingrid Gustafson, Patricia Cotter (retired) and Mike Wheat (retired); Chief Judge Dana Christensen of the U.S. District Court, District of Montana; five current or retired state district court judges; and three current or retired U.S. magistrate judges.

Family Law CLE

Friday, May 4, Butte

Approved for 6.5 CLE credits, this seminar will touch on a variety of topics and give practitioners resources to utilize in the event they encounter these issues in their practice.

Topics include how tax changes may impact child support calculations, what to expect in the next legislative session, tips for writing appellate briefs, E-Filing with the Supreme Court, child abuse in Montana Courts, and maximizing effectiveness in settlement conferences.

Ethics and Advocacy CLE

Friday, May 11, Helena

This is the CLE for everyone who

Other upcoming notable CLE presentations

Public Law - Bankruptcy CLE

Wednesday, April 11, noon – 2 p.m., MT Supreme Court Courtroom (and online). The Public Law Section and MLSA present a two-hour free CLE on the basics of bankruptcy by Jennifer Beardsley, including how to provide limited-scope assistance for individuals who want to file a Chapter 7 bankruptcy. We will attempt to get this approved for 1.5 general credits and 0.5 ethics credits.

Veteran's Representation CLE

Learn about legal problems commonly faced by veterans and returning soldiers, and existing laws that can reduce or prevent those problems. This topic is another way for government attorneys to provide limited scope pro bono services. As usual, this CLE will be free and streamed online. You may register in person at the event, or contact Sarah McClain, director of

the State Law Library, at SMcClain@mt.gov, if you want to tune in online.

Webinar - Technology, Ethics, and Your Practice

In the past, attorneys purchased a new disk drive, memory, or software to meet their needs, but technology has now evolved to the point where lower costs for hardware storage and processing speed have facilitated the proliferation of what are called soft-ware-as-a-service providers and cloud-service providers. The broad availability and relatively low (even free) cost of these cloud-based services make them tempting solutions for legal practices, but a storm is brewing regarding their use. Presented by Tom Kulik, an Intellectual Property & Information Technology Partner at the Dallas-based law firm of Scheef & Stone, LLP.

represents or sues government entities. It is also your last chance to get those vital ethics credits before the grace period ends for the reporting year -- approved for 6.5 CLE credits (3.0 Ethics).

Topics include tips on how to advocate ethically and effectively from three members of the Montana bench; potential ethical dilemmas faced by attorneys who represent the federal, state and local government; and defending the state against constitutional challenges and requests for declarative and injunctive relief.

Bucking Horse CLE

Thursday, May 17, Miles City

Timed to coincide with the annual Miles City Bucking Horse Sale, this CLE

is stocked with topics relevant to the Prairie Lawyer and approved for 6.0 CLE credits.

An employment law presentation will address workplace governance and litigation issues arising under Montana's Wrongful Discharge from Employment Act. A wills and estates presentation will focus on various types of trusts and how to administer them. A family law presentation will address dissolution cases involving the family farm or land that has been in the same family for generations.

Participants will also learn about livestock trespass laws, disability law and avoiding common pitfalls in oil and gas law.

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2018 Trends in Environmental Law CLE 6.25 CLE Credits (1.25 Ethics)

Helena
Radisson Colonial Hotel
April 13




2018 Family Law CLE
Tips to Improve Your Practice
6.5 CLE Credits

Butte
Clarion Inn
Copper King Hotel
Friday, May 4



Indian Wills CLE
7.25 CLE (1.0 Ethics)

Wednesday, April 18 | Blewett School of Law, Missoula



Ethics & Advocacy
6.5 CLE Credits (3.0 Ethics)
Helena | DoubleTree by Hilton
Friday, May 11



BENCH & BAR CLE 2018
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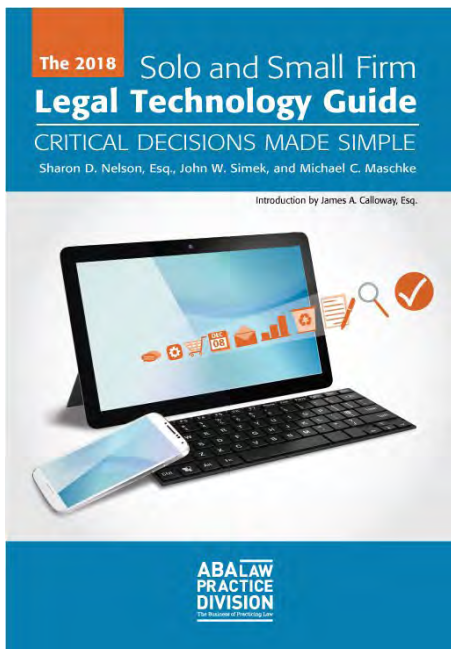
WATCH FOR DETAILS ON THESE UPCOMING SEMINARS/EVENTS

SAVE THE DATES

Annual Bankruptcy Law CLE
Aug. 2-3
Butte

BETTR Section CLE
Friday, Aug. 10
Great Falls

44th State Bar Annual Meeting
September 19-21
Kalispell, Red Lion Hotel



The 2018 Solo and Small Firm Legal Technology Guide

By Sharon Nelson, Esq., John Simek and Michael C. Maschke

178 pages, 22 chapters

REVIEWED BY BEN BURNS

This book is largely what you'd hope to find if you were searching for a guide to assist you in upgrading the technology in your small to mid-sized practice. While the guide covers topics that range from simple to complex, it does so in a way that caters to the demographic

you'd expect to need a technology guide the most. If nothing else, it provides less tech-savvy attorneys with clear and concise information about the essentials of a modern practice. It tells you what you need, why you need it, and the pros and cons of your various options. It is that sort of concise, digestible breakdown that is so often missing in similar "technology guides."

Topics discussed range from simpler topics like printers and computers, to more complex topics like networking hardware and software security. However, what separates this guide from the others is its concise and digestible breakdowns of the topics, regardless of their complexity.

While there are some topics that may have been covered more thoroughly than necessary (such as the pros and cons of the various operating systems), the 2018 Solo and Small Firm Legal Technology Guide generally provides attorneys with the information they need to upgrade their small to mid-sized firm, and touches on other upcoming technological trends to give a glimpse into the future. Technology is ever-evolving, and technology guides can often be outdated before they make it to print. But this guide should maintain relevance for much longer than the typical guide, as it covers a broad range of topics in a way that is very useful and narrowly-tailored to a specific industry and demographic. Complex topics explained in bite-sized chunks. If you are an attorney who wants to upgrade the technology in your firm but are unsure of the pros and cons of your various options, this is the guide you need.

Call for book reviews

The Montana Lawyer welcomes the submission of book reviews on topics that might be relevant to our members.

Any bar member is welcome to submit a review. Reviews should be no more than 500 words, though longer submissions may be accepted on consultation with the editor. Reviews should provide a concise summary of the book's primary themes and a brief analysis of its strengths, weaknesses, and relevance. Any book related to the law or of interest to bar members is acceptable for review, including fiction.

If you are interested in submitting a review, contact editor Joe Menden at jmenden@montanabar.org.

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In Memoriam

If you have lost a loved one or colleague who was a Montana attorney, the State Bar of Montana would like to publish a memorial, free of charge, in the Texas Bar Journal as an expression of our respect. Please email submissions to jmenden@montanabar.org. Please use the subject line "In Memoriam."

John North

Longtime Helena attorney John North on March 1, 2018, at age 70.

North grew up in Bigfork. He worked his way through the University of Montana as a custodian at Bigfork's high school and came away with a bachelor's degree in history/political science, a law degree, and lifelong friends from the Wesley Foundation Covenant



North

Group. His career as a lawyer began with the Flathead County Attorney's Office. After moving to Helena he worked first for the Attorney General, then served as chief legal

counsel for Gov. Ted Schwinden, the Department of State Lands, and the Department of Environmental Quality. John took great pride in well-written and thoroughly researched environmental laws and rules.

In 1974, John married Dawn Whitaker, also of Bigfork, a partnership that lasted forty-three years. They championed the Prickly Pear Land Trust, the Nature Conservancy, public radio, and dry humor. They belonged to

Covenant United Methodist Church, and welcomed visitors from around the world to their home. Twenty-eight summers they made eight-day backpack trips into Montana wilderness areas. They also hiked Yellowstone park regularly, lost track of trails they explored in the region, happily rode trains back and forth across the country, skied into back-country cabins, attended Lady Griz basketball games, gardened (John specialized in weeding), traveled the globe, enthusiastically watched baseball, and championed environmental consciousness with their Prius, solar panels, recycling, and lifestyle. Friends and those who encountered him in life as well as the courtroom, remember John's honesty, quick dry wit, meticulous attention to detail, and kind heart.

A celebration of John's life will be held from noon until the cows come home, on Saturday, June 23, at the family's home. Memorial donations may be sent to the Prickly Pear Land Trust, P.O. Box 892, Helena, MT 59624 or to The Nature Conservancy of Montana, 32 S. Ewing St. Suite 215, Helena, MT 59601, or Last Chance Public Radio P.O. Box 1072, Helena, MT 59624, or any other public radio station of one's choosing. Visit retz-funeralhome.com to offer condolences or share a memory of John.

Timothy John Patrick Flanagan

Timothy John Patrick Flanagan, 67, died at his home in Denver on Thursday, Jan. 4. Born April 16, 1950, in Indianapolis, he lived in Denver and worked as an attorney until his death.

Flanagan graduated from the



Flanagan

University of Denver and University of Denver Law School. He was a member of the state bars of Montana, Colorado and Wyoming. He was a trial attorney who specialized in water rights and condemnation rights. He practiced law

continuously for over 40 years, trying hundreds of cases in the lower courts and was involved in numerous issues before the state appellate courts. He loved the outdoors and standing up for the little guy. He was also an avid student of Colorado and American history.

Memorial contributions are welcome at Timothy John Patrick Flanagan Memorial Fund, c/o Jim Tarpey, 1640 Grant St., Denver, CO 80203

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ASSOCIATE ATTORNEY: Hall & Evans, LLC, a well-established and respected law firm headquartered in Denver, is seeking a full-time Litigation Associate to join their litigation branch office in Billings. Qualified candidates must be currently licensed to practice in Montana with 5-8 years of litigation experience preferred, minimum of 3 years required. You must be proficient in Microsoft Office, particularly Outlook and MS Word. Interested candidates should apply online to www.hallevents.com/careers/current-openings/. Please include your resume, cover letter, writing sample, and references. EOE.

ASSOCIATE ATTORNEY: Montana Elder Law, Inc. is seeking an attorney with 3+ years of experience for new office in Kalispell. Legal services will vary depending on a family's needs but can range from estate planning to conservatorship/guardianship cases. Excellent training program in place. Benefits available, salary DOE. Litigation experience preferred, excellent personal communication skills a must. Please respond with cover letter, resume, writing sample, and references to chelsea@mtelderlaw.com. All inquiries confidential.

ASSOCIATE ATTORNEY: Knight Nicastro, LLC is a regional litigation firm with offices in Kansas City, Montana and Colorado. We are seeking an associate with 0-3 years of litigation experience for our Billings, MT office. This is an excellent opportunity for a new associate to work in a busy and fast paced defense litigation practice. You will be provided with training, mentoring, opportunities for client interaction and trial work. Our firm offers excellent benefits, including competitive compensation and bonus structure, CLE budget, marketing support and budget, medical and dental insurance, company matching 401(k), paid time off (PTO) and holiday time. Qualifications are strong academic record, excellent researching and writing ability, and a desire to grow into a top courtroom litigator.

ASSISTANT ATTORNEY GENERAL: The Montana Department of Justice is currently recruiting for an Assistant Attorney General for the Appellate Services Bureau. The pay range is \$36.78 and \$40.72 per hour, depending on experience. To apply for this position, please submit a resume, cover letter,

and writing sample at mt.gov. If you have any questions, please contact our HR Department at 406-438-7336 or dawn.lambert@mt.gov.

CITY ATTORNEY: The City of Boulder is seeking an attorney to provide City Attorney services on a contract basis. A full request for proposal is at jobs.montanabar.org. Attorneys are invited to submit qualifications and proposals for the provision of these services. Send proposals to City of Boulder, Russell S. Giulio, Mayor, 304 N. Main St., P.O. Box 68, Boulder, MT 59632. Proposals must be received by April 25, 2018.

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MEDIATION

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

MICHAEL A. VISCOMI, of Viscomi, Gersh, Simpson and Joos, PLLP, in Whitefish, practice now limited to mediation, arbitration and special master assignments throughout the state of Montana. For scheduling, call (406-862-7800), email (randi@bigskyattorneys.com) or use online calendar available through the National Academy of Distinguished Neutrals (www.nadn.org/michael-viscomi).

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systems, materials, construction methods; Accessibility Regulations and Standard of Care; and forensic architectural investigation. Provides consulting and expert witnessing services. Attorney references upon request. Frank John di Stefano, PO Box 1478, Marion, MT, 59925, Phone: 406-212-7943.

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EXPERIENCED BANKING EXPERT/CONSULTANT – 40+ years of banking experience 30 years of which were in executive management positions in banks ranging in size from community banks to multi-billion dollar, multi-state banking organizations. Executive responsibility for all phases of lending, lending disciplines and credit assessment. Special expertise in determining borrower creditworthiness and the appropriateness of lender behavior. Outstanding legal references upon request. Please contact Leon Royer by telephone at 406-932-4255 or by email at backcastranch@gmail.com.

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

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