

MONTANA LAWYER

State Bar
— of —
Montana

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GUSTAFSON JOINS SUPREME COURT

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- > Livestock brands have key differences from product trademarks
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On the cover

U.S. District Judge Susan Watters administered the oath of office to new Montana Supreme Court Justice Ingrid G. Gustafson on Jan. 5 in Billings. Photo by Casey Page/Billings Gazette

Highlighting a time of transitions at the State Bar of Montana



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.

Transitions. We each make them. From youth to adult. From law student to lawyer. And for some, from lawyer to judge or justice.

This month's Montana Lawyer highlights transitions.

In our cover story, we focus on the appointment of District Judge Ingrid Gustafson to the Montana Supreme Court. Justice Gustafson will bring perspective from her years of service in Montana's busy 13th Judicial District to her seat on the state's highest court.

In this month's column, District Judge Leslie Halligan, President of the State Bar of Montana, shares her own perspectives on Montana's juvenile justice system, where Montana Youth Courts have been receiving nearly 6,000 referred cases per year. And Lars Phillips delves deeper into Montana Supreme Court's recent decision in *Steilman v. Michael*, addressing the constitutionality of life sentences for juvenile offenders (see page 16).

Toni Tease helps us shift gears, asking us to think about brands, of the livestock variety (see page 24). Her column is a reminder of this year's return of the Bucking Horse CLE in Miles City this May. The CLE is a member favorite and we hope to see many of you there.

Speaking of you, our valued members, a word about this

publication. As you know, we recently undertook a comprehensive membership survey, including seeking your input on the Montana Lawyer magazine. You've told us that you value and read both the traditional print and the new digital version, but still far more print than digital. And many of you commented that you would appreciate a better look for the print version, including the paper and ink. We've listened carefully. In the coming months, we will be examining how we can improve the print version of the Montana Lawyer in a cost-effective way, while continuing to adapt our communications to an increasingly digital world. More to come.

Finally, as I begin my own transition into the role of Executive Director, I want to thank Chris Manos for his many years of service and the countless hours he spent working to support our members. It is now my great privilege to lead the staff of this important organization, serving all of you as we work together to advance our justice system.

I look forward to seeing you in the coming months. In the meantime, if you have a thought, comment or concern, always feel free to contact me at jmudd@montanabar.org.

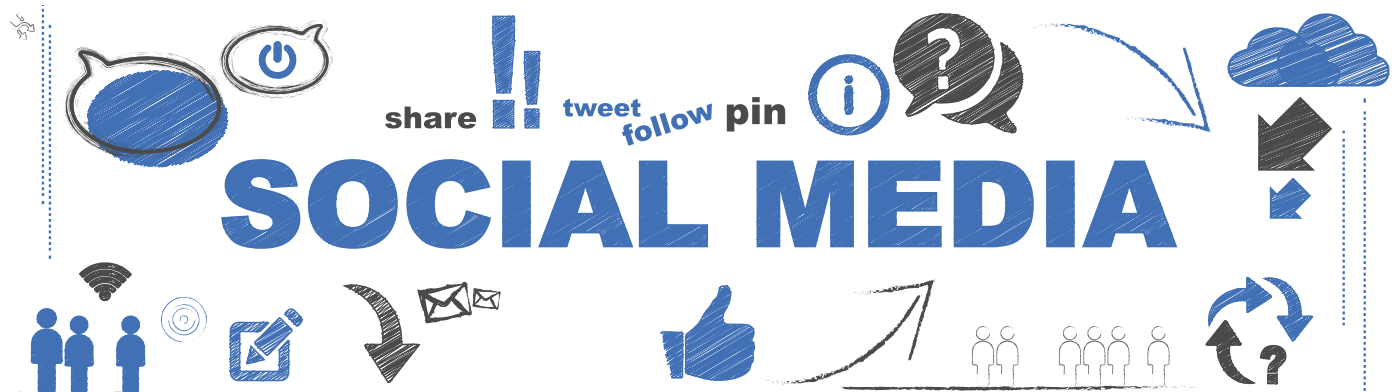
All my best,
John



STATE BAR OF MONTANA

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TWITTER: [@StateBarMT](https://twitter.com/StateBarMT)



The complex, evolving task of youth sentencing



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 a District Court judge, I regularly am presented with sentencing decisions that require the review of an individual's encapsulated life story. Often these are stories of family disruption, abuse, neglect and various traumas beginning at a young age. Many involve a history of addiction, with use of alcohol and drugs as pre-teens, gradually evolving to serious addictions to drugs like methamphetamine. Others recount a history of emotional disturbance or mental illness, poorly treated or left untreated. The stories often mirror personal histories of inmates at the Montana State Prison that I reviewed while working years ago as a clinical student in law school to prepare sentence review arguments. Determining how to appropriately interrupt an individual's path to prison continues to challenge me, and I believe it is a challenge in which our profession has a significant stake and even a responsibility to address.

As a Missoula County prosecutor, I spent many years assigned to dependency cases, cases in which children were alleged to be at risk of abuse and neglect by parents or a custodian; and a fair number of years assigned to prosecuting delinquency cases. In prosecuting juveniles, I became much more familiar with the complex system that has developed to address at-risk youth, some of whom were involved in both arenas, often referred to as cross-over youth. I gained experience in detention alternatives and worked on a regular basis with Montana's Youth Court Act, which seeks to prevent and reduce youth delinquency through a system that does not seek retribution, but is designed to provide, statewide, "immediate, consistent, enforceable, and avoidable consequences of youths' actions," and "a

program of supervision, care, rehabilitation, detention, competency development and community protection for youth before they become adult offenders." Mont. Code Ann. § 41-5-102(2). Using Montana statistics from 2013-2017, Youth Court receives an average of 5,968 referrals each year. Of these referrals, approximately 48 percent are diverted by youth court probation officers and 15 percent are dismissed by county attorneys. Of the remaining referrals, another 19 percent result in a youth being placed on informal probation, 12 percent are processed in formal court with various dispositions, and 3 percent result in transfers to the Montana Department of Corrections. Often, youth proceed through the informal system without legal representation, but youth referred to formal court are appointed legal counsel. While the legal representation of youth often falls to the least experienced attorneys, the complexity of both the Youth Court Act and the youth's circumstances demand careful assessment and skill.

As reflected in the statistics, only a small percentage of juveniles engage in criminal behavior so serious that they are propelled into the adult criminal system. An even smaller percentage commit homicides or inflict serious harm. For these youth, sentencing policy has evolved through several recent U.S. Supreme Court decisions. In addressing a writ of habeas corpus, the Montana Supreme Court recently examined Montana's juvenile sentencing jurisprudence in *Steilman v. Michael*, 2017 MT 310, particularly whether life sentences without the possibility of parole constitute cruel and unusual punishment for juveniles. To better understand the Court's analysis

and *Steilman's* implications, turn to the article authored by Missoula attorney Lars Phillips on page 16, in which he addresses both the breadth and application of the decision. Consistent with the Youth Court Act, the Montana court embraces the constitutional rights of youth and now requires sentencing courts to determine, as announced by Justice Sonia Sotomayor in *Tatum v. Arizona*, 137 S. Ct. 11 (2016), "whether the juvenile offender before it is a child whose crimes reflect transient immaturity or is one of those rare children whose crimes reflect irreparable corruption for whom a life without parole sentence may be appropriate." The Court ultimately does not grant relief to the youth, and its decision may reflect the struggle that exists when assessing the practical reality of applying these constitutional principles to the facts presented.

As we move forward to fully understand the implications of the *Steilman* decision and our treatment of juveniles in our court system, we should be mindful of Article II, Section 15 of the Montana Constitution that provides: "**Rights of persons not adults.** The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws *which enhance the protection of such persons.*" Early intervention by the social service and judicial systems to "enhance the protection of such persons" could go a long way toward altering the path of a youth from a life of addiction, abuse or neglect, or involvement with the criminal justice system, and toward a path of being a productive citizen.

HONORS

Baldwin elected to American Academy of Appellate Lawyers

Bozeman attorney Robert K. Baldwin was elected to be a member of the American Academy of Appellate Lawyers the academy has announced.



Baldwin

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

15 years.

Baldwin is a partner at Goetz, Baldwin & Geddes.

NAMES & FACES

Angel, Coil & Bartlett in Bozeman welcomes Goldwarg as associate attorney

Eric Goldwarg has joined Angel, Coil & Bartlett in Bozeman as an associate attorney. His litigation practice focuses on family law (including collaborative divorce), general civil litigation, and landlord/tenant matters. Prior to joining the firm, Goldwarg enjoyed a general litigation practice in Vermont and New Hampshire for five years, with a particular emphasis on family law. He also spent two years as a law clerk in Anchorage, Alaska, followed by a year as a law clerk on the Vermont Supreme Court.



Goldwarg

Goldwarg grew up in Montreal and graduated from Middlebury College and Vermont Law School. He can be reached at 406-586-1926 or eric@angelcoilbartlett.com.

Jones & Associates opens practice in Missoula

Kevin S. Jones has opened his own Missoula law practice, Jones & Associates, PLLC. Jones has more than 25 years of legal experience.

Joining the firm is associate attorney Joseph D. Houston. Houston has more than nine years of legal experience. Jones & Associates, PLLC has a general civil practice, with an emphasis on real estate and commercial law.

Jones is a Montana native, born and raised in Polson. He obtained his law degree from the University of Montana School of Law in 1992. Upon graduation from law school, Kevin practiced with the Missoula law firm Christian, Samson & Jones,



Jones



Houston

PLLC, where he was a member/partner for 25 years. He has handled a wide variety of civil matters, with an emphasis on real estate transactions, and real estate and commercial litigation. In addition to his Missoula-based practice, Jones is licensed to practice in Texas, where he is a partner in a small real estate law firm and "fee title" company located in Fort Worth. Kevin and his wife, Cassie, have five adult daughters. When not at work, he enjoys spending time with his family, boating, hiking and biking. Kevin has served on the Board of Directors for several nonprofit and charitable organizations in the Missoula area.

Originally from Utah, Houston has lived and practiced law in Montana since 2008. He also is licensed to practice Idaho. He received his law degree from University of Missouri-Columbia School of Law. He is an experienced litigator in both District Court and Justice Court, and he has handled numerous appeals to the Montana Supreme Court. Houston and his wife, Katie, live in Florence with their daughter and son. Outside of practice, he enjoys spending time with his family, attending his children's various activities, and volunteering for his church. He and his wife are licensed foster parents and strong proponents of foster parenting and Court Appointed Special Advocates for children.

Van Atta, Beddow named partners in Billings firm Patten, Peterman, Bekkedahl & Green

Patten, Peterman, Bekkedahl & Green in Billings has announced that it recently named two new partners at the firm.

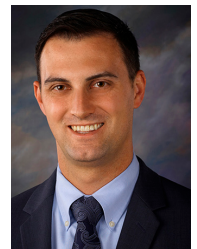
John M. Van Atta practices primarily in the areas of business, trusts and estates. He has represented clients in federal and state courts and in commercial arbitration.

Van Atta graduated with honors from the University of Montana, Missoula in 2005, and earned his juris doctorate from the University of California Hastings College of the Law in 2008. He is a member of the Yellowstone Area Bar Association, for which he serves as treasurer, the State Bar of Montana, for which he serves as chair of the Estates, Trusts and Probate Committee of the Business, Estates, Trusts, Tax and Real Estate Section, the State Bar Association of North Dakota, the Wyoming Bar Association, and the American Bar Association.

Van Atta is an adjunct instructor of business law at Montana State University-Billings and frequently presents at continuing legal education seminars. He is licensed to practice in state and federal courts in Montana, Wyoming and North Dakota.



Van Atta



Beddow

Member and Montana News

Patrick G.N. Beddow's practice concentrates in the areas of real property, mineral law, trust and estate planning and administration, real estate, and business law.

Beddow graduated from Carroll College, with distinction, with Bachelor of Arts degrees in Finance and Accounting in 2008, and from the University of Montana School of Law in December, 2011. In law school, he was an editor on the Public Land and Resources Law Review and a Rocky Mountain Mineral Law Foundation Scholar. He served in the Montana Army National Guard from 2005-2014. He is a member of the Montana, North Dakota, and Wyoming state bars, the American Bar Association, the Montana Association of Professional Landmen, and currently serves on the Board of Directors of the Billings Rod and Gun Club. He previously served as a Trustee of the New Lawyers' Section for the State Bar of Montana.

He has served as a guest lecturer in undergraduate business law courses, an update author to legal treatises, and regularly presents at continuing legal education seminars.

Nelson named newest shareholder at Bozeman firm of Goetz, Baldwin & Geddes

Goetz, Baldwin & Geddes, P.C., is pleased to welcome Kyle W. Nelson as its newest shareholder.



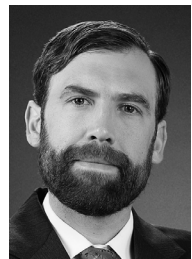
Nelson

Nelson's practice consists of litigation and trial practice, representing plaintiffs and defendants in complex commercial, business tort, corporate/shareholder disputes, personal injury claims, property and easement disputes, including matters focused on preserving access to public land, rivers and lakes, and a bankruptcy practice focused primarily on recovery of assets for Trustees and protection of creditors' rights.

Nelson is active in the community, serving on the Montana Justice Foundation Board, the Montana Supreme Court Access to Justice Commission, and the Gallatin County Bar Association Board.

Flahaut promoted to counsel at Arent Fox

Arent Fox LLP is pleased to announce M. Douglas Flahaut has been promoted to counsel, effective Jan. 1, 2018. Flahaut is based out of the firm's Los Angeles office and has been a member of the firm's West Coast bankruptcy and financial restructuring practice since 2009.



Flahaut

As an American Board of Certification-certified Business Bankruptcy Specialist, Flahaut's practice focuses on business reorganizations, representation of Chapter 7 and Chapter 11 trustees, and related bankruptcy litigation. He is president-elect of the James T. King Bankruptcy Inn of Court and is active in the American Bankruptcy Institute.

He earned his JD from the University of California, Los Angeles, School of Law and is licensed to practice

law in California and Montana.

Flahaut is a proud graduate of Mt. Ellis Academy in Bozeman and is looking forward to attending his 20-year high school reunion this spring. When not in the office, he enjoys hiking and camping with his wife Dana and their two dogs. He can be reached at douglas.flahaut@arentfox.com

Levine named partner at Fair Claim in Great Falls; Carroll joins firm as new associate

FairClaim/Linnell, Newhall, Martin, & Schulke P.C. is pleased to announce that Michele Reinhart Levine is a new law partner with the firm.

Levine grew up in Livingston. She holds a Bachelor of Arts in environmental studies from Carroll College and a Master of Science in environmental studies from the University of Montana. She graduated from the Alexander Blewett III School of Law at the University of Montana in 2012 and began working for FairClaim/Linnell, Newhall, Martin & Schulke P.C. in September 2012. She previously served three terms as a Montana State Representative for House District 97 (Democrat, Missoula).



Levine

Levine and her husband, Bill, have two daughters, a

BECK, AMSDEN & STALPES, PLLC

Welcomes

Michael G. Black, Esq.

To our law practice representing injured Montanans. Mike will practice out of our Helena office located at:

54 NORTH LAST CHANCE GULCH
GOLD BLOCK BUILDING, SUITE 2
HELENA, MT

Mike's areas of expertise include representing minority shareholders, defrauded retirees and other consumers.

Telephone inquiries and mail should be directed to the firm's Bozeman office:

BECK, AMSDEN & STALPES PLLC
1946 STADIUM DRIVE, SUITE 1
BOZEMAN, MT 59718
(406) 586-8700

Member and Montana News

3-year-old and a 10-month-old. In addition to being a mom and a lawyer, she enjoys being active in the community. She serves on the boards of the Kairos Youth Homes, the Junior League of Great Falls, and Carol's List. She also likes playing in the great outdoors with her family, especially in Yellowstone and Glacier National Parks.

Levine's practice areas are workers' compensation and personal injury. She can be reached at 406-454-5824 and at mlevine@lnms.net.

The firm also announces that Joe Carroll has joined as a new attorney. Carroll grew up in New Jersey and is a 2015 graduate of William & Mary Law School in Williamsburg, Va. During



Carroll

law school he was a member of the William & Mary Environmental Law & Policy Review and the Student Environmental & Animal Law Society. He practiced law in Virginia for two years with Legal Aid, specializing in family law.

He enjoys all the outdoor recreation opportunities Montana has to offer, especially its great state parks. He was admitted to the State Bar of Montana in October 2017, and began his association with FairClaim/Linnell,

Newhall, Martin & Schulke, P.C., in December 2017. Joe's practice areas are workers' compensation and personal injury.

Sullivan joins as Of Counsel at Davis, Hatley, Haffeman & Tighe in Great Falls

Long time Great Falls attorney Joseph M. Sullivan has joined the law firm of Davis, Hatley, Haffeman & Tighe, P.C., in an Of Counsel capacity. Sullivan has practiced in the area of civil litigation, both at the trial and appellate levels, for over 30 years. Mr. Sullivan's focus has primarily been in the areas of insurance defense and insurance law, and more recently, as a mediator. In joining DHHT he has brought his trial and



Sullivan

appellate experience to assist the firm in its defense of insureds and insurers as well as the firm's work in business litigation, transactional work, and probate practice.

Davis, Hatley, Haffeman & Tighe, P.C., is a business and litigation law firm located in Great Falls, Montana. It has been in continuous existence since 1912. Originally the firm focused on insurance defense work. While the defense of insureds and insurers remains a primary component of DHHT's practice, the firm's work has expanded over the years to include business litigation, representation of national and multi-national corporations in class actions, products liability, employment, environmental, toxic tort and commercial litigation, and the defense of public entities, including the State of Montana and numerous cities and counties, as well as a wide range of transactional work, running the gamut of business formations, farm and ranch sales, commercial leasing, oil and gas, and business consulting. There is also an active estate planning and probate practice.

The law firm of **CROWLEY FLECK** PLLP ATTORNEYS

Is pleased to announce the following Partners to the firm:

Kimberly Backman is a member of the Bismarck, North Dakota office. Her practice encompasses various areas of natural resources law and estate administration with an emphasis on title examination. Ms. Backman handles projects containing complex oil and gas title issues and also assists clients with general oil and gas matters. Ms. Backman graduated with distinction from the University of North Dakota School of Law.

Wiley Barker is a Partner in the Helena, Montana office. His practice includes state and local taxation, regulatory law, and insurance law. He is focused on helping businesses and individuals obtain fair tax treatment, helping regulated entities navigate various state regulatory issues, and assisting insurance companies in evaluating and litigating coverage issues. He regularly advises clients regarding these areas of law, and litigates disputes when necessary.

Alissa Chambers is a Partner in the Helena, Montana office. She helps clients navigate through all stages of their business needs, including entity formation and structure advice; ongoing corporate governance issues; purchasing an existing business; selling an existing business; and exiting a business (shareholder buy-sell agreements, redemption agreements). Alissa's experience includes target and acquirer representation in mergers and acquisitions and private securities offerings.

Matthew Hibbs is a Partner in the Bozeman, Montana office. Over the course of his career, Matthew has helped successfully litigate numerous employment, construction, personal injury, medical malpractice, and products liability disputes. Matthew graduated with honors from the University of Montana School of Law in 2009 and served as a law clerk to the Hon. Mike Salvagni prior to joining the firm in 2012. Matthew is Treasurer of the Gallatin County Bar Association and coaches youth sports in addition to his work for the firm.

Whitney Kolivas is a Partner in the Bozeman, Montana office. Her practice is focused on representing clients in a variety of commercial litigation matters involving complex commercial, business, real estate, contract, and banking disputes. Throughout her practice, she has represented businesses and individuals in the state and federal courts across Montana. Whitney graduated with high honors from the University of Montana School of Law. Whitney served as a law clerk to the Honorable Carolyn S. Ostby, United States Magistrate Judge for the United States District Court for the District of Montana.

Megan McCrae is a Partner in the firm's Billings, Montana office. Megan's practice focuses primarily on healthcare law. She regularly advises hospitals, physicians, and other health care providers on a broad range of business, operational and regulatory matters. During her time with the firm, Megan graduated from Loyola University Chicago with an LL.M. in Health Law. In 2011, Megan graduated with high honors from the University of Montana School of Law, where she was an Editor for the Montana Law Review, a member of the National Moot Court Team, and served as the Constitutional Law Teaching Assistant.

Eli Patten is a Partner in the Billings, Montana office. He practices in the areas of bankruptcy and creditors' rights, commercial litigation, real estate transactions and litigation. Eli works extensively with local, state-wide and national lenders and creditors in a variety of matters including representation in bankruptcy, collection litigation, real and personal property foreclosures, and real property litigation. Eli earned his Juris Doctorate at the University Of Montana School of Law.

Uriah Price is a Partner in the Bozeman, Montana office. His practice encompasses multiple areas of energy and natural resources law with a focus on oil and gas. Uriah represents clients in front of state and federal regulatory agencies, handles oil and gas related litigation, complex title examination, due diligence and Indian law matters. He serves on multiple committees for the Rocky Mountain Mineral Law Foundation where he was a Trustee at Large (2016-2017), a founding member of the Young Professionals Committee and currently serves as faculty for the Federal Oil and Gas Leasing Short Course. Uriah obtained his Juris Doctorate, with honors, from Washburn University School of Law.

www.crowleyfleck.com

Bar seeks for Board of Trustee, President-Elect, and State Bar ABA Delegate candidates

If you are an attorney who would like to take a leadership role in the State Bar, now is a great opportunity. The Bar is looking for candidates for President-Elect, nine Trustee positions, and State Bar of Montana ABA Delegate.

The Trustee positions up for election in 2018 are: one in Area A (Flathead and Lincoln Counties), three in Area B (Lake, Mineral, Missoula, Ravalli, and Sanders Counties); one in Area C (Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties); two in Area D (Cascade, Glacier, Pondera, Teton, and Toole Counties); and two in Area G (Gallatin, Park and Sweet Grass Counties).

Nomination petition forms are printed on the facing page and will be posted online at www.montanabar.org. Petitions must be returned postmarked no later than April 2.

Reminder: CLE reporting year ends March 31

The current CLE reporting year ends March 31. Please check your record online using the MyMTCLE function at www.mtcle.org. You can claim any unposted credits by sending attendance information to cle@montanabar.org.

Fee Arbitration Panel seeks 8th Judicial District members

The 8th Judicial District Fee Arbitration Panel is in need of attorney and non-attorney members.

Many of the current panelists are retiring in the near future, and if a particular district has an insufficient number of panelists, the hearing must be held in a neighboring district.

Arbitrators are selected on a rotating basis and may sit on one or two panels a year. Many times, disputes are settled before a hearing is held.

Please contact non-attorneys you think may be interested in serving on

this panel. To avoid the appearance of conflicts, we prefer non-family members of attorneys in the 8th Judicial District. Panelists must be willing and able to attend hearings in Great Falls when selected.

Please provide name, mailing address, phone number, email and occupation of any non-attorneys you have confirmed would like to be added to the list.

For further information, contact Gino Dunfee at 406-447-2202 or gdunfee@montanabar.org.

Annual fee statements to be mailed to attorneys March 1

The State Bar of Montana will mail annual fee statements to attorneys on March 1. Payments for all fees and assessments are due April 1 and can be made by check or online with a credit card. Please note members who pay fees and assessments by credit card will be assessed a processing fee. To avoid this fee mail in your payment in the form of check, cashier's check or money order.

Parsons Behle & Latimer is pleased to announce that attorney Liz Mellem has been elected as a shareholder in the firm.



Liz Mellem is a member of Parsons Behle & Latimer's Litigation, Trials, and Appeals practice group, the Employment Law practice group, and the Product Liability practice group. She concentrates her practice in the areas of employment law and commercial litigation.

Before joining Parsons Behle & Latimer, Ms. Mellem graduated with high honors from Montana State University in 2004 with a bachelor of science in sociology. She graduated with high honors from the S.J. Quinney College of Law at the University of Utah in 2010. Ms. Mellem has been selected by her peers as a Mountain States Rising Star.

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LATIMER**

110 East Broadway, Suite 206 | Missoula, Montana 59802 | 406.333.0520 | parsonsbehle.com

2018 Nomination Petition

State Bar Officer, ABA Delegate and Trustee Election

I, _____, residing at _____,
am a candidate for the office of () President-Elect; () Area A Trustee; () Area B Trustee; () Area C Trustee; () Area D Trustee; () Area G Trustee; () State Bar of Montana ABA Delegate to be held on June 1, 2018. I am a resident of Montana and an active member of the State Bar of Montana. I request my name be placed on the ballot. The term of office of the President-Elect is one year. The term of office of the State Bar of Montana ABA Delegate and of the Trustee is two years.

Signature _____

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

NAME

ADDRESS

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Return this petition to State Bar of Montana, P.O. Box 577, Helena MT 59624, postmarked no later than April 2, 2018.
Ballots will be mailed to Bar members on May 1, 2018, and must be returned to the Bar by May 21, 2018.

4 apply for 13th Judicial District opening

A 30-day public comment period opens today for four applicants for a 13th Judicial District Court judge opening.

The applicants are:

- Colette Baumgardner Davies of Billings
- Matthew L. Erikson of Missoula
- Jessica Teresa Fehr of Billings
- Analicia Teresa Pianca of Billings

Comments can be submitted in writing to Judicial Nomination Commission, c/o Lois Menzies, Office of Court

Administrator, P.O. Box 203005, Helena, MT 59620-3005; by email at mtsupremecourt@mt.gov; or by phone at 406-841-2950. These comments, which become part of an applicant's file, will be posted on the commission's web page and forwarded to Gov. Steve Bullock.

The applications may be viewed at courts.mt.gov/supreme/boards/jud_nomination. Comments will be accepted until 5 p.m. on Thursday, Feb. 22.

The 13th Judicial District covers

Yellowstone County. The person appointed will be subject to election in 2018.

The position opened when the Honorable Ingrid G. Gustafson was appointed to the Montana Supreme Court.

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

4 file for 2nd Judicial District judge

There will be a hotly contested election for one state District Court judge race on the ballot in Silver Bow County in November.

The Honorable Bradley G. Newman announced in January that he will be stepping down when his term ends after this year.

Four Butte attorneys filed to run for the seat when candidate filing with the Montana Secretary of State's Office opened on Jan. 11. They are: Brad Belke, Tim Dick, Wayne Harper and Bob Whelan.

Judge Newman was first elected 2nd Judicial District judge in 2006 and was

re-elected in 2012.

In total, there will be 36 District Court judge seats on state ballots in November. As of Jan. 30, there were only two races with more than one candidate who had filed. Matthew J. Wald of Lodge Grass and Raymond G. Kuntz of Red Lodge have both filed candidacies for 22nd Judicial District judge (Big Horn, Carbon and Stillwater Counties).

The Honorable Blair Jones of Columbus has said he does not plan to run for re-election to that office in November.

Renk files for Clerk of Supreme Court

Rex Renk, longtime Montana Supreme Court deputy clerk, has filed to run for Clerk of the Montana Supreme Court in



Renk

the 2018 election. Renk has worked for over 23 years in the office of Clerk of the Supreme Court, and is running to fill the statewide seat of the current Clerk, Ed Smith, who has decided to retire at the end of his term after 30 years in office.

Renk also unveiled a 56-person campaign steering committee, which includes six former Montana Supreme Court

Justices, 16 Clerks of District Court, and a long list of Montana attorneys and business people.

"I'm deeply honored so many outstanding Montanans from all around the state have joined together to support my campaign," said Renk. "They know this is an important and independent office which serves a vital role in the judicial branch of government, protecting public access to court records, licensing Montana's attorneys, and assisting the Court and the public with their cases."

Former Supreme Court Justice W. William Leaphart, with former Supreme Court Justice Patricia Cotter and Billings attorney, Martha Sheehy, as vice-chairs.

Pardy, Harada file candidacies for pair of new Yellowstone County district judge seats

The first candidates have filed for two new 13th Judicial District openings created by the 2017 Montana Legislature.



Pardy

Thomas Pardy, a civil deputy city attorney with the Billings City Attorney's Office, has filed to run as the district's Department 7 judge.



Harada

Billings attorney Ashley Harada, a solo practitioner, has filed to run as the district's Department 8 judge. According to her website, her practice focuses mainly on criminal defense, family law, and personal injury.

The two new Billings judge positions are among 36 judicial races on Montana ballots in November, according to the Court Administrator's Office.

Deadline to file for judicial races with the Montana Secretary of State's Office is Monday, March 12, at 5 p.m.

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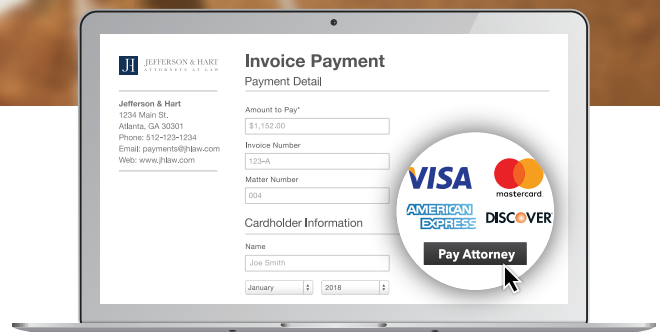
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Hamilton attorney disbarred over campaign activities in 2016 district court judge race

Hamilton attorney Robert C. Myers was disbarred for his conduct in his 2016 campaign for 21st Judicial District judge, including running false and reckless advertisements against the sitting judge.

The Montana Supreme Court accepted the Commission on Practice's findings that Myers sent a mailer to Ravalli County residents and placed advertisements against District Judge Jeffrey H. Langton, all of which contained knowingly false and reckless statements. In the ads, Myers made unsubstantiated claims that Judge Langton had presided over a case against the boyfriend of the judge's "cocaine and sex partner," and that the judge had purchased illegal drugs from a 13-year-old, the COP found.

The commission concluded that Myers violated Rules 8.1(a) and 8.4(c) of the Montana Rules of Professional Conduct by making or causing to be made statements that he knew to be false or made with reckless disregard for the truth concerning the integrity of a judge, and by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The commission also found evidence that Myers violated numerous provisions of Canon 4 of the Montana Code of Judicial Conduct, which applies to judicial candidates under Rule 8.2(b) of the Montana Rules of Professional Conduct.

Myers' filed a petition for a rehearing, but the court denied it, saying he "failed to file any objections with this court to the commission's findings, conclusions, and recommendations."

Myers told the Ravalli Republic newspaper after his disbarment in December that he plans on appealing to the U.S. Supreme Court.

The disbarment was one of three separate orders of discipline the court handed down to Myers.

The court also suspended him for three additional years for placing an advertisement earlier in the same judicial campaign. The court found that in this ad, Myers directed a former client to make false statements about the judge and that Myers provided a false written statement to the local newspaper about the same matter.

The third discipline order, a seven-month suspension, arises from Myers' conduct in representing the client who appeared in the false ad. According to court records, Judge Langton found that Myers failed to timely file an opening brief or to timely file a Rule 60 Motion during his post-hearing representation of the client, squandering his right of direct appeal and his right of review on claims of surprise and fraud.

During that case, the judge also determined that Myers made baseless

accusations of conspiracy, fraud, bias, unethical behavior, and illegal acts against numerous people, including adverse counsel and Judge Langton himself.

The suspensions are to run consecutively, meaning that Myers may not petition for reinstatement for eight years and seven months from the effective date of disbarment.

Colorado attorney disbarred in reciprocal disciplinary action

The Montana Supreme Court this week disbarred Colorado attorney Philip Kleinsmith from the practice of law in Montana.

The disbarment, which is effective Feb. 1, is reciprocal to discipline imposed on Kleinsmith in Colorado for ethical misconduct, including the knowing conversion of client funds.

According to the Jan. 9 Montana order, Kleinsmith did not respond to notice of the petition against him for reciprocal discipline.

Kleinsmith's license had already been suspended in Montana since April 2017 for noncompliance with the IOLTA program. He also previously had been suspended for a year by the Supreme Court of Arizona for multiple ethical violations.

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Contractor or employee? Advising clients about ICEC program is paramount to determining status

By Quinlan O'Connor

Since the inception of the current Independent Contractor Exemption Certificate (ICEC) laws in 2005, the Montana certificate holder population has steadily expanded. Under the direct purview of the Independent Contractor Central Unit (ICCU) housed within the Montana Department of Labor & Industry (MTDLI), the program creates a single determination of independent contractor versus employee status for workers' compensation, wage and hour, unemployment insurance, and human rights.

The purpose of this article is to update practitioners on the state of ICEC law, and to be an assistive tool to those advising workers, hiring agents, or employers about their rights, responsibilities, and potential liabilities resulting from the program. While there are exemptions from the requirement to hold an ICEC, this article focuses on the covered worker who "regularly and customarily performs services at a location other than the person's own fixed business location" and who opts not to obtain a workers' compensation policy. See Mont. Code Ann. § 39-71-417(1)(a).

A worker seeking to be an independent contractor must submit an application to the ICCU, showing the independence of their business as well as the various occupations in which they perform services. When all requirements are met, the ICCU grants the ICEC, which remains in effect for two years absent revocation or suspension. Since 2006, when 14,254 workers held ICECs, the number has grown to more than 20,000 in 2017.

Put simply, the ICEC seeks to eliminate post-hoc litigation of worker status in favor of a pre-work, conclusive status determination. For those aware of the ICEC program, this system creates simplicity; for those who fail to check, or who ignore, the ICEC status of a worker, however, liabilities can quickly arise.

In addition, MTDLI recently published an administrative rule proposal impacting the ICEC program as it relates to Montana's wage and hour laws: specifically, to conform with other MTDLI programs, wage and hour has proposed elimination of the common law "AB Test" in favor of the conclusive ICEC.

Independent Contractor Program Background

By default, workers are employees. At common law, it is only upon a "convincing accumulation of undisputed evidence" that a worker is legally recognized as an independent contractor. *Wild v. Fregein Constr.*, 2003 MT 115, ¶ 34, 315 Mont. 425, 68 P.3d 855. Common law required the utilization of a complex, multi-part "AB Test," looking both to control over the worker and whether the worker had established an independent business. This test was then codified in statute, and described by our Supreme Court as follows:

First, he must be free from the control of his

employer, under his contract *and* in fact, in the performance of his services. Second, he must be engaged in an independently established occupation.

Sharp v. Hoerner Waldorf Corp., 178 Mont. 419, 424, 584 P.2d 1298 (1978) (emphasis in original). Those two parts may appear simple, but the Supreme Court also recognized four subparts of part "A" of the test: evidence of control, method of payment, furnishing of equipment, and right to fire. *Id.* at 425. In addition, this test required courts and administrative agencies to determine after the fact whether work was performed as an employee or an independent contractor.

In an attempt to avoid this burdensome, post-hoc evaluation, the Legislature in 1999 enacted an independent contractor exemption program. The program required a worker to pay a fee to MTDLI and to swear an oath that work would be performed as an independent contractor; the department then granted a certificate. The Supreme Court evaluated that program in *Wild, supra*, and noted that the low threshold for obtaining an exemption and the nearly non-existent status determination prior to granting a certificate, rendered the certificate meaningless. *Wild*, ¶¶ 23-27.

In his concurrence, Justice Rice agreed that the then-existing exemption program "was insufficient to exempt Wild from workers' compensation benefits." *Id.* at ¶ 48 (Rice, J. concurring). He went on, however, to explain the issue, and the remedy, more clearly:

The purpose of this determination is to eliminate the need for a hiring agent to make the complex inquiry about an exemption-holder's status as an independent contractor. No second guessing is necessary — the holder possesses a written certificate from the Department which conclusively establishes his status. That "settles" the issue. However, in this case, the Department's approach to the exemption statute, by its regulations and the issuance of the independent contractor certificate, has not implemented the underlying purpose of the statute.

The Certificate of Independent Contractor Exemption issued to Kelly Wild by the Department did not conclusively determine that Wild was an independent contractor who was exempt from coverage under the Act. It merely certified that Wild *swore* that he was independently engaged in an established trade, and then placed the duty of determining whether Wild was actually an independent contractor — the Department's duty under the exemption application process — squarely on the employer.

Id. at ¶¶ 50-51 (emphasis in original). Justice Rice noted that

MTDLI had to do more than trust ICEC applicants; instead, he called upon MTDLI to make a thorough determination regarding independent contractor status — one upon which employers or hiring agents could rely. *Id.* at ¶ 53.

The New Exemption Program

Following *Wild*, the 2005 Legislature considered and enacted significant changes to the certificate program. The preamble to that legislation is instructive:

WHEREAS, the concurring opinion in the *Wild* decision further suggested that the Department of Labor and Industry strengthen the certification process to provide a conclusive determination of independent contractor status; and

WHEREAS, the *Wild* decision created a great deal of uncertainty in matters involving independent contractors and employees in the business community, with employers and independent contractors coming together to propose a consensus solution after participating in a study required by Senate Bill 270, passed by the 58th Legislature; and

WHEREAS, the Montana Legislature considers enacting legislation appropriate to effectively reverse the *Wild* decision and to restore the conclusive presumption of an independent contractor exemption certificate . . .

2005 Mont. Laws 1546 (Ch. 448, Preamble). The Legislature therefore stated a clear intention that the independent contractor exemption certificate program, codified at Mont. Code Ann. § 39-71-417, provide a conclusive presumption as to independent contractor status upon which businesses and workers could rely. The new law codified the program in general, and required MTDLI to engage in rulemaking to define the independence of applicants.

To enact this statute, the ICCU, housed within MTDLI, maintains rules governing the certificate program. Most notably, extensive negotiation among stakeholders and MTDLI led to the enactment of Admin. R. Mont. 24.35.111. The rule states the requirements for application for an ICEC. It requires various documentation be submitted, and establishes a point-based system for determining whether an applicant qualifies for an ICEC.

Far beyond the previous oath merely claiming independence, the current program considers a variety of factors — from business registration, to ownership of valuable equipment, to invoices from the independent contractor — for the award of points. It further requires acknowledgment, under oath, that the worker waives the right to employee benefits like workers' compensation.

The Workers' Compensation Court recognizes the conclusivity of the ICEC

When status disputes do arise in workers' compensation, unemployment insurance, wage and hour, human rights, or tax, they are referred to the ICCU for Decision. Admin. R. Mont. 24.35.202. These decisions are binding on the referring agency, Admin. R. Mont. 24.35.202, and on all parties, absent an appeal. Mont. Code Ann. § 39-71-415; Admin. R. Mont. 24.35.205. Mont. Code Ann. § 39-71-415 states that decisions of the ICCU may be appealed,

after mandatory mediation, to the Workers' Compensation Court (WCC).

The WCC has limited, but exclusive, jurisdiction, and appeals from it are direct to the Supreme Court. *See* Mont. Code Ann. § 39-71-2905. As such, its holdings concerning independent contractors are binding statewide and of particular importance to the program. (WCC decisions are published online at <http://wcc.dli.mt.gov/cases.asp>).

The WCC has considered the ICEC program on numerous occasions, but two decisions are of particular import.

First, in *McCone County v. ICCU*, 2012 MTWCC 19, the ICEC was considered for purposes of unemployment insurance (UI). The UI division referred a worker status question to the ICCU for determination. According to the ICCU, the worker met both parts of the AB Test. *Id.* at ¶¶ 12-13. However, the worker had not elected workers' compensation coverage, nor did she hold an ICEC. *Id.* at ¶ 18. Further, she did not work from a fixed business location. *Id.* at ¶ 23. The court noted that Mont. Code Ann. § 39-51-201(15) defined an independent contractor as one holding an ICEC and working under it. The Court then held:

Johnson did not have an independent contractor exemption certificate when performing her duties for the County. Although she may have satisfied both parts of the independent contractor test, the statute does not invoke the independent contractor test for situations such as the present one, and it is not the province of this Court to redefine the statute.

Id. at ¶ 24. As such, for purposes of UI, and without need of the AB Test, the ICEC operates to establish conclusively the worker status: one who holds an ICEC is an independent contractor; one who does not is an employee.

Second, *Reule v. UEF*, 2017 MTWCC 3, considered a claim for workers' compensation benefits filed by Christopher Albrecht. Albrecht was an employee hired by Andrew Brock. *Id.* at ¶ 15. Andrew Brock was hired by Timothy Reule. *Id.* at ¶ 13. Brock did not have an ICEC at the time of Albrecht's injury, *Id.* at ¶ 14, and neither Brock nor Reule had a workers' compensation policy. *Id.* at ¶¶ 22-23. There was a dispute regarding whether Brock was an independent contractor or not for the purposes of workers' compensation. The Court held:

The UEF is correct that to be an independent contractor for purposes of workers' compensation under the new scheme, Brock was required either to obtain an ICEC through the DLI's procedures or insure himself with workers' compensation insurance. . . . As a result, Brock was not an independent contractor as a matter of law. . . .

Id. at ¶ 44.

On reconsideration, the court emphasized, and arguably expanded upon, this holding:

Brock was not an independent contractor, despite his being Albrecht's direct employer, because Brock did not meet the statutory requirements for being

Montana Supreme Court ruling wide in scope, narrow in effect

By Lars Phillips, Esq.

The Montana Supreme Court's recent decision in *Steilman v. Michael*¹ significantly alters the landscape of juvenile sentencing jurisprudence in Montana. While *Steilman* is only the most recent iteration of a wide-sweeping shift in how our criminal justice system attempts to define cruel and unusual punishment for juvenile defendants, it appears likely that this will prove to be a watershed decision not only because of the structure it puts in place for sentencing juveniles in the future, but also because of the broad swath of circumstances to which the decision applies.

The groundwork for *Steilman* was first laid in 2005 with the U.S. Supreme Court's decision in *Roper v. Simmons*,² where the Court banned death sentences for juvenile defendants and recognized that the characteristics of youth required that children be treated differently than adult offenders. *Roper* was followed shortly by *Graham v. Florida*,³ which prohibited sentencing juveniles to life without parole for non-homicidal crimes, and then by *Miller v. Alabama*,⁴ which prohibited applying mandatory life without parole sentencing guidelines to juvenile defendants. Finally, in *Montgomery v. Louisiana*,⁵ the immediate catalyst for *Steilman*, the Supreme Court held that the announced *Miller* rule was retroactive, opening up a new avenue of relief in state courts for a small subset of currently incarcerated defendants.

Notably, *Miller* and *Montgomery* challenged sentences issued under mandatory sentencing schemes in Alabama and Louisiana, respectively. In Alabama,

for example, the mandatory sentencing scheme required that every juvenile convicted of homicide be sentenced to life without the possibility of parole.⁶ With this context, the *Miller* rule requiring specific consideration of the characteristics of youth makes sense as simply another iteration of *Roper*'s determination that 'children are different' and, accordingly, must be sentenced differently.

To that end, it is important that *Miller* did not categorically ban life without parole sentences for juvenile defendants, it only required that the sentencing judge "follow a certain process — considering an offender's youth and attendant characteristics — before imposing a particular penalty."⁷ And, as pointed out by Justice Laurie McKinnon in her dissent to *Steilman*, Montana's "individualized and discretionary sentencing scheme already require[s] a sentencing court to consider a defendant's individual needs, characteristics, family environment, and prospects for rehabilitation—including age."⁸

Were *Miller* still the law of the land, distinguishing between the "certain process" described therein and the sentencing procedures currently in place in Montana would require significant legal gymnastics. As impliedly recognized by *Steilman*, however, *Montgomery* requires something much more specific than *Miller*'s vague "certain process." To that end, the U.S. Supreme Court has repeatedly, albeit impliedly, emphasized this new specificity, recently vacating and remanding five cases where juveniles had been sentenced to life without parole in Arizona to allow the courts to consider the sentences in

light of *Montgomery*.⁹ Further, as noted by Justice Samuel Alito, all five Arizona cases were decided after *Miller* and, if all *Montgomery* did was declare *Miller* retroactive, there would be no need to apply *Montgomery* to cases decided after *Miller*.¹⁰

The implication, that *Montgomery* adds a new requirement that a sentencing court issue a specific finding of irreparable corruption before sentencing a juvenile to life without parole, should be a warning beacon to Montana's judiciary. The clearest current statement as to what sentencing courts should consider post-*Montgomery* was delivered by Justice Sonia Sotomayor in her concurring opinion to the five Arizona cases, where she framed the required question as "whether the juvenile offender before it is a child whose crimes reflect transient immaturity or is one of those rare children whose crimes reflect irreparable corruption for whom a life without parole sentence may be appropriate."¹¹ With this background in mind, analyzing *Steilman* reveals an opinion which is at the same time both broad in its protection of juveniles and limited in providing any hope of legitimate relief to those defendants.

In *Steilman*, the Court makes mincemeat of the distinction between Montana's discretionary sentencing scheme and the mandatory sentencing schemes of Alabama and Louisiana under which *Miller* and *Montgomery* were decided, concluding that it is the sentence of life without parole itself, rather than the sentencing scheme, which renders the

1 2017 MT 310, ___ Mont. ___, ___ P.3d __.

2 125 S. Ct. 1183 (2005).

3 130 S. Ct. 2011 (2010).

4 132 S. Ct. 2455 (2012).

5 136 S. Ct. 718 (2016).

6 *Id.* at 734.

7 *Miller*, 132 S. Ct. at 2471.

8 *Steilman*, ¶ 34 (McKinnon, J., dissenting).

9 *Tatum v. Arizona*, 137 S. Ct. 11 (2016); *Arias v. Arizona*, 137 S. Ct. 370 (2016); *DeShaw v. Arizona*, 137 S. Ct. 370 (2016); *Purcell v. Arizona*, 137 S. Ct. 369 (2016); *Najar v. Arizona*, 137 S. Ct. 369 (2016).

10 *Tatum*, 137 S. Ct. at 13 (Alito, J., dissenting).

11 *Tatum*, 137 S. Ct. at 13 (Sotomayor, J., concurring) (citations omitted).



sentence cruel and unusual.¹² Although pressing at the bounds of *Montgomery* already, the Court continues on to carve out new protections for juveniles in Montana. Rejecting the State's arguments to the contrary, the Court holds that the underlying rule in *Miller* and *Montgomery* applies with equal force to "term-of-years" sentences that result in the functional equivalent of life imprisonment, as it does to sentences of life without parole. This determination shifts *Montgomery* from a decision aimed solely at juvenile defendants convicted of homicide to a decision affecting any juvenile who receives a significant term-of-years sentence.¹³

The Court strengthens this conclusion by forging a connection between *Montgomery* and *Graham v. Florida*, the decision that had categorically forbidden life sentences for juveniles convicted of non-homicide crimes. The Court emphasized that "*Montgomery* and *Graham* illustrate the U.S. Supreme Court's inexorable evolution recognizing that all but the rarest juvenile offenders

be given an opportunity for redemption and a hope of release, which a sentence of life without parole cannot provide," and that *Montgomery* "draws a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption."¹⁴

In other words, the Court seems to suggest, and logic supports, the idea that determining whether a juvenile's crime reflects transient immaturity, thereby limiting the amount of time he or she should serve, should not be reserved only for instances in which the juvenile is convicted of homicide, but should apply wherever a lengthy term-of-years sentence is possible. While a question remains as to how long a term-of-years sentence must be to trigger *Montgomery*'s application in Montana, the conflation of these two lines of cases seems to have created a novel avenue for relief for juveniles in Montana. Specifically, *Steilman* may allow juveniles who have received lengthy term-of-years sentences in non-homicide cases to challenge their sentences if the sentencing court did not explicitly consider whether

the crimes at issue reflected irreparable corruption.

Although the *Steilman* Court speaks in grand terms of the importance of giving youth the opportunity for rehabilitation, and appears to significantly expand the number of juvenile defendants who may challenge their sentences, the Court stopped shy of granting *Steilman* the relief he sought. In a twist that seems oddly disconnected from the rest of the opinion, the Court concludes that the Eighth Amendment protections provided by *Montgomery*, *Miller*, and *Graham* are not implicated by *Steilman*'s sentence.

In reaching this determination, the Court notes that "because *Steilman* is eligible for day-for-day good time credit, his 110-year sentence allows for his release after serving only 55 years, contingent upon his behavior in prison."¹⁵ Further, the Court finds that, because *Steilman* is currently serving an additional, consecutive sentence of 23 years and eight months for an unrelated crime in Washington,

Juvenile, page 17

¹² *Steilman*, ¶ 17.

¹³ *Id.* at ¶¶ 2, 20–21.

¹⁴ *Steilman*, ¶¶ 20–21 (cleaned up).

¹⁵ *Steilman*, ¶ 22.

Trauma from service can lead to ‘bad paper’

By Hillary Wandler and Patty Fain

The U.S. Marine Corps aggressively recruited John Smith¹ out of high school, along with several of his friends on the football team. Young enough to require parental consent to enlist, the athletic boys excelled in infantry school and soon deployed. Smith was assigned to one of the Marine Corps’ storied units heavily involved in Operation Iraqi Freedom/Operation Enduring Freedom, and he faced extreme conditions and combat in each of his eventual three deployments. Based on Smith’s exceptional service as part of the invasion force and the Battle for Baghdad during his first tour, he was made a team leader during his second tour, which brought some of the bloodiest battles in military history.

Smith’s combat experiences took a significant toll on his physical and mental health. By the end of his second tour, he was fighting his own personal battle with several serious physical and mental injuries; he refused a Purple Heart related to a battle in which the team he led suffered heavy losses, and he began drinking heavily to dampen his suicidal thoughts. During his third tour, which came up unexpectedly just as Smith and his friends were preparing to go home, Smith’s company suffered even more losses. Commiserating over the death of another friend in battle, Smith and several other soldiers shared a joint one of the other soldiers had brought from home; this choice led to Smith’s bad conduct discharge from the Marine Corps during the final month of his third combat tour after five years of honorable and decorated military service.

Even though Smith was not dishonorably discharged, his less-than-honorable character of discharge immediately thwarted his attempts to obtain medical and mental health care from the VA.² The bad conduct discharge, which appeared on Smith’s DD-214, also made it impossible for Smith to use the G.I. Bill to pay for college, or to even get a job; his application for G.I. Bill benefits was denied, and employers turned him away as soon as they reviewed a copy of his DD-214. Seeing no reason to hope his circumstances would ever change, Smith spiraled further out of control. He requested an upgraded character of discharge from the Department of Defense, but his request was denied, in large part due to his continuing substance abuse.

Ideally, the military would have the capacity and expertise to recognize a severe mental health response to combat and treat it effectively and appropriately to preserve each soldier’s future after the intensity of combat passed. But, military leaders are not operating in an ideal world, especially when engaged in warfare

overseas where a soldier’s mental health response can endanger lives and distract from the mission. When this situation arises, leaders try to contain the problem as efficiently as possible.

For John Smith and his fellow soldiers, this meant immediate confinement, bare minimum due process, and a quick exit back to the States and out of the military with “bad paper.” Far from being preserved, their futures would be forever clouded and defined by a choice many other U.S. teenagers make every day.

While the majority of our military members separate from the service with an honorable discharge, estimates indicate that nearly one-third receive less than honorable discharges.³ Some receive dishonorable discharges for serious crimes or unmitigated dishonorable conduct unrelated to combat trauma. But many veterans who served in combat have stories similar to Smith, who was caught in the vicious behavioral spiral created by untreated severe PTSD and traumatic brain injury (TBI). Another common story involves the behavioral issues a veteran displays after suffering Military Sexual Trauma (MST) or being harassed sexually.

Certain characters of discharge will cause a veteran to lose rights to services and benefits normally available to our country’s veterans, such as medical care, the G.I. Bill, and compensation for service-connected disabilities. As happened with Smith, employers routinely request a copy of a veteran’s DD-214; a less than honorable character of discharge can make it difficult, if not impossible, for the veteran to get a job. Researchers have recently found a less-than-honorable character of discharge is a strong predictor of poor post-discharge outcomes like homelessness, substance use disorders, suicidality, unemployment, and incarceration.⁴ For a veteran facing a daily battle with severe symptoms of PTSD, TBI, or the many physical ailments that arise from service in Vietnam, Iraq, and Afghanistan, the inability to earn income and related inability to obtain non-emergency medical care presents a far darker future than the veteran may have had without military service.

To uncover and remedy wartime imbalances between efficiency and justice, the Department of Defense has panels of civilians and officers who review veterans’ less-than-honorable discharges. Deemed “Discharge Review Boards” or “Boards for Correction of Military Records,” these panels review a veteran’s service records, medical records, and sometimes post-service conduct to determine whether the veteran’s discharge was legally and procedurally correct or the veteran’s service warrants

Veteran, page 26

1 This veteran’s name and some details of his story have been changed to protect confidentiality.

2 At the time of Smith’s discharge, the VA did not have programs in place that would allow veterans with bad conduct discharges to receive treatment for severe PTSD. Since that time, the VA has developed some mental health resources that even veterans with bad conduct discharges can utilize.

3 Brignone, Emily, et al., *Non-routine Discharge from Military Service: Mental Illness, Substance Use Disorders, and Suicidality*, 52 Am. J. of Preventive Med. 557 (2017) (finding over 28% of veterans who had deployed to Afghanistan and Iraq and utilized VA services between 2004 and 2013 had received “non-routine” military discharges, or discharges that were less than honorable).

4 *Id.* (“Non-routine service discharge strongly predicts VHA-diagnosed mental illness, substance use disorders, and suicidality, with particularly elevated risk among Veterans discharged for disqualification or misconduct.”).



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Justice Ingrid G., Gustafson hugs U.S. District Judge Susan Watters after taking the oath of office at her swearing in ceremony in the Yellowstone County Courthouse on Jan. 5. Gustafson succeeds Justice Michael Wheat, who retired at the end of 2017. (Photo courtesy of The Billings Gazette/Casey Page.)

'Calm, measured' justice

Gustafson sworn in as newest member of the Montana Supreme Court

**By Joe Menden
Montana Lawyer**

Justice Ingrid Gustafson has clearly earned the respect of those who have come to know her best – the attorneys in her

hometown of Billings and her colleagues on the state District Court bench.

When Gustafson applied for a seat on the Montana Supreme Court last year nearly 100 people wrote letters to the Judicial Nomination Commission in support of her. The bulk of those were penned by Billings attorneys or District Court judges, who praised her for her patience, preparation and work ethic.

Out of seven people who applied for the Supreme Court seat, Gustafson was the only one to receive the unanimous recommendation of the Judicial Nomination Commission.

She eventually was appointed by Gov. Steve Bullock in December, and she became the newest Supreme Court justice on Jan. 5 when she took the oath of office in a ceremony in

Billings presided over by U.S. District Judge Susan P. Watters.

It's no wonder she has earned the trust of so many: From her roots as a nationally recognized athlete through being recognized as one of the state's most efficient judges during her time on the bench she has a history of achieving big things.

Ashley Harada, the president of the Yellowstone Area Bar Association, said she expects Gustafson to do well on the Supreme Court, but she will be missed in Billings.

"Judge Gustafson's advancement to the Montana Supreme Court is bittersweet because we are sad to see her go," Harada said. "The Yellowstone Area Bar is grateful to have had a wonderful and empathetic jurist for 13 years. She has influenced the culture of the judiciary in Billings and the lives of the people who have appeared before her. Her thoughtful legal analysis and writing will certainly serve her well on the Montana Supreme Court. We wish her the very best on her newest endeavor and will miss her greatly.

According to Eric Nord, a Billings attorney and president-elect of the State Bar of Montana, Gustafson is well-suited for the Montana Supreme Court because she has proven herself to be a sound jurist with a "calm, measured demeanor."

"Judge Gustafson has handled hundreds, if not thousands, of matters relating to criminal, civil, drug, and family court matters at the trial level," Nord wrote. "She personifies a core value of the State Bar of Montana which is to build and sustain a rich and highly qualified legal community. Judge Gustafson has committed herself to maintaining the highest level of professionalism. In her courtroom, she demands the highest level of competence and professionalism of the attorneys who appear before her. She is a skilled leader of the Bar and jurist. Her experience in the areas of family and criminal law, as well as general civil matters, combined with her broad-based talents as an attorney and a judge, position her well for service as an Associate Justice of the Montana Supreme Court.

State Bar of Montana President Leslie Halligan called Gustafson – whom she first met when they were both in law school and became reacquainted with when she became a district judge in 2014 — a mentor and friend. Halligan said she has learned firsthand the overwhelming caseload that Montana judges must manage. She said Gustafson's performance in the 13th Judicial District, which handles a caseload that dwarfs that of other districts, is especially impressive.

"Even with her significant work load, in the nearly 14 years that she has served, Ingrid has developed a reputation as a fair, knowledgeable and effective jurist, and consistently demonstrates an ability to hear and timely decide cases," Halligan wrote.

Halligan called Gustafson "an exemplary public servant who represents all that is good in the Montana judiciary."

As busy as her caseload has been, Gustafson over the years has found time to serve in many other ways outside of the courtroom too. She has volunteered for a long list of Supreme Court boards and commissions and Montana judicial groups.

In 2011, Gustafson started the 13th Judicial District's first felony drug court. She also served as a member of the Montana Drug Court Strategic Planning Initiative from 2014-2016, evaluating drug court practices across the state and developing a strategic plan for using evidence-based practices. She developed

Q&A with Justice Gustafson

Look for a Q & A with Justice Ingrid G Gustafson in an upcoming issue of the Montana Lawyer.

a clinic, along with the Yellowstone Family Law Project and the State Pro Bono Coordinator, for self-represented litigants to complete dissolutions of marriage and parenting plans in a more accurate and efficient manner. She has also been a prolific speaker, lecturing at dozens of seminars and presentations.

Gustafson said in her application with the Judicial Nomination Commission that she considers service to society as one of her obligations.

"Contributing to one's community does not only involve volunteering one's time to community activities and projects, it also involves being a good citizen and promoting that in others," she said. "We certainly cannot expect respect and consideration from others unless we show it ourselves and teach it to our youth."

Gustafson, who earned her JD from the University of Montana School of Law in 1988, was a decorated athlete before her law career, most notably as one of the top alpine skiers in the nation. She earned a skiing scholarship to attend Montana State University, where she earned varsity letters all four years

Justice, page 26

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The short and useless life of a bad resume

By Sharon D. Nelson, Esq.

Over the last 20 years, I have reviewed hundreds of resumes. Most of them hit the wastebasket very rapidly. There are a lot of reasons why.

1. The author can't write proper English, punctuate properly or obey the rules of grammar. Even little things matter – attention to detail is important in the business world and a resume should be proofed carefully before it is sent out. Don't just proof it yourself – have someone you know to be a good editor review it too.

2. The resume sounds like puffery (“I am wonderful” is not the right tone).

3. The objective has no hint of personality or originality. Some are like eating a spoonful of the Sahara. Add some color (without going bonkers) and make yourself stand out. I always like language that indicates that applicants are self-starters who enjoy both working individually and in a team. You'll certainly have to do both. The truth can be refreshing. I remember someone whose objective indicated his passion for digital forensics while noting that, thus, far, his experience was limited. His passion and candid recognition of his minimal experience struck me, both in his resume and in his cover note. He still works for me.

4. When I look at the resume's metadata (yes, I always do that if the resume is interesting), sometimes the candidate is not the author of the document. Humorously, the name may indicate that mom or dad did the resume (tsk, tsk). There are legitimate reasons for going to another name appearing as the author – and there's no harm in going to a professional to help with your resume. But be aware that employers sometimes do look at the resume's metadata, especially if they are applying for a position in a technology field.

5. The cover letter (or email) doesn't jibe with the resume. The resume may display wonderful writing (thanks to help from someone) but the accompanying note does not. These days, prospective employers want nothing to do with applicants who can't write the English language.

6. The cover letter (or email) fails to spark my interest. This is the perfect place to say something original that will catch the attention of the reader and differentiate you from other applicants.

7. When I advertise for a position, I always ask that the applicant include his/her salary requirements. If you do not do so, you are history – you can't follow instructions. Saying that you are open to discussing your salary is not acceptable. It doesn't tell me anything. I want some idea of what you think you are worth.

8. If you are young, a one-page resume is sufficient. Trying to cram all the minutiae of your life into your resume is not helpful. People reviewing resumes do so quickly, ditching the obvious “losers” and reserving resumes to be looked at more carefully. That said, now and again, I get a very worthy two-page resume

from someone who has actually accomplished quite a bit and needs the two pages to document their credentials and experiences – if well done, I will review it carefully.

9. Tell the prospective employer why you want to work for them. This rarely happens – I suppose applicants don't want to take the time to look up a law firm or company and personalize their cover note or email, but rest assured that those who do end up in the pile of resumes I want to look at more closely. The more it is clear to me that they did some homework about my company, the more apt I am to ask for an interview. Virtually every employee I've ultimately hired has made that effort.

10. Tell the prospective employer if you have a skill that might be relevant. For instance, if the law firm or company is involved with high tech work, it is helpful to list any technical certifications or technical skills you possess. More and more, law firms want to know that you are “tech competent.”

11. Don't undo your resume with your social media. I vividly remember receiving a well-done resume from a young woman and then visiting her public Facebook page, where she described herself as “sexually adventurous” and boasted that she could run a mile in high heels. Her resume hit the trash can with more than the usual speed.

12. Don't write from your current employer's address. If you will research and apply for jobs on someone else's time, you'll likely do the same thing to any employer – including me. It also indicates that you aren't all that bright since employers have the right to monitor work done on company computers.

Your resume is critical. If it fails you, you won't get the job you want. One of the best resources I've seen is from Yale Law, which has a Toolkit for Student Job Seekers (<https://law.yale.edu/student-life/career-development/students/toolkit-student-job-seekers/resume-advice-samples>) including Resume Advice and Samples along with Cover Letter Advice and Samples. It is a good starting point.

One more thing – if you get the opportunity to interview, employers know you are likely to be nervous. In my experience, this is one of the things job applicants worry about the most. I have a story that I hope will calm you if you are prone to “interview anxiety.” Ten years ago, I interviewed an incredibly nervous young man whose hands shook rather severely during our entire interview. He was well-mannered, well-spoken and incredibly bright. I overlooked his nervousness (as most employers do) and hired him. Ten years later, he is my CEO. Fashion a great resume and cover letter – and if you cannot entirely compose yourself in an interview, may you have the same happy ending as my CEO.

Sharon D. Nelson, Esq. is a practicing attorney and the president of Sensei Enterprises, Inc., a digital forensics, cybersecurity and information technology firm in Fairfax, Va. A co-author of 15 books published by the ABA and hundreds of articles, she is also on the faculty for ABA TECHSHOW 2018. She may be reached at snelson@senseient.com.

Whoa there: Don't confuse that cattle brand with a trademark

By Toni Tease



The word “maverick” has been used to describe various politicians over the years but the term derives from 19th century land baron Samuel Maverick, a Texas rancher who refused to brand his cattle despite the fact that it had become a widely accepted practice. As a result of Maverick’s decision to buck the system, unbranded, free-ranging cattle became known as “mavericks.” The practice of cattle branding originated with the Spaniards, who brought the practice to Mexico. The first cattle brand registry was established in Mexico City in 1537, and cattle branding was introduced in the United States in the mid-1800s along with open range grazing. The term “cattle branding” refers to the practice of branding cattle with a hot iron, although other methods (such as freeze branding, ear tattoos, and RFID tagging) are also used to identify the cattle owner.

Under the laws of Montana (and most states excluding several on the East Coast), any brand used to identify livestock must be registered with the state. Brand laws typically specify where on the animal the brand may be placed, and they also provide that the brand itself establishes a rebuttable presumption that the owner of the brand also owns the livestock. These brand registries also serve to alleviate confusion by ensuring that no two brands are confusingly similar—a test that is also applied under trademark law.

The Montana Department of Livestock administers brands for the state of Montana. Under Mont. Code Ann. § 81-3-102, it is unlawful to brand any domestic animal or livestock unless the brand has been recorded with the state within the past 10 years. No more than five brands may be recorded by the same person. Mont. Code Ann. § 81-3-211 makes it illegal to sell, slaughter or move livestock from one county to another unless the livestock have been inspected for brands by a state stock inspector. Furthermore, the owner of the brand has the exclusive right to use the brand on the species of animal designated in the brand recordation. Mont. Code Ann. § 81-3-105. Although a brand may consist of any symbol(s), the Montana Department of Livestock “suggests applying for brands that are side by side containing two letters and/or numbers, with a bar, quarter circle or slash.” (<http://liv.mt.gov/Brands-Enforcement/Livestock-Brands>)

Livestock brands and trademarks are similar in that they confer exclusive rights upon the owner to use a certain name or symbol. They are also similar in that the regulating agency must

The book on brands

You can see all the Montana registered brands by county and also buy brand books online at <http://liv.mt.gov/Brands-Enforcement/Brand-Books>

undertake some degree of analysis to determine whether the name or symbol is confusingly similar to other registered names or symbols before permitting a new brand or trademark to be registered. The similarities end there, however. Although trademarks may be registered for livestock (examples include CSR owned by Copper Spring Ranch LLC and SIMANGUS owned by the American Simmentel Association, both of Bozeman), a livestock brand does not carry the same basket of rights that a federally registered trademark does. Perhaps the most significant distinction between a livestock brand and a trademark is that the livestock brand allows the owner to prevent others from using the same (or confusingly similar) brand on the same species of livestock; trademark rights are broader in that the owner of a trademark may prevent others from using the same (or confusingly similar) mark not only on the goods covered by the registration but also on related products (for example, beer and wine are considered related, as are clothing and watches).

We periodically receive calls from clients who want us to send a cease and desist letter to someone who is using their state-registered livestock brand without authorization. Unless the case involves the unauthorized use of the brand on livestock (which it usually does not), we need to turn to trademark law for recourse. A trademark may be registered at the state or federal level; however, we strongly recommend registration of trademarks with the U.S. Patent and Trademark Office. In order to register a trademark, a person must specify the goods or services with which the mark is being used. A trademark may not be registered either federally or on a state level unless it is actually being used by the trademark owner in connection with the goods or services specified in the application.

Toni Tease is a registered patent attorney and solo practitioner in Billings who specializes intellectual property law.

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.

CLE seminars and webinars on wide array of topics planned for February and March

The State Bar of Montana has CLE seminars online and webinars on a wide variety of subject areas scheduled for February and March.

This year's Real Estate CLE is approved for 5.75 CLE credits and combines many essential topic-areas for use in every real estate practitioner's toolkit. Water law, community associations, and land use law will all be discussed in depth.

Set against the backdrop of Fairmont Hot Springs on Friday, Feb. 16, this CLE promises to deliver a much needed break from the rigors of the practice of law.

The CLE Potpourri seminar in

Bozeman is the following week, on Friday, Feb. 23. Featuring 6.0 CLE credits (1.0 Ethics), this CLE will update you on a wide variety of topics facing attorneys and paralegals today, including electronic data handling, District Court E-filing, DUI laws and policies, victim rights and professionalism/ethics.

The annual St. Patrick's Day CLE in Butte on Friday, March 16, will explore two important topics. The morning session will feature updates on ransomware prevention and response, data breach responsibilities, and cyber insurance. In the afternoon, participants will learn the

basics of Montana's alcoholic beverage and gambling licensing and regulatory systems.

There are also three one-hour noon-time webinars planned for March:

Wednesday, March 7: Webinar – Mediation/Arbitration as a Full-Time Profession

Wednesday, March 21: Webinar – Mind Body Connection: Ethical Considerations for its use in Mediation

Wednesday, March 21: Webinar – 2017 Legislative Changes: Medicaid Provider Audits & Active Supervision of Licensing Boards



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Veteran, from page 18

equitable relief.

Unfortunately, these caseloads are swelling, and the denial rate is high. Veterans seeking upgrades of military discharges face an uphill battle. The process to upgrade military discharge can be complicated for a lay person, and even those who learn of the process and fill out an application rely on brief personal statements about their service experiences, foregoing fact investigation of the discharge process or forensic mental health evaluation to establish a link between PTSD or TBI and the behavior that led to their bad paper.

This is where you can help. With an attorney's assistance, a veteran can effectively investigate and develop the application for discharge upgrade and navigate the application process, which could change the veteran's future. While we do not have definitive numbers on how many Montana veterans need help

with an application for discharge upgrade, those of us practicing in this area have anecdotally observed rising need. Due to the volume of veteran's requests, many calls have gone unanswered. We want to change that by providing training and support to attorneys willing to assist income eligible veterans *pro bono* in applying for discharge upgrade.

The Veterans Law Section of the State Bar of Montana, the Veterans Advocacy Clinic at the Alexander Blewett III School of Law, and the Montana Supreme Court Statewide Pro Bono Program are partnering to offer free training and materials in exchange for assisting one veteran. We are working to collaborate with students at the law school to screen cases and assist *pro bono* attorneys who take a case.

Hillary Wandler is a professor at the University of Montana's Alexander Blewett III School of Law. Patty Fain is the Montana Supreme Court's statewide pro bono coordinator.

Contractor, from page 15

an independent contractor. Section 39-71-419(1), MCA, is clear that a person may not work as an independent contractor without obtaining an ICEC, unless he is not required to have one under § 39-71-417(1)(a), MCA, or insuring himself with workers' compensation insurance.

Reule v. UEF, Order Denying Petitioner's Motion for Reconsideration, WCC No. 2015-3585, at ¶ 6.

The statute clearly established that the holding of an ICEC rendered a worker an independent contractor for purposes of workers' compensation and unemployment insurance. Following *Reule* and *McCone County*, the law is clear that the converse is also true: a worker who does not hold an ICEC but is required to do so is an employee for the same programs, even were he to meet the AB Test.

Forthcoming administrative rules

Recently, MTDLI issued a notice of proposed rulemaking regarding wage and hour laws which impact the ICCU. See 1 Mont. Admin. Reg. (25 - 33) (Jan. 12, 2018, available at sos.mt.gov/arm/register/index) (For those interested, the comment period remains open until Feb. 12). There, the definition of independent contractor is proposed to be modified at Admin. R. Mont. 24.16.102 to mean "an individual working under an independent contractor exemption certificate provided for in 39-71-417, MCA." Further, at Admin. R. Mont. 24.16.7520, the proposal clarifies that the interpretation for wage and hour purposes as to worker status is

the same as that outlined above for UI and workers' compensation purposes, thus eliminating the need for an AB Test analysis in wage and hour matters when an ICEC is required.

In addition, MTDLI expects to release a proposal for simplification and clarification of the rules for the ICCU in the near future.

Conclusions

Because worker status is conclusively determined based on whether the worker has an ICEC, the importance of advising clients about the program is paramount. While historically worker status questions could be resolved after the fact through a trial of facts surrounding the working relationship, the current model most often demands a single, narrow inquiry: whether the worker has an ICEC and is working under it. Employers should be advised to make sure of ICEC status before or at the time of hiring. This can be done either through the ICCU's website (mtcontractor.com) or by calling the department at 406-444-9029.

Instead of a post-hoc determination, by direction of the Legislature the ICCU now engages in extensive evaluation of potential independent contractors before work begins. The ICEC program limits the necessity of litigation, permits a conclusive, predetermination of worker status, and ensures predictability for businesses as to the working relationship of those hired.

Quinlan L. O'Connor is Lead Counsel for the Montana Department of Labor & Industry. He is a graduate of Yale University and The Catholic University of America, Columbus School of Law, and his practice focuses on worker misclassification, discrimination, and other employment disputes.

Justice, from page 21

and was named an All-American skier in 1983. She was inducted into the MSU Athletic Hall of Fame in 2011. She earned a business degree from MSU in 1983.

She also has won multiple awards as a competitive softball, racquetball and soccer player.

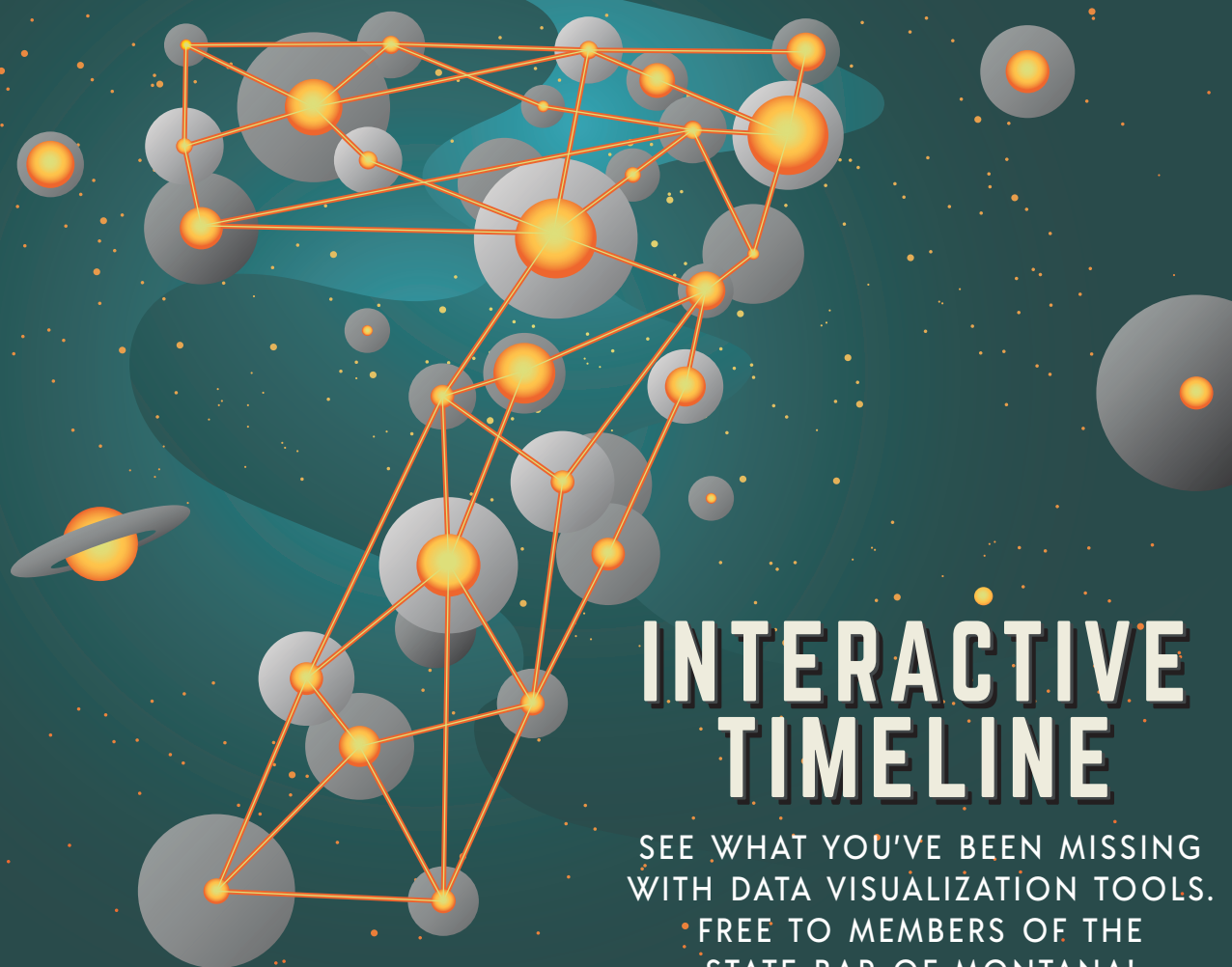
She continues to be involved in sports: She served as a soccer coach at the youth and high school levels in Billings for over

20 years, and she referees soccer matches at the high school and intercollegiate levels.

Gustafson was appointed as a district judge by then Gov. Judy Martz in January 2004 and won election to the seat in 2004, 2006 and 2012.

Gov. Bullock appointed Gustafson, 56, on Dec. 14 to replace Justice Michael Wheat, who retired at the end of 2017 after seven years on the court. Gustafson must run for election in November to retain her Supreme Court seat.

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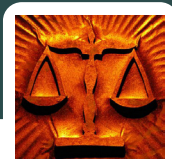


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William James May

William James May, Sr., age 99, a longtime Conrad resident, died Jan. 21, 2018.

He was born Nov. 18, 1918 in

Bridgeport, Conn. He enlisted in the Navy during World War II, serving as a first-class petty officer in mine-sweeping plan operations at the Caribbean Sea Frontier Base.

Following military discharge, he attended May where he was a member of the Delta Sigma Tau fraternity. Upon completion of his studies at the Gregg College Division of Northwestern in Chicago he was appointed Official Court Reporter for the Ninth Judicial District of



the state of Montana covering Pondera, Teton, Glacier and Toole Counties, in February of 1950. He served in that capacity for 35 years, retiring in 1985 with the distinction of having served longer than any elected or appointed official in those four counties. When he retired and on two previous occasions he was publicly honored by the Ninth Judicial District Bar Association for his dedicated services.

Bill and Elizabeth L. Clavin were married in St. Michael's Catholic Church in Conrad on Sept. 24, 1951. Active in community affairs, he served as a past Secretary Treasurer of the Conrad Lions Club, was a charter member of the original Conrad Jaycees, a past twelve-year member of the Board of Trustees of the Conrad Public Library, and served eight years as an elected trustee of Conrad School District 10 and as chairman when

Prairie View School was constructed and additions made to Conrad High School during the missile crisis, also serving as a member of the Advisory Panel for the Conrad-Great Falls College Center.

In addition to his duties as Ninth Judicial District Court Reporter, he served as Pondera County Justice of the Peace from 1964 to 1973 and as deputy City of Conrad Magistrate. He also was elected Pondera County Public Administrator serving multiple two-year terms. Following retirement as a court reporter he served the Pondera County District Court as bailiff and as a Guardian ad Litem. He was a member of the National Court Reporters Association and a past president of the Montana Court Reporters Association and editor of its publication.

Juvenile, from page 17

"Steilman could potentially serve as little as 31.33 years exclusively attributed towards" the crime at issue in this case. The Court concludes that "Steilman would be hard pressed to argue that [a sentence of 31.33 years] was disproportionate to the horrific crime he committed."

While the Court's overarching point, that a functional sentence of 31.33 years does not violate the *Graham*, *Miller*, or *Montgomery*, is appealing, the fact remains that Steilman was sentenced to 110 years without parole in this case. Further, in his dissenting opinion, Justice Wheat highlighted several other jurisdictions where shorter sentences than 55 years had been invalidated under *Miller* and *Montgomery*.¹⁶ In that regard, it is difficult to reconcile the Court's application of the law to Steilman's sentence with the rest of the opinion, as well as governing federal law. The determination that the length of the sentence pronounced in Steilman's case is insufficient to trigger the *Montgomery* analysis because of the additional realities the Court mentions rings hollow. Not because those exterior factors

could not be considered by a sentencing court, but because the Court makes that determination without allowing Steilman the opportunity to present the case that the crime at issue reflected transient immaturity as opposed to irreparable corruption. An allowance it deems earlier to be constitutionally required.

Further, an important question remains as to what constitutes proper relief for juvenile defendants that fall within *Steilman*'s scope. Both dissenting opinions highlight this issue, but suggest differing approaches. Justice McKinnon argues that a petition should be remanded to the district courts for resentencing, leaving the court free to impose the original sentence. Justice Michael Wheat, joined by Justice Dirk Sandefur, follows the guidance proposed by the U.S. Supreme Court in *Montgomery*,¹⁷ and suggests that the parole restriction be removed from the sentence, allowing the parole board to consider "Steilman's youth and attendant characteristics at the time of his crime and his development and behavior during incarceration."¹⁸

The question of whether to order a defendant be resentenced or to strike the offending parole restriction is complex

and delicate. Procedural matters such as overcrowded dockets and budgetary restrictions combine with questions involving how to reintegrate defendants who have known only the confines of a prison for a majority of their lives to add varying shades of legal and social issues to the mix. As was the case following Congress's passage of the Anti-Terrorism and Effective Death Penalty Act of 1996, the best solution here is likely legislative. Until Montana's legislators act, however, we will likely see various iterations of the questions wrought by *Steilman* brought to the Montana Supreme Court for review.

In that regard, some of these issues may be before the Court more quickly than expected. District Court Judge Gregory Pinski has ordered that Steven Keefe be resentenced in light of the Court's decision in *Steilman*. Keefe was sentenced to three consecutive terms of life imprisonment plus 50 years after being convicted on three counts of deliberate homicide when he was 17. That proceeding is currently scheduled for March 2018.

Lars Phillips is an attorney practicing in Bozeman, Montana



¹⁶ *Steilman*, ¶ 28 (Wheat, Sandefur, JJ., dissenting).

¹⁷ *Montgomery*, 136 S. Ct. at 736.

¹⁸ *Steilman*, ¶ 32 (Wheat, Sandefur, JJ., dissenting).

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LEGAL ASSISTANT/PARALEGAL: Small Missoula civil litigation law firm seeks an experienced legal assistant/paralegal. Duties include monitoring deadlines, daily communication with clients and other parties, scheduling, file management, records review/organization, trial assistance and general office duties. Position requires strong organizational skills, familiarity with case management software, the court system and the ability to quickly shift between projects. Attention to detail and a litigation background are a must. Full time, flexible and casual work environment. Compensation dependent upon experience and background. Please provide cover letter and resume to: Hansberry & Jourdonnais, PLLC, by email to jenny@hjbusinesslaw.com.

LEGAL ASSISTANT/PARALEGAL: Mid sized Kalispell law firm seeks a legal assistant/paralegal for full time, long term employment. This position requires advanced computer proficiency. Duties include daily communication with clients and other parties, scheduling, document preparation, file management, records review/organization, trial assistance and general legal assistant and paralegal duties. This is a fast paced position requiring strong organizational, multi-tasking, and people skills. Attention to detail and the ability to work as part of an existing team are a must. Hours generally 8:30-5:30 M-F. Salary will depend upon applicants experience and background. Firm offers benefits, including health insurance, retirement and paid time off. Please provide cover letter, resume, and references to: Moore, Cockrell, Goicoechea & Johnson P.C. PO Box 7370, Kalispell, MT, 59904 and/or via email to ksmith@mcgalaw.com.

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MEDIATION AND ARBITRATION SERVICES: Please contact Carey E. Matovich, Matovich, Keller & Murphy, P.C., Billings, MT, 406-252-5500, or email at cmatovich@mkmfir.com.

CONSULTANTS & EXPERTS

APPRAISALS: DIL Appraisals, provides personal property appraisals to International Society of Appraisers (ISA) standards and according to the Uniform Standards of Professional Appraisal Practice (USPAP) for Fine Art, Antiques and Residential Contents for Estate Tax and Donation; Equitable Distribution for Estate Planning, Dissolution of Marriage; Insurance, Damage Claims, Bankruptcy and Expert Witness. Contact Dorothy Long, ISA AM, dorothy@dilappraisals.com, www.dilappraisals.com, 954-336-5458 in Billings, MT.

ARCHITECTURAL EXPERT, FORENSIC INVESTIGATION & ANALYSIS: 43 years architectural experience. Specializing in Contract Administration; Specifications; and Architect / Owner /Contractor relationships. Extensive knowledge of building 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: 1-406-212-7943.

CONSTRUCTION EXPERT: Over 25 years residential and commercial construction experience. Expert services include bid or project document and plan reviews, onsite inspections for code and/or specification compliance or deficiencies, written reports, consultations, and in-person testimony. Work history includes extensive construction and legal experience - large firm construction management, small firm business ownership, and legal firm paralegal work and practice administration. For CV, fee schedule, references or other information call 406-855-1823 or email 406.cbms.llc@gmail.com.

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

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@dpcmt.com. www.dpcmt.com. 406-899-0522.

SECURITY EXPERT WITNESS: Board Certified Protection Professional and former Senior Police Commander providing forensic consulting to both plaintiff and defense counsel in all areas/venues of security negligence. A comprehensive CV, impeccable reputation and both criminal and civil experience equate to expert litigation support. Michael S. D'Angelo, CPP. Secure Direction Consulting, LLC. www.securedirection.net. (786) 444-1109. expert@securedirection.net

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