

MONTANA LAWYER

State Bar
— of —
Montana

December-January 2017-18
Vol. 43, No. 3

Program is building a network of guardians



Also in this edition

- > Montana Supreme Court orders creation of Asbestos Claims Court
- > 3 nominated for Supreme Court justice seat
- > Remembering longtime Montana Bankruptcy Chief Judge John L. 'Jack' Peterson
- > Newly redesigned Bar website launches

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From the cover

Tim and Priscilla Murphy, and their son, Benjamin, of Missoula, are among the families with special-needs kids who Montana lawyers have helped guide through guardianship cases. A new program conceived by Montana attorneys aims to make build a network of lawyers who can do the same for families in desperate need of help. See page 16 to learn more.



The Honorable Leslie Halligan of Missoula 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.

'Season of Service' at the Bar closing for executive director

December brings leadership changes to the State Bar, as Executive Director Chris Manos retires from his position after 16 years of service.

As State Bar president, I have become more aware of the magnitude of the demands that Chris has managed during his tenure, challenges that incoming Executive Director John Mudd will face beginning in January 2018. Chris has met the demands of his position with keen intellect, good judgment, diligence, and significant energy. Furthermore, he has always displayed integrity and professionalism in dealing with the challenges of working with many strong personalities, diverse constituencies and ever-changing "bosses" (the Supreme Court, the changing presidents, diverse Boards of Trustees) and on projects that shape the legal profession amid constantly emerging changes to the practice and delivery of legal services. Regarding retirement, Chris has reflected that his tenure at the State Bar has been just one "season of service" that has followed other seasons of service, including his military service and service to the legal profession in the private and public sectors. I hope you will join me in thanking Chris for his many contributions and his devoted service.

As the calendar year closes, I encourage you to take time to reflect on the contributions that others have made to enrich your life, both personally and professionally. Whether these may be the life lessons that you received from family members, the kindnesses of colleagues with whom you work, the friend or neighbor who helps you in a time of need or simply offers a random act of kindness, or a mentor who has demonstrated just what it means to "live" a profession of service.

And then, I challenge you to chart your own plan of service. It may be the best gift that you can give to yourself.

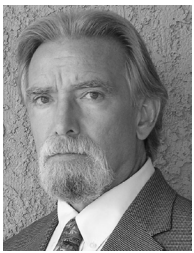
Best wishes for peace during the holidays and joy in the new year.

Chris has reflected that his tenure at the State Bar has been just one "season of service" that has followed other seasons of service, including his military service and service to the legal profession in the private and public sectors. I hope you will join me in thanking Chris for his many contributions and his devoted service.

HONORS

Gaitis named College of Commercial Arbitrators Distinguished Fellow

James M. Gaitis of Polebridge, Montana has once again reprised his role as editor-in-chief of "The College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration," the substantially expanded 4th edition of which was released for publication in October 2017.



Gaitis

At the CCA's 2017 annual meeting in October, Mr. Gaitis spoke on a panel discussion relating to emergency arbitrators in U.S.-based domestic and international arbitrations. At the college's formal dinner that evening, he was honored for his outstanding contributions to the field of commercial arbitration by being the first individual in the 17-year history of the college to be awarded the title of Distinguished Fellow of the College of Commercial Arbitrators.

NAMES & FACES

Stack & Kottke welcomes Rogers as new associate

Stack & Kottke, PLLC, located in Missoula, is pleased to announce the addition of Abigail Rogers as an associate, joining Katy Stack and Briana Kottke as part of the firm's criminal defense team.



Rogers

Rogers is originally from Portland, Oregon. She graduated from Carroll College where she was a collegiate soccer athlete for four years. She then attended the University of Montana School of Law, receiving her Juris Doctorate in May 2017.

During law school, Rogers was

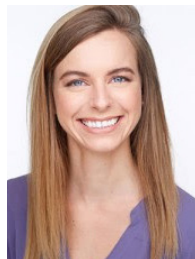
selected as a member of the National Trial Team and competed in two regional competitions as an attorney. She was later awarded the International Academy of Trial Lawyers Student Advocacy Award. Throughout law school, she volunteered her time as a hearing officer for the Missoula Housing Authority. During her second year of law school, she accepted an internship position with Stack & Kottke and completed her clinic with the Montana Office of the State Public Defender.

Rogers is admitted to practice in Montana state court and the United States District Court for the District of Montana. Her primary area of practice will be criminal defense. You may contact her at 406-284-1860 or abigail@stackandkottke.com.

Faller joins as new associate at Farve & Brown Law

The law firm of Farve & Brown Law, PLLC, is proud to announce Mimi Faller, who joins the firm as a new associate. Farve & Brown is a boutique law firm specializing in land and water law. Faller will be specializing in real estate, corporate transactional law and water law and is currently working in the firm's Bozeman office.

Faller grew up in Coeur d'Alene, Idaho, and attended college at the University of Colorado at Boulder, graduating cum laude with a Bachelor of Arts in French Literature and International Affairs in 2010. After taking a year off to work in a small Boulder law firm and focus on her law school applications, she attended the University of Denver Sturm College of Law and received her Juris Doctor in May 2014, focusing her studies on corporate and commercial law, as well as bankruptcy law. Following graduation, Faller moved to Boise, Idaho, to serve as the law clerk for the Honorable Terry L. Myers, chief judge for the U.S. Bankruptcy Court for the District of Idaho. In August 2015,



Faller

she relocated to Jackson, Wyoming, and joined a boutique transactions firm where she specialized in real estate and corporate transactional law.

Faller joined Farve & Brown Law as an associate in September 2017. Her practice focuses on real estate and corporate matters, as well as water law. Mimi has extensive experience assisting clients in corporate matters, employment matters, licensing, commercial and residential lease review and negotiations, and all matters related to real estate. Mimi is licensed to practice in Idaho and Wyoming, and her Montana license is currently pending.

You can reach her at mimi@farvebrownlaw.com or at 406-219-0073.

Silverman Law Office welcomes 3 attorneys in Helena, Bozeman

Silverman Law Office has announced the addition of three new attorneys at its offices in Helena and Bozeman.

Joseph Passamani decided to return to his small-town roots in the Mountain West after living and working as an attorney in Florida for several years. Passamani joined Silverman Law Office because of its team and customer service approach in representing clients. Passamani is excited to become part of the Helena community, where he can use his estate planning, transactional, tax and real estate background to help Montanans achieve their personal, family, legal and business goals.

Passamani was born and raised in Prescott, Ariz. He graduated magna cum laude from Sandra Day O'Connor School of Law at Arizona State University in 2011, and received his LL.M. in Taxation from New York University in 2012.

While in law school, Joseph received several academic accolades and awards, including awards in legal writing, tax, and professional responsibility.

Prior to joining Silverman Law Office, Passamani worked for a transactional and



Passamani

business firm in Naples, Fla., where he concentrated his practice in the areas of commercial and residential real estate transactions, business acquisitions and development, estate planning and corporate transactions.

Passamani is an avid outdoorsman and sports fan. When not in the office, he enjoys spending time with his wife, Jacqueline.

Kathryn A. Munro has a love and passion for Montana and her clients. She was born in Corpus Christi, Texas, but she was raised in Montana, where both of her grandfathers homesteaded in the early 1900s. She received her Bachelor of Arts from Montana State University, her Juris Doctor from the University of Montana School of Law in 2003, and a Master's in Taxation from the University of Washington School of Law in 2004.



Munro

Munro's joy for working with businesses and individuals began when she moved to Havre and started working as a tax preparer, including handling payroll.

After receiving her Masters in Taxation, she moved to Flagstaff, where she worked with clients in the legal fields of school law, nonprofit law, and estate planning, wills, trusts, guardianships, conservatorships and probate law. However, the draw to return to Montana, and spend more time with her family and friends, became too much for her to withstand.

Munro was drawn to join Silverman Law Office by its focus on clients and the ideals of customer service. She believes that clients are like family, not mere customers. She also appreciates the team focus in working with clients in estate planning, probate, guardianships and conservatorships.

Her practice areas include school contracts, both employment and acquisitions (including finance leases); nonprofit setup and compliance; estate planning, probates, and guardianships and conservatorships. She especially enjoys trust and estate administration.

When not working, Munro enjoys horseback riding, hiking, and being outdoors. She and her two cats are also avid jigsaw puzzle enthusiasts.

Jordan Feddes was born and raised in Southern California, in a charitable-minded family. While pursuing her undergraduate degree at the University of California, Berkeley (Bachelor of Arts in Linguistics in 2011), law degree at Pepperdine University School of Law (2015), and Masters of Law in Taxation from Loyola Law School (2015), Jordan coached gymnastics and volunteered with nonprofits whenever possible. Her passion to work with people inspired her to undertake estate, gift and succession planning, and charitable organization classes during her Masters in Taxation. Jordan continues to passionately serve businesses, families and charities while helping them reach their long-term goals today with the Silverman Law Office, PLLC team.



Feddes

Jordan moved to the Gallatin Valley in June 2015 after marrying her husband, Mark, a Bozeman native. Her first two years of private practice were with a well-regarded boutique firm in Bozeman, assisting clients with business, tax, and estate planning, including wills, trusts, and real estate transactions. Jordan transitioned to Silverman Law Office in the Fall of 2017, to continue her passion of working closely with clients and providing excellent service through a team and client-oriented approach.

When not in the office, she enjoys spending time with Mark and their cat, Marty, and dog, Maisie. She can often be found cheering on the Cal Bears, doing yoga, playing trivia, or enjoying the outdoors while hiking, skiing, or soaking in hot springs.

She is licensed to practice law in California and Montana.

Myers rejoins Matovich, Keller & Murphy

Jesse Myers has rejoined Matovich,

Keller & Murphy as an associate after spending four years representing a national transportation corporation on a variety of claims and lawsuits.



Myers

Myers focuses his practice primarily on civil litigation matters, including insurance defense, insurance coverage and bad faith, and personal injury defense. He also represents clients in product liability litigation, employment matters, and contract disputes. Myers is a Montana native and received dual degrees in psychology and biological science from Washington State University.

He graduated from the University of Montana School of Law and received his LL.M. from the University of Washington. Before first joining the firm in 2012, Myers worked at the Office of the State Public Defender. He can be reached at 406-252-5500 or via email: jmyers@mkmfirm.com.

Musick opens criminal, family law practice in Bozeman

Elizabeth Tipton Musick, formerly of Guza, Nesbitt & Putzier, is pleased to announce the opening of her new practice, Musick Law Firm, with an office on West Dickerson near the Law and Justice Center in Bozeman.



Musick

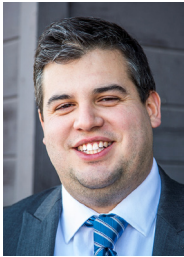
Musick Law Firm specializes in criminal defense and family law matters. Musick, originally from Memphis, Tennessee, graduated from Clemson University in 2008 with a Bachelor of Arts in English and a minor in Education. She earned her JD from the University of Montana in 2015, and has been practicing in Bozeman since that time.

For more information, please visit www.musicklawmt.com.

Smith Oblander law firm announces new shareholder, new associate, new name

Smith Oblander law firm in Great Falls has announced a new shareholder and a new associate attorney at the firm.

Matt Meade, who has worked as an associate attorney at Smith Oblander since 2013, has become the newest shareholder at the firm, which will now be known as Smith Oblander & Meade, P.C.



Meade

Meade was raised in Belgrade and attended the University of Montana and Gonzaga University School of Law. He joins Stephanie Oblander and Gregg Smith as shareholders in the firm which was first established in 1993. Meade practices primarily in personal injury litigation, both on the plaintiff and

defense side. He served as secretary of the Cascade County Bar Association from 2014-2016.

Kaitlyn McArthur was raised in Everett, Washington, and graduated from Henry M. Jackson High School in 2011. In 2014, she graduated from the University of Great Falls (now University of Providence) summa cum laude.



McArthur

During her time at the University of Great Falls, she was a member of the women's basketball team. She also interned as a file clerk at Smith Oblander, which ultimately led her to law school.

McArthur graduated from the University of Montana's Alexander Blewett III School of Law in 2017. As a law student, she interned with Milodragovich, Dale, and Steinbrenner, P.C., and the Missoula County Attorney's Office. She was also an active

member of the Montana Trial Lawyers Association Student Chapter.

McArthur has a diverse practice spanning myriad areas, including transactional work, construction-related litigation, wills and estates, personal injury, and personal injury defense.

APPOINTMENTS

Molloy appointed to Montana State Fund board

Helena attorney Jim Molloy was appointed to the board of directors of the State Workers' Compensation Insurance Fund.

Gov. Steve Bullock appointed Molloy, a partner with Gallik, Bremer & Molloy P.C., to the board Nov. 17. Molloy has previously served as senior adviser to Gov. Bullock and as chief consumer protection counsel in the Montana Department of Justice.

Gov. Bullock also appointed Cliff Larsen of Missoula to the State Fund board.



STATE BAR OF MONTANA

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STATE BAR OF MONTANA

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

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

What are the benefits of joining Modest Means?

While you are not required to accept a particular case, there are certainly benefits!

You are covered by the Montana Legal Services malpractice insurance, when you spend 50 hours on Modest Means and / or Pro Bono work (you'll need to track your time and let us know), you will receive a free CLE certificate to attend any State Bar sponsored CLE. State Bar Bookstore Law Manuals are available to you at a discount and attorney mentors can be provided. If you're unfamiliar with a particular type of case, Modest Means can provide you with an experienced attorney mentor to help you expand your knowledge.

Questions?

Please email: ModestMeans@montanabar.org

You can also call us at 442-7660.



Are You Interested in Joining The Modest Means Program?

To get started, please fill in your contact info and mail to: *Modest Means, State Bar of Montana, PO Box 577, Helena, MT 59624.*

You can also email your contact info to ModestMeans@montanabar.org

Name: _____

Address: _____

City, State: _____

Email: _____



The Honorable Ingrid Gustafson



Mike Lamb



The Honorable Russ McElyea

Commission nominates Gustafson, McElyea, Lamb for Supreme Court justice opening

The Judicial Nomination Commission submitted three nominees to Gov. Steve Bullock for consideration for appointment to a vacant associate justice seat on the Montana Supreme Court.

The three are Yellowstone District Court Judge Ingrid Gustafson, Montana Chief Water Judge Russ McElyea, and Helena attorney Mike Lamb.

The commission evaluated the candidates on five criteria: electability, depth and breadth of legal experience, judicial temperament.

Commission members unanimously voted in favor of nominating Judge Gustafson. Six of the seven commission members voted to nominate Lamb, while five voted in favor of Judge McElyea's nomination.

The commission on Nov. 16 interviewed five applicants for the seat. The other two interviewed by the commission were Billings attorney Martha Sheehy and Helena attorney Jim Hunt.

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

must fill the position within 30 days of receipt of the nominees from the commission. The position is subject to election in 2018. The successful candidate will serve until January 2023.

Commission members are District Judge John C. Brown of Bozeman; attorney members Karl Englund of Missoula and Elizabeth Halverson of Billings; and lay members Janice Bishop of Missoula; Hal Harper of Helena; Lane Larson of Billings; and Nancy Zadick of Great Falls..

Zadick reappointed to Judicial Nomination Commission

Gov. Steve Bullock has reappointed Nancy Zadick of Great Falls to a four-year term as a lay member of the Judicial Nomination Commission.

The commission consists of four lay members from different geographical areas of the state and who represent different industries or professions, along with two attorneys and one district judge. Zadick is a nonprofit consultant working in finance and bookkeeping.

Her term runs through Jan. 1, 2022.

Berger, DeWolf appointed to Criminal Jury Instructions Commission

The Honorable Luke Berger of the 5th Judicial District and Bozeman attorney Annie DeWolf have been appointed to the Montana Supreme Court's Criminal Jury Instructions Commission.

Judge Berger replaces the Honorable Julie Macek, who recently retired as a Cascade County District Court judge. His term will end Nov. 1, 2021.

DeWolf is appointed to the seat formerly held by Peter Ohman for a term to expire on March 1, 2020.

Murphy appointed to Uniform District Court Rules Commission

Billings attorney Brooke B. Murphy has been appointed to the Montana Supreme Court's Uniform District Court Rules Commission. She took over the term previously held by deceased attorney John Maynard for a term ending Nov. 17, 2021



IOLTA/TRUST ACCOUNT AND PRO BONO REPORTING

www.montanabar.org

REPORTING PERIOD: DECEMBER 15, 2017, THROUGH JANUARY 31, 2018

WHY SHOULD I DO IT?

Per Rule 1.18 of the Montana Rules of Professional Conduct, all active-status attorneys must submit an annual attorney trust account certification.

Failure to complete the trust account certification by January 31 may result in **SUSPENSION** of an attorney's active status and a \$50 reinstatement fee

HOW DO I COMPLETE CERTIFICATION?

Attorneys may complete their trust account certification online by logging into their State Bar of Montana website account at **www.montanabar.org** on or after December 15.

There's no need to create a new account. Use the same credentials you use to access your Fastcase member benefit or your State Bar of Montana online profile.

Note: If you haven't logged in to your State Bar account recently, it is a good idea to test out your login before completing IOLTA certification

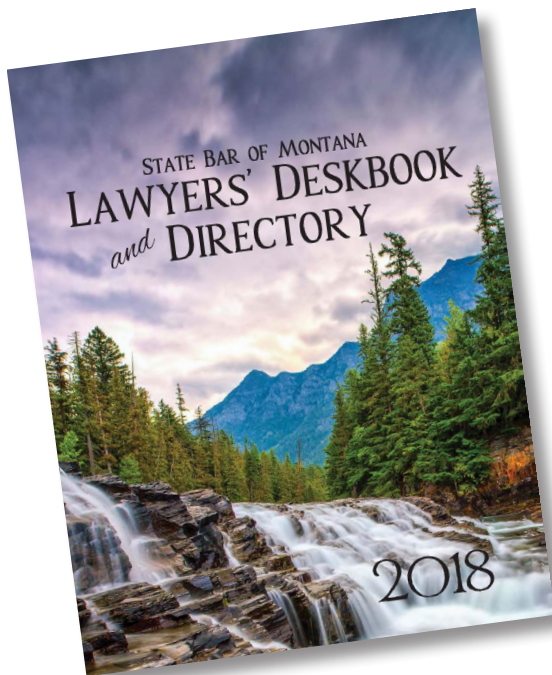
WHAT IF I FORGET?

We will make every effort to help ensure reporting compliance. Postcard and email notifications will be sent to Active Attorneys in mid-December.

Further notifications for members out of compliance with their IOLTA reporting will be provided as the January 31 deadline nears.

STILL HAVE QUESTIONS?

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



2018 DESKBOOK & DIRECTORY

Last chance to pre-order — print copies are limited

This comprehensive resource includes:

- State/Federal Courts and Rules
- District Courts and Rules
- Sample Fee Agreements & Forms
- Up-to-date roster of State Bar of Montana members
- Rules Regarding the Practice of Law
- Legal Resource Guide
- Law-Related Organizations & Associations
- Law Firm Section for participating firms
- And more....

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Supreme Court creates Asbestos Claims Court

The Montana Supreme Court on Nov. 28 issued an order creating an Asbestos Claims Court to resolve hundreds of asbestos-related cases pending in Montana's trial courts. The cases, which have languished while federal bankruptcy issues were pending, can now proceed in the state court system. The action places all pending asbestos cases into the specialty court.

The order requires attorneys representing parties in cases arising from asbestos-related claims to file a notice of appearance with the Asbestos Court by Dec. 28, 2017.

The court has identified a list of about 600 pending cases but not all cases may have been captured. Parties and attorneys involved in litigation brought for the recovery of monetary damages for personal injury, wrongful death, loss or consortium, or other injury arising out of an asbestos-related disease that is alleged to result from the mining of vermiculite, the processing of vermiculite, or the transfer, storage, installation, or removal of a product containing vermiculite



should file a notice of appearance in the court even if a case does not appear on the list. The notice of appearance must be filed electronically through the Montana Supreme Court.

Flathead County District Court Judge Amy Eddy will preside over the court initially. Consolidating the cases will allow discovery and settlement discussions to proceed quickly. Any cases that are not

settled will be tried in the Judicial District in which the cases originated.

The Montana Legislature gave the Supreme Court the authority to establish an asbestos court during the 2001 legislative session.

The order creating the Asbestos Claims Court, along with a list of identified pending asbestos cases is available at www.montanabar.org.

State Bar renews dues increase request in response to public comments filed with Supreme Court

The State Bar of Montana renewed its request for a dues increase in its response to public comment filed with the Montana Supreme Court.

The bar's petition, filed originally filed Sept. 21, called for dues increases ranging from \$25 for senior members to either \$85 or \$100 for Active Attorney members. The bar's Board of Trustees approved the response to the public comment at its board meeting on Dec. 1. The comment was filed with the court later that day.

In its response, the bar noted that relatively few people submitted comment

to the court despite the fact that the petition was publicized on the cover of the Montana Lawyer, featured prominently on the bar website, included in the Bar Briefs e-newsletter, and shared on social media. Comments submitted to the court were about evenly split between those in support and those in opposition.

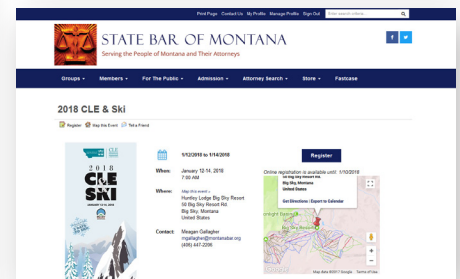
"While the overall dearth of opposition is not proof that members welcome a dues increase, it may be a tacit acknowledgement of the fiscal realities of operating an organization with more than 6,500 members," the bar's comment says. "Moreover, it may also reflect the fact

that most members believe the value of State Bar programs and services is at least roughly equivalent to the proposed dues."

In addition, the bar's response noted that many members of the Board of Trustees reached out to their constituents.

Anecdotally, trustees in Area B, Area D, Area F, and Area H found members generally supportive, while trustees in Area A and Area C heard largely negative feedback.

The bar's response with links to the public comments are posted at www.montanabar.org.



State Bar of Montana debuts new mobile-responsive website

The State Bar of Montana is pleased to announce the launch of a newly redesigned and mobile-responsive website.

We think you will find the new layout and updated menus will make using our website an easier, more intuitive experience.

While the website has a new look and feel, many things have not changed. You will still log in with the same

username and password as before, and your State Bar login credentials will still automatically sign you in to use your Fastcase legal research member benefit.

We hope you like the changes. If you have any questions, feel free to get in touch with Communications Director Joe Menden at 406-447-2200 or jmenden@montanabar.org.

2017 IOLTA reporting period runs from Dec. 15 to Jan. 31

The 2017 IOLTA/Trust Account compliance and Pro Bono reporting period opens on Dec. 15, 2017, and runs through Jan. 31, 2017.

Every Active Attorney in Montana is required to complete IOLTA/Trust Account compliance. Failure to certify

will result in suspension of an Active Attorney status and a \$50 reinstatement fee. See the ad on page 7 for more information.

ODC moves into new office space on Sixth Avenue

The Office of Disciplinary Counsel for the State of Montana has moved into a

new physical address at 24 W. Sixth Ave., Fifth Floor.

ODC's mailing address and phone number remain the same:

P.O. Box 1099, Helena, MT

59624-1099

Phone: 406-442-1648

Fax: 406-442-2685

LSC awards MLSA \$308K in technology grants, funding for tech fellowship



Legal Services Corporation announced in November that Montana Legal Services Association will receive two Technology Initiative Grants.

LSC distributes up to \$4 million annually to its affiliated legal aid organizations through the program, which support projects that develop and replicate technologies to improve efficiency and provide greater access to legal assistance for low-income Americans. This year, 22 legal organizations in 18 states will receive the grants.

MLSA's two grants are for a total of \$308,245.

MLSA's first grant, for \$221,995, will support its medical-legal partnership with community health care providers. The project is designed to foster an integrated approach to addressing legal problems faced by low-income individuals that

negatively affect their health. It will combine data collected from electronic health records and legal case information into a system that better tracks health outcomes following legal interventions and conducts more comprehensive legal screenings when patients seek medical assistance.

MLSA's second grant, for \$86,250, will support technical improvements to the MontanaLawHelp.org website. LSC says the changes include adding plain language readability, creating style guides to ensure best practices for future content, and improving search engine results. The project will also develop tools that will be shared among all 28 state network sites.

Montana's U.S. senators each issued statements congratulating MLSA.

"Montana Legal Services provides important services for Montanans in

need to access legal help," said Sen. Steve Daines. "Through this additional funding Montana Legal Services will continue to serve Montanans with high quality legal advice."

"These resources will ensure Montanans can access legal advice regardless of their income," Sen. Jon Tester said. "I want to thank the Montana Legal Services Association for their hard work helping low-income Montanans navigate the complicated legal system in this country."

LSC announced later in November that it has partnered with the 2018 Access to Justice Technology Fellows program to provide funding for fellowship positions at 21 legal aid organizations, including MLSA. The 21 organizations are all recipients of LSC Technology Initiative Grants.

Continuing Legal Education

CLE & Ski features 2 Supreme Court justices, legal tech expert

The Annual CLE & Ski at Big Sky Resort will feature presentations by two Montana Supreme Court justices as well as in-depth presentations on technology issues facing attorneys by a national leader on the subject.

The seminar is approved for 10.0 CLE credits, including 2.0 Ethics. The CLE will be presented in the early morning and late afternoons, leaving three full days of "The Biggest Skiing in America."

Montana Supreme Court Chief Justice Mike McGrath and Associate Justice Beth Baker will provide a legislative update.

Chief Justice McGrath was elected to the court in 2008. He was a Montana Assistant Attorney General from 1977 to 1982 before being elected to five terms as Lewis and Clark County Attorney beginning in 1983. He was elected to two terms as Montana Attorney General. As

Attorney General he served from 2000 to 2008.

Justice Baker was elected to the Montana Supreme Court in 2010. She served ten years on the State Bar of Montana's Access to Justice Committee and currently serves as an ex officio director of the Montana Justice Foundation. Justice Baker now serves as the Montana Supreme Court's representative on the Court's Access to Justice Commission.

Featured presenter Paul Unger, a managing partner of Affinity's Columbus Ohio office, is a national speaker and frequent lecturer for CLE programs. He is active in the Law Practice Management Section of the American Bar Association, and he served as the chair of ABA TECHSHOW 2011.

Tax, financial issues are focus of Family Law Update CLE

Attendees at the Family Law Update CLE seminar in Missoula Jan. 19 will learn about a wide variety of financial and tax issues affecting family law cases.

Presentations on the agenda are:

- Overview of Tax Returns and Tax Issues;
- Overview of FLOs;
- Overview of Qualified Domestic Relations Orders and IRA Division;
- Innocent Spouse Rule;
- Tax Implications with Child Support; and
- Games People Play with Self-Employment.

The seminar will be at Missoula's Hilton Garden Inn. It is approved for 6.75 CLE credits.

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Register at montanabar.org



Plotting out a brighter future for MT families

Photos by Jessie Crowley/5 Crow Photo

New collaborative program aims to fill a major gap for Montana families in planning for their special-needs children



Tim and Priscilla Murphy of Missoula, shown with their son, Benjamin, are among the Montana families grateful for help they received from Montana lawyers planning for the future of their special needs children.



Missoula attorney Larry Riley, shown above, and Billings attorney Tom Lynaugh conceived of the Montana Guardianship Legal Assistance Program. The program aims to recruit, train and support attorneys to provide legal representation in guardianship cases, and connect them with families that need assistance.

Want to help? Join the Jan. 17 webinar

Riley and Lynaugh will be presenting a webinar hosted by Montana Legal Services Association on Jan. 17, 2018, during the noon hour, to give more information about the Guardianship Legal Assistance Program. Register for the webinar at attendee.gotowebinar.com/register/7330035390015964163, or by following the link at www.montanabar.org.

Did the article in November's Montana Lawyer about assisting special needs families with guardianships resonate with you? The program titled Montana Guardianship Legal Assistance Program (MT-GLAP), was envisioned by Larry Riley and Tom Lynaugh after their many experiences doing pro bono guardianship cases for families of limited income who desperately needed help planning the future of their special needs children. The program is a collaborative effort between Lynaugh, Riley, the State Bar of Montana, Montana Legal Services Association (MLSA) and Statewide Pro Bono Coordinator Patty Fain.

There is no public guardianship system in Montana and the need for attorneys outstrips by far the limited number of attorneys currently available and trained to provide these services. We hope you will step up and offer your assistance. These guardianships must take into account the special circumstances of each family, and to invite attorneys who might not be familiar with this area of law, Riley and Lynaugh will be presenting a webinar hosted by MLSA on Jan. 17, 2018, during the noon hour. You can register for the webinar here: <https://attendee.gotowebinar.com/register/7330035390015964163>, or by following the link at www.montanabar.org.

MT-GLAP is comprised of two distinct goals: 1) To recruit, train, and support Montana attorneys to provide legal representation in guardianship cases; and 2) To

match qualified attorneys for either the petitioner or the ward with people seeking assistance with guardianship cases. If you agree to offer your service to meet this critical legal need, the program will help you every step of the way. You will receive guardianship specific continuing legal education at no cost beginning with the webinar described above. You will also be provided forms, reference materials, mentoring, and support. The program will provide you with the law for each part of the guardianship process, all of the forms needed, sample letters and a detailed explanation of all of the procedure. Representing the guardian will take approximately 4-6 hours over a 6-8 week period of time. Representing the ward will take approximately 2-3 hours. To learn more about this program, visit http://courts.mt.gov/cao/ct_services/probono/programs/MT-GLAP follow the link at www.montanabar.org.

In addition to offering your services pro bono to low-income families unable to pay, you may also choose inclusion in a Modest Means and full-pay, sliding-scale referral panel. Pro Bono and Modest Means cases are screened for financial eligibility and placed through MLSA. Modest Means and full pay cases are administered by the State Bar of Montana.

In order to sign up for the program please visit this link. For questions about the program please contact Patty Fain, Statewide Pro Bono Coordinator at pfain@mt.gov or 406-794-7824.



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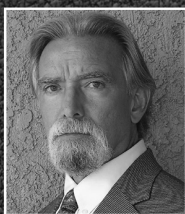
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Excellence in the field of Alternative Dispute Resolution



Tracy Axelberg
Missoula



Dee Carestia
Wise River



James Gaitis
Whitefish



Jay Hunston
Whitefish



Michael Lilly
Bozeman



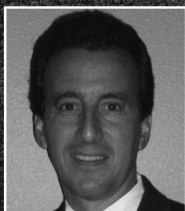
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Longtime Montana Chief Bankruptcy Judge John L. "Jack" Peterson is shown at the time of his retirement from the bench in 2013. Peterson died in September at age 83.

Photo courtesy of
The Montana
Standard/Walter
Hinick

A judge's impact on the Bar: Reflections on Judge Peterson

Anecdotes compiled by the Honorable Benjamin P. Hursh

Following the passing of Bankruptcy Judge John L. "Jack" Peterson, a long recitation of his achievements was included in the *Montana Lawyer*. This recitation chronicled his education, law practice, appointment to the bench as Montana's first bankruptcy judge, and other numerous professional accomplishments. Although each of the referenced accomplishments was worthy of mention, the list omitted any reference to the individual and significant impact Judge Peterson had on the bankruptcy lawyers that appeared before him shortly after he was appointed to the bench in 1985. To illustrate this impact, following are the anecdotes and reflections of lawyers who appeared before Judge Peterson during formidable periods in their careers.¹

■ ■ ■

He taught me and a generation of lawyers about effective courtroom practice. The lessons were often taught in a non-user-friendly fashion. But we learned to

know the facts and study the law of our case, and to be following the right procedure or we would get our heads handed to us in open court. We learned fast. And sometimes it was painful. But I often saw a twinkle in his eye when the lessons were being taught. I also began to appreciate that JLP enjoyed a bit of repartee in courtroom argument, which made it fun if you were up to it.

We were having hearings in the Billings courtroom. I had several cases, numerous clients and witnesses. The line to get through security moved slowly. I figured JLP would hold off on starting court. I was wrong. By the time I got my gang noisily into the courtroom. Not only had he started court, but he had called my case. I was mortified and trying to figure out how I was going to avoid a malpractice suit. As I sat down JLP called my name. "Mr. Guthals, good to see you. Where have been? I already called your case, but you weren't here. That matter has been decided." I apologized and was about to beg him to reconsider when he said, "do you want to know how you did?" "Yes your honor." My knees were quaking. JLP announced: "The court ruled in your favor." All I could say was "Thank you your honor."

– Joel Guthals

¹ With the exception of minor editing, the anecdotes appear as their authors wrote them, including where necessary, the facts and details related to a particular case or experience.

Judge Peterson treated individual debtors, with respect. He understood, and vigorously implemented, the mandate of the Bankruptcy Code that everyone is entitled to a fresh start, as long as they are honest with the Court, trustee and creditors. However, he did not suffer poor lawyering well; he held the bankruptcy bar to a high standard at all times.

I suspect that this high standard stemmed from his concern that people appearing in his court were in real distress, whether as a result of medical debt, credit card bills or commercial debt in the millions of dollars. Therefore, he required that debtor counsel should be both empathetic with their client, and competent in their representation, in order to do their best to alleviate that distress. On the other hand, he made sure that creditor counsel recognize both the human element of the case at bar and that the Code provides relief to which debtors are entitled, whether creditor counsel might agree or not.

I recall one incident involving an attorney who was often less than prepared and in the habit of submitting "unusual" legal theories, usually to the detriment, if not outright harm, to his clients. At one hearing (which was this attorney's last bankruptcy hearing), Judge Peterson became so irate at him in the poor presentation of his client's case that the attorney abruptly left the courtroom (and the courthouse) visibly shaking. That attorney never appeared in bankruptcy court again, as far as I can recall.

When I left the Crowley Firm in May 2000 to go out on my own, shortly thereafter I received a personal handwritten letter from the Judge congratulating me on going into solo practice and telling me that, based upon his years as a solo practitioner, I would come to enjoy my new life on my own. He encouraged me to remain in the practice of bankruptcy law, which I have done to this day. I keep his letter close to me in my desk to this day. I use his high standards and respect for the individual as my guideposts.

He educated and trained a generation of Montana bankruptcy attorneys in the proper and efficient presentation of cases, many times under his intense and unrelenting scrutiny. As a result, those attorneys can practice before any court, regardless of the jurisdiction. He will be sorely missed.

— Malcolm Goodrich

My first legal experience as a new law school graduate was against Judge Peterson in the highly contentious Colstrip Units 3 and 4 permitting proceedings. I was a wet-behind-the ears staff attorney for the Northern Plains Resource Council and jumped into the middle of the highly contentious regulatory approval of Units 3 and 4. Judge Peterson, who was at the time not yet a judge but a bankruptcy referee, was known among the Colstrip opponents as "Black Jack" Peterson. Judge Peterson earned this nick-name through his "take no prisoners" approach to obtaining the required permits for Units 3 and 4. My introduction to the practice of law was to battle with "Black Jack" in the Colstrip hearings.

While Judge Peterson fulfilled his nickname while we were before the Boards of Health and Natural Resources, he had an out-of-the-courtroom attribute that I have since tried to emulate. In one of my first hearings before the Board of Health, which had jurisdiction over the air quality permit for Units 3 and 4, Judge Peterson was fully engaged in his combative courtroom conduct. When a recess was called, we walked out of the hearing room together but once outside his persona changed; he patted me on the back in a friendly fashion and asked how I was doing. This was followed with a collegial conversation about something other than Colstrip. Judge Peterson's split personality this day wasn't a one-time thing, but was repeated throughout the Colstrip permitting proceedings. I learned that there were two Judge Petersons, one in courtroom, and a different one outside the courtroom.

As a baby lawyer I believed that opposing attorneys were supposed to be oppositional in all respects, whether in or out of the courtroom. Judge Peterson disabused me of that notion. I learned from observing Judge Peterson that while the courtroom could be, and with him it was, akin to a bar brawl, that behavior could and should be left at the courthouse door. I have done my best to follow what Judge Peterson unwittingly taught me and as a result I still have a law practice that I can enjoy. I am grateful to Judge Peterson for this valuable lesson on how to conduct myself as a lawyer.

— J. Andrew Patten

Judge Peterson's time on the bench spanned nearly half of

I learned from observing Judge Peterson that while the courtroom could be, and with him it was, akin to a bar brawl, that behavior could and should be left at the courthouse door. I have done my best to follow what Judge Peterson unwittingly taught me and as a result I still have a law practice that I can enjoy.

my now 34 years as a creditor's rights attorney. His influence on my development as a practitioner in the 1980's and 90's is immeasurable. He taught me and my colleagues now comprising the "geriatric" members of the Bankruptcy Section the importance of being prepared, concise, and most importantly, to be "tuned in" to that was actually happening, in real time, in the courtroom. Most of us learned what it meant when Judge Peterson took his glasses off [be careful, tread lightly], or when he stopped you to ask his own questions of your witness [you were done], or if he asked you if you were done [yes, you really were done]. I learned those lessons early, often the hard way. The others who did have gone on to have successful practices in the Montana Bankruptcy Court.

In the 18 or some odd years following Judge Peterson's retirement he stayed active with the Bankruptcy Court as mediator and senior-status judge for many of them. During those years, I came to appreciate that the twinkle in his eye meant that he liked and appreciated you, and your work.

- William D. Lamdin III

The only trial I had in front of Bankruptcy Judge ("Black") Jack Peterson involved Montana's Dangerous Drug Tax Act. The measure was not really a "tax" but more like a criminal "penalty." In the early '90's, my client, Richard Kurth, ironically a Republican Central Committee Chairman, was apprehended with his family and criminally charged for conducting a major marijuana grow operation on their ranch outside of Fort Benton.



After guilty pleas, Richard Kurth was sentenced to 20 years, 15 suspended and his wife, Judith, to five years, four suspended. After their criminal prosecution, the Montana Department of Revenue tried to collect a major tax bill (\$800,000) based on the recently-enacted Montana

Drug Tax. I challenged the tax as being essentially a criminal penalty and unconstitutional under the Federal Double Jeopardy Clause. We won at all levels, starting with Judge Peterson, affirmed by the Montana District Court, affirmed by the 9th Circuit, ultimately affirmed by the U.S. Supreme Court in a 5-4 vote. *Montana Department of Revenue v. Kurth Ranch*, 611 U.S. 767 (1994).

The Montana tax was based on the value of the drug. In preparing for the Bankruptcy Court trial, both the State and I faced a difficult time trying to find valuation experts who could testify as to the street value of the Kurths' marijuana. This was not an easy task because marijuana was a black-market activity.

I finally settled on Ed Rosenthal. Ed was a writer for *High Times Magazine* and wrote about quality and price of marijuana in regions around the country. The state's attorney vigorously cross-examined Mr. Rosenthal attempting to elicit an admission that Rosenthal had used marijuana in the United States—a crime. Rosenthal dodged the admission, testifying that his marijuana use was outside the United States.

To Judge Peterson's credit, he ruled in our favor on the

case. However, I always chuckle about his side note on our expert:

Plaintiff's witness, Rosenthal, states the material (the "shake") was not saleable. But I reject Rosenthal's testimony on grounds that Rosenthal is not a credible witness. Rosenthal is a drug culture author who promotes the cultivation of marijuana and other controlled substances through his writings. He testified that he never used marijuana, but his writings are replete with a contrary story. His bias and prejudice in favor of drug culture related activities such as Kurth's is obvious for that is how he makes his living. I therefore disregard all of his testimony as I find he is not a credible witness.

Id. at 72. This is the only expert in my memory who I have ever put on the stand who has been so roundly criticized.

- Jim Goetz

There is much I can say about my years in Judge Peterson's courtroom but one hearing I attended illustrates four important lessons I learned from him. Bankruptcy Court in Billings in the recessionary years of the 1980s was held in the small courtroom on the fifth floor of what was then the federal courthouse. It was near the elevators allowing latecomers easy access in the days before security became the norm and, more importantly sometimes, quick departures. The small room was packed with debtors, creditors and lawyers on the morning in question. The jury box overflowed with bankruptcy lawyers waiting to appear in multiple hearings that day.

The occasion was a contested hearing on confirmation of a Chapter 12 plan to reorganize a family farm or ranch. Judge Peterson called the case and came straight to the point. What, he asked was the debtor's response to the creditor's "absolute priority rule" objection to confirmation? This is the first lesson of life in Judge Peterson's courtroom: Be prepared for anything. He had read the plan and the objection, knew the law and had immediately zeroed in on a weakness of the debtor's case.

Unfortunately, debtor's counsel was not ready for the question and, seemingly, did not know the absolute priority rule. He gulped, said something like, "I think I have it right here", and started fumbling through his brief case. It should be said at this point that Judge Peterson was not always a patient man. Rather than wait for a response, he turned to counsel for the creditor and asked him to explain the rule, again illustrating the first lesson. The startled lawyer rose, recited the rule in two or three sentences and quickly sat down, thus illustrating lessons two (know the law) and three (be brief in your remarks to the court). Brevity was required above all else in Judge Peterson's court. Keeping one's head down was not a bad idea, either.

The story could've ended there as another anecdote about an unprepared lawyer flayed by an overbearing judge, but that's not my recollection. Instead, the judge merely asked the debtor's counsel to review the rule, amend the plan, if necessary, and come back for a rescheduled hearing. This is lesson

number four: learn from your mistakes and try not to repeat them. This is one lesson I would revisit over and over with Judge Peterson's assistance.

I understand only now after all these years that he viewed courtroom exchanges as teaching moments and not as occasions to embarrass lawyers to the detriment of their clients. Though his methods may sometimes have seemed harsh (or even scary), I am very grateful for the lessons Judge Peterson taught those of us who appeared regularly in his court. He made us all better lawyers and for that I will never forget him.

– Chuck Hingle

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Judge Peterson was always prepared, and frequently knew the underlying facts, arguments and law better than the attorneys arguing before him. He was not interested in peripherals or tangential issues. He was heard to say "you just get started and I'll help you out". Helping out was telling lawyers in a concise and direct fashion that they needed to get to their point. I always thought he liked vigorous exchanges between the bench and the bar. He could chew us out in the courtroom and then make a point of bumping into us after the hearing and pat us on the back in the hallway.

Judge Peterson was a pioneer. He supported the Bankruptcy Section and its educational efforts from its inception. He pioneered video conferencing of court appearances. Chapter 12 was newly enacted in the 1980s. Judge Peterson plowed new ground with his opinions interpreting that new section of the bankruptcy code. He mentored many of us novices through that busy period for the bankruptcy court. He molded us into better lawyers and better people.

– Robert G. Drummond

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I met Judge Peterson when he served on the Board of Regents. Because of his service, higher education became possible and affordable for many more Montana citizens. His service changed lives and made Montana a better state. I was privileged to practice in bankruptcy court before Judge Peterson. In the early days, things were much less formal than they are today. When Judge Peterson arrived at the courthouse, he often invited me and other attorneys to join him for breakfast or a cup of coffee in the courthouse cafeteria. After visiting, we would return to the courtroom where inevitably, the Judge would rule against me. Over the years, I actually won very few cases. When I commented once at a seminar that Judge Peterson had ruled in my favor in the previous year, the Judge offered that his ruling must have been a mistake.

– Doug James

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I attended my first Bankruptcy Section Seminar in Billings in November 1989. During the seminar, Judge Peterson engaged in a question-answer session with the attorneys present. One of the questions posed to Judge Peterson was "what is the most important thing an attorney can do when preparing for a hearing before the court?" Without hesitation, Judge Peterson's response to the question was short and succinct – "read the Code."

About six months later, I had several short matters scheduled for hearing before Judge Peterson during his monthly

court calendar in Missoula. The courtroom was crowded with attorneys patiently/nervously waiting for their respective cases to be called. One of the first matters that Judge Peterson took up that day involved an adversary proceeding in which a creditor had filed a complaint seeking to have the debtor's discharge denied in his Chapter 7 case. When the case was called, the creditor's attorney walked up to the podium with his file in hand and before he could speak, Judge Peterson leaned forward and asked him in a very stern tone, "Counsel, I just have one question – under what section of the bankruptcy code are you proceeding with in this case?" The creditor's attorney stood stoic before the podium, shuffled through papers in his file and then actually stared at the ceiling for a few moments, possibly hoping that the correct answer to Judge Peterson's question would come to him from on high.

After what seemed like hours, but was probably no more than 30 seconds, the attorney finally looked at Judge Peterson and said, "Your Honor, I'm not entirely certain." Possibly trying to throw the attorney a lifeline, Judge Peterson responded, "Well, are you proceeding under section 523 or 727?" Again there was more silence, paper shuffling and staring at the ceiling. Finally, creditor's counsel looked up and softly responded, "Your Honor, I'm not sure."

Having obtained that admission from creditor's counsel, Judge Peterson leaned forward and said, "Counsel, after reviewing your pleading filed in this case, I agree with you in that regard and since your complaint fails to state a claim under either sections 523 or 727, the case is dismissed." It was at that moment in Judge Peterson's court room in the summer of 1990 that I finally had a full appreciation of his admonition to all attorneys who practiced before him to "read the Code."

– Richard J. Samson

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Judge Peterson was first a boss and mentor who taught me so much about the practice of the law. Judge Peterson held his law clerks to the same standards he held the parties who appeared before him: Know the applicable law and rules, and be prepared for every eventuality. As many attorneys may have experienced, and as I too have experienced, Judge Peterson could bark, and sometimes that bark felt like a bite. But what I learned, was that while he did bark, he never held a grudge and underneath that bark was one of the kindest and most caring individuals I have ever met.

– Kelli Harrington

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My first experience with Judge Peterson was when I was just a baby lawyer in 1987. Chapter 12 cases were handled in a side room of the Federal Court Building in Great Falls. It did not matter, as the Judge had a very demanding presence that overcame the informal setting. I watched as lawyer after lawyer, seasoned as they might be, were humbled by the judge's character and, most importantly, his knowledge.

I really started to question my career choice when I saw him ask a white-haired lawyer, who obviously was quite knowledgeable, if that was his client seated behind him. When the lawyer acknowledged it was, Judge Peterson told him to give the name



We're All Going to Die (and Other Happy Thoughts of an Estate Planner Turning 50)

First you forget names; then you forget faces; then you forget to zip up your fly; and then you forget to unzip your fly.

— Attributed to Branch Rickey

Death is the destiny of everyone; the living should take this to heart.

— Ecclesiastes 7:2

No one here gets out alive.

— The Doors

By Eddy R. Smith

AN UNCOMFORTABLE TRUTH

I think the paradigm shift started the time I realized that my teenage son let up during play wrestling because he was concerned he might hurt me. Since then, exercise has become less about competition and trying to look good, and more about managing blood pressure and hoping to be able to play with my future grandchildren. This year I treated myself to invisible trifocals, which will be of no use during my first colonoscopy. When

someone says something is true for “men of a certain age,” the age increasingly is mine.

During my 40s, I delivered my father’s eulogy, watched a good friend my age waste away from cancer, was the primary caretaker for my mother during her final months on earth, and helped a friend and her sister administer their mother’s estate, immediately followed by helping the friend administer the sister’s estate. Last week, I watched my mother-in-law take her last breath.

All of this has made me acutely aware of my mortality. You need to be aware of yours, too, because we’re in the same

Since death is inevitable, I want to be like those I have watched deal with that fact head-on.

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mortal boat. We're all terminal; it's simply a question of how long each patient has (which only occasionally can be estimated with any certainty).

FACING THE REALITY OF DECLINE AND DEATH

I have observed personally (family and friends) and professionally (planning and administering estates) several options for how to react to the prospect of your own death. Some spend a fortune trying to cheat death through anti-aging treatments and futile medical attempts to delay reaching room temperature. Many try to ignore death, and our culture has formulated ways of thinking and talking, and entire industries, out of our desire not to be confronted with death. Some are overwhelmed with anxiety or depression when facing inevitable physical and mental decline.

While each of these approaches has its own logic and appeal, I am striving for a different tack as I head into my 50s.¹¹ Since death is inevitable, I want to be like those I have watched deal with that fact head-on, in both how they live and how they die. Trying to do so raises many questions for me.

What makes a good life? How can I get to the end of life with few regrets, few coulda's, woulda's and shoulda's? What is lasting and deserving of my time and talents and what is only a vapor in the grand scheme of things? How can I positively impact the lives of others? What important things have I failed to say to key people in my life? What can I do to serve those who are dying and their families?

What makes a good death? What can I learn from how others handle the loss of a loved one or their own decline? What can I learn from the ways doctors approach their own deaths?² What are my children learning from watching how I deal with deaths of parents and my creeping age? What do I think about CPR, breathing machines, tube feeding and treatment of new conditions in the context of a terminal illness, advanced dementia, a permanent coma, or being completely unable to care for myself? What about moving to assisted living or skilled nursing facilities versus dying at home?³ Do I want to be an organ or tissue donor? Do I have thoughts about my funeral or obituary? Embalming or cremation? How does my

spiritual perspective inform decisions on these issues? Have I communicated my wishes to anyone?

In the legal and financial realms, there are important questions related to aging and death. Have I purchased disability insurance and life insurance if my family depends upon my ability to produce income? Should I purchase long-term care insurance to try to avoid outliving my financial resources? Do I have a well-thought-out estate plan that includes a will, financial power of attorney and advance directive?⁴ Have I left accessible (i.e., not on a computer with a password only I know) information and instructions to allow the right persons to manage my personal and financial affairs before and after my death? Have I implemented a succession plan for my business or professional practice?

Good lawyers are skilled at educating and motivating their clients and identifying and addressing problems. Are we discussing with our clients their need to address these issues in their lives? As officers of the court and advocates for our clients, are we on the lookout for signs of verbal, physical and financial elder abuse? Do you know what to do if you become concerned someone is taking advantage of a senior?⁵

Is It Appropriate to Focus On These 'Soft' Issues?

There is little technical or legal in this installment of "Where There's A Will." Perhaps I've wasted your time with nothing more than the midlife crisis/spiritual wanderings/existential ramblings of a guy looking past his prime.

However, my hope is that we are moved to face our mortality with honesty and determination, to value each day more than the last, to contemplate how we want our lives defined and remembered, to seek ways to contribute personally and professionally to the lives of others, and to begin conversations and planning centered on end-of-life issues. As lawyers, we can serve our clients by helping them face these realities in their estate and business planning and other legal matters. As we seek to do all the above, consider the words of Michael Weiner, former head of the Major League Baseball Players Association, while dying of brain cancer: "What I look for each day is beauty, meaning and joy, and if I

can find beauty, meaning and joy, that's a good day."

EDDY R. SMITH practices trust and estate law with Holbrook Peterson Smith PLLC in Knoxville. He is a fellow of the American College of Trust and Estate Counsel and past chair of the Tennessee Bar Association Estate Planning and Probate Section. He can be reached at edsmith@hpestatelaw.com.

NOTES

1 According to the Social Security Administration, the average male on his 50th birthday has a life expectancy of another 32.3 years. See <https://www.ssa.gov/OACT/population/longevity.html>. Better flip me, because I am 60 percent cooked.

2 See Ken Murray, "How Doctors Choose to Die," *The Guardian*, Feb. 8, 2012, available at <http://www.theguardian.com/society/2012/feb/08/how-doctors-choose-die>. Other resources recommended to me (I have a lot of reading to do): Atul Gawande, *Being Mortal: Medicine and What Matters in the End*, Henry Holt & Company (2014); Paul Kalanithi, *When Breath Becomes Air*, Random House (2016); Elisabeth Kübler-Ross, *On Death and Dying: What the Dying Have to Teach Doctors, Nurses, Clergy and Their Own Families*, Scribner (1969); Bronnie Ware, *The Top Five Regrets of the Dying: A Life Transformed by the Dearly Departing*, Hay House (2012); Yoel Hoffmann, *Japanese Death Poems: Written by Zen Monks and Haiku Poets on the Verge of Death*, Tuttle (1986).

3 I have watched, and have been one of, many children who struggle to serve a parent well when the parent's needs cannot be met by family, but the parent has decreed that he wants to die at home and never wants to be in a facility. That can become untenable, causing frustration, feelings of guilt, an inappropriate physical and emotional burden on the child, and inadequate care for the parent. In my experience, most children want what is best for their parents, and prefer to see their potential inheritance spent on the best available, appropriate care. Do your kids a favor: educate yourself about available levels of care, visit facilities near your home or your kids' homes, and then tell your kids that, even though you prefer to remain at home as long as it makes sense, the following facilities look good to you. This almost always works better when talked about openly and honestly in advance, rather than when parents are in immediate need and not thinking clearly because of decline or fear.

4 See Tennessee Advance Care Plan, available at <http://tn.gov/assets/entities/health/attachments/PH-4194.pdf>.

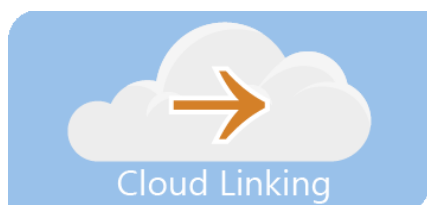
5 A good place to learn more is the TBA's *The Legal Handbook for Tennessee Seniors*, available at http://www.tba.org/sites/default/files/TBA-The_Legal_Handbook_for_TN_Seniors-February_24-2014.pdf. When faced with a potential abuse situation, personal and professional ethics and the law might require contacting adult protective services or law enforcement.

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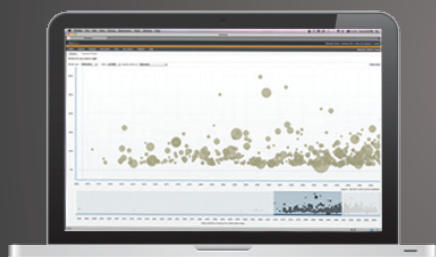
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Elison, UM law professor, state Constitution expert, dies at 85

Professor Emeritus Larry M. Elison died on Nov. 11, 2017, his 85th birthday, from complications of pneumonia. Professor Elison worked most of his life in Missoula as a law professor at the Alexander Blewett III School of Law at the University of Montana.



Elison

Professor Elison started his career at the University of Montana Law School in 1962, teaching torts, criminal law, and criminal procedure. He later taught constitutional law, his favorite subject area. Professor Elison was a very popular teacher who masterfully employed the Socratic method to encourage students to use their understanding of the law to debate, defend and, ultimately, improve their use of legal knowledge.

Between teaching during the school year and racing thoroughbred horses in the summer months, Professor Elison found time to be active in the legal community of the state. He was instrumental in drafting language for the 1972 Montana Constitution and Montana's Criminal Code. Prior to retiring, he wrote and published a reference guide for the Montana State Constitution.

After 30 years of service at the law school, Professor Elison

Memorial and celebration planned for Dec. 21

A memorial and celebration of Professor Elison's life will be held at the Alexander Blewett III School of Law on Thursday, Dec. 21, at 5 p.m. in room 101, with a reception to follow at 231 S. 5th St. E. Donations may be made to the law school to help establish a scholarship in Professor Elison's name.

retired to Gold Canyon, Ariz., where he took up golf, but he continued to work on legal cases in Montana and wrote several amicus curiae briefs in an effort to protect the language and meaning of the Montana Constitution. He will be fondly remembered for his infectious laugh, progressive thought, and caring personality.

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Michael J. Rieley

Helena attorney Michael J. Rieley died on June 11 at the age of 67.



Rieley

Mike was born in Missoula on July 16, 1949, to Frank and Anita Rieley. He attended Willard Grade School, Hellgate High School, and graduated from the University of Montana with a Juris Doctorate.

In 1972, Mike married Mary Carlson of Miles City. From this union his beloved sons Michael and Patrick were born.

According to an obituary in the Missoulian, one of his earliest and most meaningful experiences as an attorney was clerking for Justice John C. Sheehy at the Montana Supreme Court. He later served as the East Helena city attorney for many

years while maintaining a private practice in Helena.

He was an avid runner. He loved opera, the arts, and the Grizzlies. He was a lifelong student of everything. He had a strong sense of duty and responsibility. He was strong and passionate about his Catholic faith. But most of all, he loved his family.

He married Jeanne Ahmann on Aug. 8, 2008. Together they volunteered for NODA (No One Dies Alone) and were Eucharistic Ministers to the sick and dying.

Memorials in Michael's name are suggested to St. Peter's No One Dies Alone Program, Volunteer's Department Attn: Katie Peterson, 2475 Broadway, Helena, MT 59602, The Helena Dioces' Guatemalan Mission Fund, PO Box 1729, Helena, MT 59634 or to the Sycamore Tree, 21592 Sycamore Tree Lane, Swan Lake, MT 59911. Please visit aswfuneralhome.com to offer a condolence to the family or to share a memory of Michael.

Please pass along news of Montana attorney deaths to the Montana Lawyer by sending an email to editor@montanabar.org

of the lawyer's E&O carrier to him as the client was going to need it.

After years of practice in front of the judge, I did realize that he strived for fairness even if his brusque nature hid it. If you could withstand the questions and weather the storm, he eventually acknowledged you as knowing what you were talking about and the storm (occasionally) subsided. The judge never worried about perceptions that he was favoring one lawyer over another as you could have a drink with him one night, and get chewed out the very next day in Court.

I have told many lawyers that since I "grew up" in Judge Peterson's court, I felt I could go into any other court and be prepared. Once you survived his court, it was hard to imagine another judge that might rattle you like Judge Peterson. He was an intelligent man who knew the law extremely well and you had better be on your game or suffer the consequences. While lawyers certainly did not always agree with him, they all respected him as a person and a Judge.

-- Gary Deschenes

I appeared in front of Judge Peterson many times, almost always representing a creditor, and had great respect for him. While I considered his approach to generally be that the Bankruptcy Court was there to assist debtors, and that most debtors didn't want to be there any more than the creditors, he always treated me and other counsel fairly as long as you knew the law, the rules, and stuck to them. One particular example stands out in my mind.

A fellow named John Love of Cut Bank had cornered the rare coin market. He first bought up as many silver dollars as he could when they were going out of circulation. He then expanded his business to rare coins. His business took off, primarily because he published a monthly pamphlet extolling the increasing value of rare coins. Of course, the increasing value was because Love would sell a \$5 gold coin to a friend for \$20 and then report the next month that coin had increased 400 percent! The friend would sell to another crony for \$30 and John Love would report another amazing gain. Then Love would buy the coin back for \$50 and Love would again point out the fantastic gains to be made. However, one day in October in the 1990s, someone said, "Wait a minute! That \$5 gold coin is only worth \$5." Black October for John Love. The rare coin market collapsed like the Ponzi scheme it was. Love filed a Chapter 11 proceeding to fend off creditors.

I represented a Havre bank that had lent Love a lot of money. Other banks had as well. I was asked to also represent the Unsecured Creditors Committee. I agreed and filed a number of adversary cases to recover assets (not coins) or avoid preferences. I was pretty successful, even recovering several million dollars based on a contract written on a Las Vegas bar napkin. I eventually filed my application for approval of my fees. However, I hadn't made periodic applications and advised the court of all that I had done until that one and final filing. In a lengthy ruling Judge Peterson chastised me for not following the rules. He disallowed some of my fees as well. I was pretty discouraged given the language he'd used in the order.

Then I received a call from his law clerk. He said the judge had asked him to call and tell me he thought the work I'd done on the case was some of the finest he'd seen. He may have liked what I accomplished, but he still insisted that I play by the rules. And for that lesson I've always been grateful.

- Ward Taleff

With so many contributions being made, I will limit my remarks to a few of my personal memories of Judge Peterson, with a perspective that his professional and judicial colleagues might not have, unless they spent time with him on a golf course or at a card table.

He was by far the best golfer I ever played with, and with my being such a hopeless golfer, since 1991 I don't think we played more than three rounds of golf together. But my second finest golf moment ever was matching his drive at a CLE tournament at Fairmont. On the long drive contest hole, by sheer coincidence I happened to hit my drive straight. He followed with his drive. When we got to our balls, he walked from one to the other and back again, thought about it and pronounced that we were dead even (we weren't - I was a bit longer).

Judge Peterson was a complex man. He was competitive at almost everything he did, whether it was practicing law, golf, pinochle, pan, cribbage, sports betting, handball, or racquetball. We played racquetball from 1991 until probably 2010, at the Butte Country Club, several times per week over lunch. He was 22 years older than I, and 20 or 30 pounds heavier. Naturally, he was slower, playing racquetball was a welcome distraction to our work, so I was happy to do it. But it was not competitive without a handicap, and he wasn't interested unless there was a wager. So I would spot him 8, or 9, or 10 points in a 15 point game, and we would play for steak dinners, or for \$5 per game in a three-game match.

He would run around as fast as he could, and he would "hinder" me as often as he could get to me, even if that meant he put himself directly in front of me in the line of fire for my kill shot. He would be polka dotted afterwards from getting hit by balls. A few times over the years he took full force shots directly in his face. At least twice I expected him to fire me on the spot from those. For his part, if he could hear you breathing he would call a hinder (if he missed his shot). Even with the handicap, I would hit the ball right to him so that he got a good workout every day. Finally it made him too tired to play, and we stopped playing when he was in his mid-70s.

He had figured out much earlier in his life that if he could get an opponent rattled, it gave him an advantage. So if he found an effective way to needle you or put pressure on you during a competition to throw you off your game, he used it. But after the game or case was over, bygones were always bygones. He often shared a quotation with attorneys about litigation that went something like: "Vie greatly, but afterwards eat and drink as friends." He always picked up the check, unless it was a special occasion like his birthday. He was the most generous man I have ever known, but he did not broadcast it.

- Terry Healow

When I worked for Jack he instituted the 60-day rule. It

PETERSON, from previous page

required practitioners to contact the court if anything under advisement had not been decided. His stance, repeated often, was, “make the best decision you can, and make it quick. If you’re wrong, an appeals court will fix it.” He truly believed clients had the right to a decision as soon as possible.

– Wayne Harper

One can take from the foregoing

anecdotes as much or as little as they choose, but at a minimum they illustrate the enduring impact Judge Peterson had on the lawyers that appeared before him and the clerks that worked with him in chambers. Although times have changed, Judge Peterson impressed upon a generation of bankruptcy lawyers in the mid-1980s the importance of: reading the code; being prepared when one enters the courtroom; leaving the fight at the courthouse door; resisting the temptation to hold a grudge; learning from one’s mistakes; playing by the rules; and, being

kind to your colleagues. Not surprisingly, these norms of conduct continue to be the foundation for bankruptcy practice in Montana. Although the role these precepts play in the work done by lawyers and judges is obvious, the importance of taking a moment, revisiting them, and striving to faithfully adhere to them, as a generation of bankruptcy lawyers learned to do, cannot be overstated.

The Honorable Benjamin Hursh was appointed as the chief bankruptcy judge for the United States Bankruptcy Court, District of Montana in February of 2017.

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