

MONTANA LAWYER

State Bar
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Mudd selected as new State Bar executive director

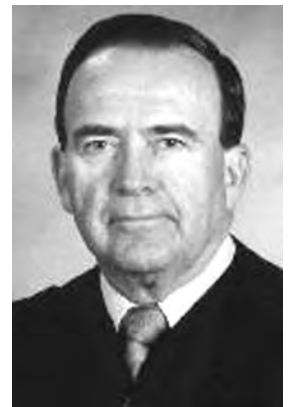
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Court seeks comment on dues increase

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- > 67 new Montana attorneys take oath at swearing-in ceremony
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- > Fehr, Harris, Raffiani nominated for 13th Judicial District judge
- > Kurt Alme confirmed as U.S. Attorney for Montana



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

Pro Bono Week is a reminder of responsibility to serve

In October, the National Celebration of Pro Bono Week (October 22-28) reminds us of our commitment to pro bono service. Sponsored by the Legal Services Corporation and the American Bar Association, this celebration provides an opportunity for local legal aid organizations to reach and serve more individuals needing legal services using volunteer lawyers, with this year's national focus on homeless youth.

As established in Rule 6.1 of the Montana Rules of Professional Conduct, every lawyer licensed in Montana has a professional responsibility to provide legal services to those unable to pay, and every lawyer should render at least 50 hours of pro bono publico services per year. However, identifying strategies to address Montana's unmet legal needs continues to be a challenging endeavor.

Professor Hillary Wandler examines the declining number of attorneys in rural Montana in her article "Spreading Justice to Rural Montana: Rurality's Impacts on Supply and Demand for Legal Services in Montana," 76 Mont. L. Rev. 225, and identifies the challenges that rurality causes in the delivery of legal services. The Montana Justice Foundation, with the help of Carmody and Associates, surveyed and analyzed Montana's unmet legal needs in a 2014 report entitled, "The Justice Gap in Montana: As Vast as Big Sky Country." This report, prepared to assist Montana's Access to Justice Commission in identifying and developing strategies to meet gaps in the delivery of legal services, now guides the work of many dedicated professionals who are working to address the unmet legal needs of Montanans. Montana Legal Services, in addition to providing direct representation to clients, is working to develop programs that are attractive to attorneys who are interested in assisting clients but unable to make a long-term commitment. These opportunities include referrals for limited scope representation and for "phone advice"

on a topic familiar to the volunteer attorney. Family advice clinics and self-help law centers, available in many judicial districts, also provide opportunities for pro bono service. The Access to Justice Commission, the Montana Justice Foundation, Montana Legal Services, the Alexander Blewett III School of Law and the State Bar are committed to improving Montanans' access to justice. But the success of these efforts depends on the continued dedication of Montana lawyers.

During the recent 43rd Annual Meeting, the State Bar of Montana recognized several distinguished lawyers for their pro bono work and efforts to improve access to justice. Helia Jazayeri and her colleague Travis Dye received the Neil Haight Pro Bono Service Award for providing hundreds of hours of pro bono representation to low-income individuals in landlord-tenant cases. In discussing her pro bono work, Helia explained that she identified an area of the law where she could provide meaningful legal assistance to people in need that didn't involve the complexity of child custody issues and could be completed in a reasonable period.

Like Helia and Travis, many Montana attorneys have found a path to provide pro bono legal services and devote countless hours to help meet Montanan's unmet legal needs. Others, like Victor Valgenti, a Missoula attorney recently recognized for 36 years of service on the Judicial Standards Commission, focus their efforts on public service. I would like to take this opportunity to thank members of the Bar who have generously provided pro bono service, who are working to meet Montana's unmet legal needs, and who provide public service. For your past efforts, thank you. For your commitment to provide pro bono services in the future, thank you. Joining together, we can bridge the justice gap in Montana, increase confidence in the legal system, and improve the lives of Montanans.

Sanders joins Victim Legal Assistance Network at Montana Legal Services Association

Heidi Sanders was recently added to Montana Legal Services Association's Victim Legal Assistance Network. As staff attorney, she is assisting victims of crime who face civil legal issues.

Sanders is a 2016 graduate of the University of Montana's Alexander Blewett III School of Law. She comes to MLSA from a clerkship with the Honorable Amy Eddy, 11th Judicial District Court judge.

Before attending law school, Sanders worked as a victim advocate serving survivors of intimate partner violence, sexual assault, and stalking on the Flathead Indian Reservation. She was raised in Helena and is excited to be living and practicing in her hometown.

Goldwarg joins as associate attorney at Angel, Coil & Bartlett in Bozeman

Eric Goldwarg has joined Angel, Coil & Bartlett in Bozeman as an associate attorney.



Goldwarg

Goldwarg's litigation practice focuses on family law (including collaborative divorce), general civil litigation, and landlord-tenant matters. Prior to joining Angel, Coil & Bartlett, 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 grew up in Montreal, Quebec, and graduated from Middlebury College and Vermont Law School. He can be reached at 406-586-1926 or eric@angelcoilbartlett.com.

Williams opens eastern Montana satellite office

Jennifer A. Williams is pleased to announce that as of Aug. 24, she is providing legal services to eastern Montana and has opened a satellite office in Ekalaka. Williams is an associate attorney for MacMillan, Wallace & Athanases, PLLC, in Minneapolis, and practices in the areas of real estate, business law, family law, wills and probate, criminal law, and mental health law. Williams also participates in the firm's 30-plus-year city attorney contract prosecuting misdemeanor cases.



Williams

Williams has a unique practice that involves traveling between Ekalaka and Minneapolis where she handles a multitude of client matters. She is licensed in Montana and Minnesota and provides a wide range of legal services. She also includes virtual services for her clients, including video conferencing and real time meetings.

Williams was born in Minnesota, but she and her parents moved to Sidney in 2002. Williams received her Bachelor of Arts degree from Dickinson State University in Dickinson, N.D. She completed law school at William Mitchell College of Law (now known as Mitchell Hamline School of Law) in Saint Paul, Minn. Since graduation, Williams has worked in the commercial real estate industry and been a judicial staff attorney for the Honorable Karen Asphaug in Dakota County, Minn.

Additionally, her husband's family lives in Baker and Ekalaka, MT, providing an opportunity for her to extend her practice to eastern Montana. She has coupled with Ekalaka practitioner Richard O. Harkins, to make that happen, which is where her satellite location is housed. Williams' Ekalaka office is located at 11 Main St, Ekalaka, MT 59324. MacMillan, Wallace & Athanases, PLLC is located at 9220 Bass Lake Road, Suite 355, New Hope, MN 55428.

Williams looks forward to serving the people of Eastern Montana. You can reach her at 406-489-1269 (cell), 763-559-9553 (business), or jawilliams@mwlaw.us.

Secretary of State moves most to exclusively digital format for most business services

The Montana Secretary of State's Office announced that it moved to an exclusively digital format for most business services starting Sept. 1.

Services affected include registering, amending, or renewing a business, filing annual reports or trademarks, and requesting copy work.

The office also has launched a new service called introduced Search-Click-Pay for businesses that are making no changes on their annual reports.

According to the Secretary of State's Office, 90 percent of Montana businesses will be able to use the service, which allows them to search for their business, click to enter an expedited portal and pay without logging in. The remaining 10 percent that do have changes can still use the state's E-Pass login portal.

Have Member News to Submit?

Do you have news you would like to share with the Montana legal community? The Montana Lawyer welcomes submissions from Montana attorneys about new jobs, honors, publications, and other accomplishments, which are free to submit.

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



67 attorneys take oath of admission

Pass rate for July 2017 bar exam was 85%



Photos by Joe Menden/Montana Lawyer

The 67 newest members of the State Bar of Montana take the Oath of Admission Sept. 26 in the House Chambers in the Montana Capitol.

**By Joe Menden
Montana Lawyer**

There were a lot of smiling faces in the Montana Capitol as the State Bar of Montana welcomed 67 new members at a swearing-in ceremony on Sept. 26. Paul Kirgis, dean of the University of Montana's Alexander Blewett III School of Law, may have been nearly as happy as the newly minted lawyers and their family and friends.

That's because the pass rate jumped to 85 percent for the July 2017 after several down years, including a historic low of 62 percent in 2015. The pass rate for UM law students was even higher – 89 percent, 93 percent for the school's first-time

takers of the exam.

"We are just so delighted to see so many of you pass the bar exam," Kirgis said in his address to the new lawyers. "It's a tribute to your hard work and the support of those around you who helped you get to this point and get across that final hurdle."

Kirgis also told those being sworn in that they are joining the profession at a critical time. Regardless of a person's political leanings, he said, it is impossible not to notice and worry about the fracturing of and loss of confidence in many of our national institutions.

OATH, next page

Alme confirmed as Montana's US Attorney

The U.S. Senate on Sept. 14 confirmed Kurt Alme of Billings as the new U.S. Attorney for the District of Montana, more than two months after the White House nominated him to fill the post.



Alme

Alme was the First Assistant U.S. Attorney from 2003 to 2010. Before his confirmation, he had been president and general counsel of the Yellowstone Boys and Girls Ranch Foundation.

The White House announced Alme's nomination on June 29 after Sen. Steve Daines — Montana's senior Republican congressman — recommended him. Sen. Jon Tester, a Democrat, joined Daines in supporting Alme for the role.

"Kurt Alme is the right man for the job and I'm thrilled to see bipartisan support for this well-qualified public servant," Daines said in a statement after the Senate vote.

The District of Montana is the largest geographic federal court district in the lower 48 states. Alme was sworn into office in late September.

Former U.S. Attorney for Montana Michael Cotter — along with 45 other U.S. attorneys across the country who were appointed during the Obama administration — was asked to resign by President Donald Trump in March. Cotter is now serving as chief disciplinary counsel for the Office of Disciplinary Counsel.

Former Montana U.S. Attorney William Mercer and Attorney General Tim Fox issued statements of support.

A Montana native, Alme went to high school in Miles City and graduated cum laude from Harvard Law School in 1992. He clerked for U.S. District Court Judge Charles Lovell before joining the Crowley Law Firm in Billings. There he practiced nonprofit law, business and estate planning, and tax law, eventually becoming a partner at the firm.

In 2001, he was named director of the Montana Department of Revenue before joining the U.S. Attorney's Office. He left the office in 2010 to become general counsel at the Yellowstone Boys and Girls Ranch Foundation — an organization that provides tax and charitable planning to help support the ranch, which works with emotionally troubled youth — and became its president in 2013.

OATH, from previous page

"The rule of law has never been more important, and therefore the profession has never been more important," he said. "You have in front of you careers in which you will make meaningful contributions to your state, to your country and the world through your dedication to the rule of law and our legal institutions."

The Honorable Leslie Halligan, State Bar President, also addressed the new lawyers, telling them that getting involved in the bar can help them transitioning into their new careers. She noted the bar's many sections that offer the opportunity to share knowledge with like-minded lawyers across the state,

which can help them in the pursuit of their personal and professional goals.

"We encourage you to join those sections," she said. "Certainly as new admittees, I encourage you to join the New Lawyers Section. That will assist you in getting your feet on the ground, to develop relationships across the state and to be mentored by others who are not so new to the practice."

The swearing-in ceremony was the first using the newly amended Oath of Admission. The new oath adds a pledge to maintain civility toward opposing parties and their counsel not only in court, but also in all written and oral communications.

The Montana Supreme Court ordered the change to the oath on Sept. 19 after a 90-day comment period.

406-683-6525

Montana's Lawyers Assistance Program Hotline

Call if you or a judge or attorney you know needs help with stress and depression issues or drug or alcohol addiction .

Court seeks comment on Bar dues increase request

Bar members, public can comment until Nov. 17

The Montana Supreme Court is asking for comment from State Bar of Montana members and the public on a dues increase request from the State Bar.

The bar petitioned the court on Sept. 21, asking for a dues increase ranging from \$25 to \$100 depending on member type. For Active Attorney members, dues would increase from \$200 to either \$285 or \$300; for Inactive Attorney members, dues would rise from \$125 to \$190; and for Senior members, dues would increase from \$50 to \$75. Dues would not increase for other member types.

"We look forward to working with our members to ensure the viability of the State Bar and the continued self-regulation of our profession," said Bruce Spencer, immediate past president of the Bar. "We have been good stewards with our member dollars and have not asked for a dues increase in eight years. The loss of revenue from the Health Trust disbanding and cost

inflation require the Bar to ask for the increase to maintain financial stability. Our Trustees will be meeting with local bars in the coming months to gain member insight."

State Bar members and members of the public may file comments on the proposed increases with the clerk of the Montana Supreme Court on or before Friday, Nov. 17. The comment period opened on Sept. 27.

After the comment period, the bar will have until Dec. 1 to respond in writing to the comments from the public and membership.

According to the bar's petition, increased administrative costs for the bar to support court-ordered programs are the primary reason a dues increase is needed. The bar has monthly expenses of approximately \$130,000. The bar has 16 employees, not counting six Office of Disciplinary Counsel employees.

In addition to providing services to State Bar members and to the public, State Bar staff directly support four Supreme Court Commissions, 17 State Bar committees, and 17 State Bar sections.

A copy of the court's order for a comment period – to which the bar's petition for a dues increase is attached – is posted on the bar website at www.montanabar.org.

7 apply for justice seat on Montana Supreme Court

Seven people have applied with the Judicial Nomination Commission for a seat on the Montana Supreme Court that is opening in January. They are:

- Michael G. Black, 55, Helena, litigation director for Montana Legal Services Association.
- Professor Cynthia Ford, 63, Missoula, Alexander Blewett III School of Law at the University of Montana
- The Honorable Ingrid Gayle Gustafson, 55, Billings, chief judge of the 13th Judicial District.
- James Gebhard Hunt, 64, Helena, sole practitioner, Hunt Law Offices.
- Micheal F. Lamb, 63, Helena, Lamb & Carey Law Firm.
- The Honorable William Russell McElyea, 57, Bozeman, chief water judge, State of Montana.
- Martha Sheehy, 54, Billings owner/attorney at Sheehy Law Firm.

The applications may be viewed at http://courts.mt.gov/supreme/boards/jud_nomination.

The commission is now soliciting public comment on the applicants. Submit written comments to: Judicial Nomination Commission, c/o Lois Menzies, Office of Court Administrator, P.O. Box 203005, Helena, MT 59620-3005; or by email to mtsupremecourt@mt.gov. Comment also will be accepted via telephone at 406-841-2950.

Comments, which will be posted on the commission web page, will be accepted until 5 p.m. on Wednesday, Nov. 1.

At the end of the comment period, the commission will interview candidates, if necessary, and forward three to five nominees for appointment by Gov. Steve Bullock.

The successful candidate will replace Justice Mike Wheat, who has announced that he is retiring effective the end of this year.

MONTANA DEFENSE TRIAL LAWYERS

2017 Annual CLE Seminar

October 13, 2017 | 6 CLE credits (3 ETHICS CREDITS INCLUDED)

Doubletree by Hilton Missoula Edgewater, Missoula, Montana

A limited block of rooms has been reserved for MDTL program participants. Call 406.542.4611 and ask for the MDTL room block rate.

For full schedule and additional information, visit www.mdtl.net.

Seminar Schedule

7:30 am	Registration
8:00 - 10:00 am	Electronic Discovery
10:30 - 11:30 am	Medical Damages (Part 1)
11:30 am - 1:15 pm	MDTL Annual Membership Meeting Luncheon & Election of Board Members <i>Lunch on your own if not attending</i>
1:15-2:15 pm	Medical Damages (Part 2)
2:30 - 4:30 pm	Self-Care and Resilience for the Professional
4:30 pm	Reception: Hosted by the Alexander Blewett III School of Law, University of Montana



Seminar Overview

Register below or online at mdtl.net

Electronic Discovery (1 ethics credit):

- 1) Electronic discovery amendments to the Federal Rules of Civil Procedure; ethical implication effective on December 1, 2015;
- 2) Data preservation obligations and potential sanctions for failing to properly preserve data;
- 3) Technology-assisted review, including predictive coding; and
- 4) Emerging electronic discovery trends

Thomas M. Jones, Esq., Cozen O'Connor, Seattle

Eric Robinson, JD/PMP, Kroll Ontrack, Richmond, VA Area

Medical Damages: Billed vs. paid; utilizing experts to establish reasonable medical damages post-Meek.

Patrick M. Sullivan, Esq., Poore, Roth and Robinson, Butte

Andrew T. Newcomer, Esq., Ugrin Alexander Zadick, P.C., Great Falls

Paul Haffeman, Esq., Davis, Hatley, Haffeman & Tighe, Great Falls

Moderator: Mark Thieszen, Esq., Poore, Roth and Robinson, Butte

Self-Care and Resilience for the Professional (2 ethics credits):

Participants will gain an understanding of the impacts of chronic stress and its impact on overall wellness, as well as its interaction with a lawyer's ethical duties. They will gain personal insight into their own level of professional satisfaction, craft a self-care plan, and gain resilience skills so as to be able to continue fulfilling their important responsibilities as a representative of clients, an officer of the legal system and a public citizen.

Katy Nicholls, LCSW, Parker, Colorado

Name _____

Nickname for badge _____

Firm _____

Address _____

City/State/Zip _____

Email _____

	On or Before Sep. 15	After Sep. 15
<input type="checkbox"/> MDTL Member	\$260	\$325
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Registration Policies: The registration fee includes all sessions and course material. Payment must accompany registration form to receive early registration discount. **Cancellations received in writing by September 15 will be subject to a \$25 service charge. No refunds will be made after September 15.** Registration substitutions may be made at any time without incurring a service charge.

If mailing registration, send to:

MDTL 36 S Last Chance Gulch, Suite A Helena, MT 59601

Phone: 406.443.1160 ■ Fax: 406.443.4614

mwangen@rmsmanagement.com ■ www.mdtl.net

John Mudd selected as State Bar of Montana's executive director

Will take over for longtime State Bar ED Chris Manos effective Jan. 2, 2018

The State Bar of Montana is pleased to announce that John Mudd has been selected as the new executive director for the organization. Mudd will begin his duties January 2, 2018, upon the retirement of current executive director Chris Manos.

"We are very pleased that John will be joining us and bringing his diverse practice background and years of experience working with members of the Montana bar to this position," said State Bar of Montana President Bruce Spencer. Mudd was selected following a national search. He has served as the Director of Development and Alumni Relations for the Alexander Blewett III School of Law at the University of Montana since 2010 and is a long-standing member of the Bar's Professionalism Committee.

"I am truly humbled by the opportunity to work with the Board of Trustees and lead the outstanding staff of the State Bar of Montana as we work to fulfill the Bar's mission to serve its members and the public, and to promote the legal system in Montana including access to justice for all," said Mudd.

"John has been an integral member of our team at the law school, from record fundraising to alumni engagement to modernizing the school's communications, including the Montana Barrister Magazine," said Dean Paul Kirgis. "While we are sad to see him leave, the relationship between the law school and the bar is vital and we are excited to continue to work with John in this new role."

Outgoing executive director Chris Manos will retire January 1, 2018 after more than 16 years of service to the State Bar of Montana. "Chris has dedicated himself to constantly improving the operations of the State Bar of Montana and working to benefit its members," said Spencer. "He will be truly missed as he begins his next chapter."

Mudd previously served as Executive Counsel for the State Auditor and, prior to that, was in private practice in Missoula.



John Mudd

He also served as the Secretary of the Montana Senate during the 2007 legislative session. Mudd holds a Juris Doctorate from the University of Montana School of Law, where he was an editor of the Montana Law Review and a member of the School's national championship moot court team. He received his undergraduate degree with honors from the Catholic University of America in Washington, D.C and was elected to Phi Beta Kappa.

The State Bar of Montana (www.montanabar.org), with offices in Helena, has over 5,000 members. The Bar provides professional services to Montana lawyers and education and services to the public, consumer brochures, and distribution of legal information.

New Peak for ALPS founder



Above, Robert W. Minto, right, stands with Bar President Bruce Spencer after receiving the William J. Jameson Award at the 2017 Annual Meeting. At right, Minto addresses the banquet attendees.

The Jameson Award is the highest honor bestowed by the bar for distinguished legal service which exemplifies the essence of professionalism.

Photos courtesy of ALPS/Andrew Sweet photographer





Above: Montana Supreme Court Justice Beth Baker, left, presented the Honorable Karen Townsend of Missoula with the Karla M. Gray Equal Justice Award at the Annual Meeting.

Below: Helia Jazayeri, left, and Travis Dye hold their plaques after receiving the Neil Haight Pro Bono Award at the Annual Meeting.



Hooper, Manning share Haswell Award

Trent Hooper and Michael Manning shared the 2017 Frank I. Haswell Award for outstanding Montana Lawyer contribution.

Hooper (pictured at right), of Jupiter Law Group, with offices in Billings and Folsom, Calif., won for his article "Can I Make a Copy of That? A Primer on Copyright's Fair Use Doctrine." Manning, of Manning Ritchie law firm in Billings, won for "May it Please the Court, his series of columns combining appellate practice tips and summaries of Ninth Circuit opinions from cases that originated in Montana.

The award, which is named for former Supreme Court Chief Justice Frank I. Haswell, includes a cash award.



Distinguished group of 50-year members

At right, retired Montana Supreme Court Justice John Warner receives recognition for 50 years of service to the legal profession in Montana. Before appointment to the Supreme Court, Warner served as 12th Judicial District judge for 14 years. He was also president of the State Bar of Montana, 1987-1988.

Below: From left, 50-year members Bob Campbell, David DePuy, retired U.S. Magistrate Judge Leif "Bart" Erickson, James McLean, Michael Nash, Kenneth Peterson, J. Dwaine Roybal, James Screnar, and James Torske. Bonnie Swandal, the only woman to sit for the bar exam in 1967, was unable to attend, but her son Sen. Nels Swandal and granddaughter Rebecca Swandal, both attorneys, accepted her award.

Fifty-year members not in attendance were: Gerald Archambeault, retired District Judge G. Todd Baugh, Donald Hedman, Donald LaBar, Louis Nybo, Laurence Petersen, Darrell Peterson, and Robert Sheridan,





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PROGRAM HIGHLIGHTS

- Watch premier trial lawyers do what they do best.
- Observe effective and proven techniques to use in direct and cross-examination of lay and expert witnesses.
- Network with colleagues and earn CLE credit.

The Foundation of the American Board of Trial Advocates is dedicated to educating lawyers in the art of trial advocacy. The Masters in Trial® program shows how some of the most successful trial lawyers in the country conduct a trial. All of the trial team counsel are ABOTA members and are well-known and highly respected in their fields.

FEATURED TRIAL PRESENTERS

Presiding Judge

Hon. Dana L. Christensen *United States District Court for the District of Montana*

Plaintiff Team

Alexander (Zander) Blewett, III *Hoyt & Blewett, PLLC*

Michael D. Cok *Cok Kinzler, PLLP*

Donald L. Harris *Harris, Gannett & Varela, PLLC*

Sydney E. McKenna *McKenna & Starin, PLLC*

Peter W. Riley *Schwebel, Goetz & Sieben, P.A.*

Renée E. Rothauge *Markowitz Herbold, PC*

Defense Team

Kathleen L. DeSoto *Garlington Lohn & Robinson, PLLP*

Wilma J. Gray *McNamara, Ney, Beatty, Slattery, Borges & Ambacher, LLP*

Mikel L. Moore *Moore Cockrell Goicoechea & Johnson, P.C.*

Randall G. Nelson *Nelson & Dahle, P.C.*

Dominique A. Pollara *Pollara Law Group*

Linda Star *Lewis Brisbois Bisgaard & Smith, LLP*

The Foundation of the American Board of Trial Advocates has requested approval from the Montana Commission on Continuing Legal Education.

Visit ABOTAMastersinTrial.org to register!
Discounted rates are available to groups of 3 or more.



Emma Eodice, left, and Aurora Smith, both from Helena's Capital High School, listen as their witness is cross-examined at a recent mock trial competition. Seated behind them are Tyler Ballweber and Hoke Bell from Helena High School.

TRIAL RUN AT TRIALS

High school mock trial program taking off in Helena

By David Morine, Kayleigh Brown,
and Kacey Askin

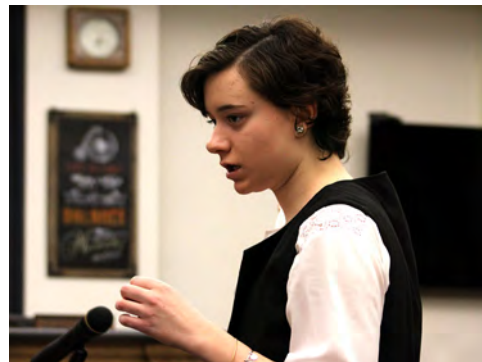
The defense attorney approaches the podium, trying not to let her nerves show. She is about to deliver an important closing argument in a criminal trial. The stakes are high. Her client stands accused of grand theft by possession of stolen property.

Making her task even more difficult, she has never been to law school. She doesn't even have an undergraduate degree. Her training consists solely of a few months of practice as a member of a high school mock trial team.

The attorney, Jordan Straub, is a junior at Helena High School and has been a member of the school's mock trial program since its inception three years ago.

In the case at hand in this trial, the state claims the defendant's father organized a museum heist 20 years ago and stole six artworks by renowned Idaho artist James Castle. A few months ago, two of those paintings were recovered in the defendant's storage locker in Blackfoot, Idaho.

The defendant claims he knew nothing about the paintings. He says he discovered a key to the storage locker after his father died, and as soon as he saw the paintings in the locker he did everything he could to return them while keeping his family name



Jordan Straub of Helena High School delivers her argument.

Want to start a mock trial team?

For more information, if you are interested in starting a team in your area, or if you have any ideas you'd like to share, please contact David Morine (406-444-8771, dmorine@hwlawmt.com), Kayleigh Brown (406-457-2051, kbrown@crowleyfleck.com), or Kacey Askin (406-438-0042, kaskin@helenaschools.org). David and Kayleigh are the attorney coaches for the Helena teams. Kacey is the faculty coach and a teacher at Helena High School.

out of the newspapers.

The state argues the defendant was trying to sell the paintings and concocted a story about finding them in a forgotten storage locker only after he got caught. Three witnesses testify in support of the state's case, and Jordan has an uphill battle to convince the jury to acquit her client.

Former student made starting team her mission

The high school mock trial program in Helena began when a student who had participated in mock trial in South Carolina moved back to Helena. Disappointed there was no mock trial team, she made it her mission to build one. Within a couple months she had recruited two attorney coaches, a faculty adviser, and enough students to form a seven-person competition team.

Helena is the only community in Montana that has a high school mock trial program. Because Montana does not have its own program, Idaho has generously invited the teams from Helena to participate in the Idaho state competition for the past three years. Montana teams have found success each year. Exceeding all expectations, in 2015 the first team from Montana placed second at the Idaho regional competition and earned a spot at the state competition (where they finished fourth). In subsequent years, Montana teams have consistently advanced to the state competition and team members have earned many individual awards.

The mock trial program is similar to what many attorneys may have done in law school. Teams receive case materials in November — typically a complaint or information, sworn witness statements, and potential trial exhibits — and work with attorney and faculty coaches to prepare for trial in February or March. Each team consists of seven to ten students. Three students act as attorneys and three act as witnesses. Each team may also bring a sketch artist and teams must provide a student timekeeper. Teams prepare both the plaintiff/prosecution side and the defense side and present each at least once during the competition.

The students prepare the case themselves. They scour the witness statements and exhibits, looking for inconsistencies and other critical details. The student witnesses memorize the content of their witness statements and subject themselves to repeated practice rounds of direct and cross examination. The student attorneys prepare questions, opening statements, and closing arguments. At the same time, the student attorneys learn the rules of evidence and practice making and responding to evidentiary objections.

After a few months of after-school trainings, workshops, and practice rounds, the teams travel to Idaho (Caldwell, Coeur d'Alene, Pocatello, and Boise have been the destinations thus far) for the competition. Local judges, attorneys, and law students serve as competition judges. The "jury" is in fact three or four scoring judges and does not render a verdict, but rather scores each individual student's performance. The aggregate score for a team determines who wins the round. High-scoring attorneys and witnesses receive individual awards at the end of the competition.

The program has been a spectacular experience for all participants, regardless of whether they have any intention of making a career in law. Mock trial teaches essential skills that benefit



Emma Sihler of Helena High School testifies for the state.

students wherever their career path takes them; skills such as critical thinking, storytelling, working with a team, public speaking, and more. It introduces students to the U.S. legal system and teaches them how civil and criminal trials work. (The case switches between civil and criminal each year—2017 was a criminal case, 2018 will be a civil case).

The most significant problem facing Helena's high school mock trial is that Montana does not have its own statewide program. The teams in Helena have grown over the past few years from a single team in 2015 to three teams in 2017. The teams are now composed of students from both Helena High School and Capital High School in Helena. While grateful for Idaho's support, the students and coaches in Helena would appreciate an opportunity to compete in Montana against other Montana students.

In order to build a statewide program, we need more teams, more students participating, and more parents, teachers, attorneys, and judges volunteering to help. The organizers of Idaho's mock trial competition have offered to help build a Montana program. To get there, we need to spread the word and generate interest, and the members of the bar can help.

As attorneys, paralegals, and legal assistants, there are many ways we can help get a program off the ground. If you have high-school-aged children, ask if they are interested in starting a team at their school. Talk to teachers at your children's school (or any other teachers you may know) and ask how you can get a team started. Volunteer your time as an attorney coach or parent helper. Consider donating when students come asking for contributions to their bus and hotel fund. Spread the word and get your kids and their friends interested. This is an excellent opportunity for motivated students to start something in their high school that can have a lasting impact long after they've graduated.

For more information, if you are interested in starting a team, or if you have any ideas you'd like to share, please contact David Morine, Kayleigh Brown, or Kacey Askin. David and Kayleigh are the attorney coaches for the Helena teams. Kacey is the faculty coach and a teacher at Helena High School.

David Morine practices civil litigation in the Helena office of Hattersley Walter, PLLP. Kayleigh Brown practices civil litigation in the Helena office of Crowley Fleck, PLLP. Kacey Askin teaches law & justice and business at Helena High School.

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Understanding veterans' employment laws: What attorneys need to know

By Bryce Burke, Jennifer Shannon,
Molly Rickets, and Tyler Morgan

Montana is home to roughly 100,000 veterans.¹ Although the number is low in terms of total veteran population, Montana nears the top of the list for veterans per capita.² Since roughly one-tenth of Montanans are veterans,³ Montana's lawyers would be well-served to become familiar with the laws regarding servicemen and women.

On its face, veteran employment in the United States is strong. In December 2016, statistics show the veteran unemployment rate at 4.2 percent, placing veterans below the civilian (over 18) unemployment rate of 4.4 percent.⁴ However, when narrowing this same study to focus on veterans between the ages of 18 and 24, the unemployment rate makes a significant leap to 15.3 percent, roughly seven percentage points higher than non-veterans of the same age group.⁵ Additionally, the transition period from soldier to civilian is especially difficult, with the average unemployment rate of recently returned veterans nearly double that of non-veterans of similar education and demographics.⁶

This article provides a brief overview of the employment

Editor's Note:

Students in Professor Hillary Wandler's four-day veterans law course at the University of Montana's Blewett School of Law produced articles on various aspects of veterans law as a course project. This is the third and final of these articles to be published in the Montana Lawyer.

issues veterans face when transitioning from active duty, with specific focus on veteran rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). In addition, this article apprises attorneys of potential employment resources available to aid veteran clients in transitioning back to civilian life.

Discussion

A. Legal framework and key principles

Veterans' employment laws are primarily focused on promoting job security. These laws are designed to facilitate hiring and

discourage discrimination in the workplace against honorably-discharged uniformed service members.

Perhaps the most influential law regarding veterans' employment rights is the Uniformed Services Employment and Reemployment Rights Act (USERRA), which applies to all private and public employers regardless of size.⁷ The Act requires (1) that veterans not be disadvantaged due to their service and (2) that veterans be promptly re-employed in their civilian jobs upon returning from service.⁸

Employers must avoid discrimination in the workplace and in the hiring process due to past, present, or future military service.⁹ Under USERRA, employers can take no adverse action in the form of termination, hiring, pension, or any other means based solely on military service.¹⁰

Business owners are often surprised by USERRA's second requirement. The law provides that if a service member is deployed for less than five years and has given reasonable notice of deployment to his or her employer, the employer must hold the veteran's job until they return from duty.¹¹ Upon return, the veteran must be promptly reinstated to their position. The law also has an "escalator" provision, which requires that veterans returning to work be treated as if they never left, including promotions and pay raises.

When federally employed, veterans have even greater protections. They must be given hiring preference under the Veterans' Preference Act of 1944.¹² This act gives veterans additional points towards passing the civil service exam and allows them special consideration in the federal hiring process.¹³ Additionally, some veterans may qualify for work under the federal contractor program through the Jobs for Veterans Act, which provides veterans with employment and training services and requires affirmative action for hiring veterans in the public sector.¹⁴

Guided by this legal framework, the next two sections will discuss guidelines for representing employee veterans and employers in veteran employment law disputes. The first section details the rights of veteran employees in the workplace. The second section goes on to discuss the rights of employers and provides information on hiring veterans.

B. Advising Veterans on their Employment Rights

1. Hiring

If you are aiding a veteran who has not been able to find work for reasons they believe are discriminatory, there are two options.

First, USERRA makes it unlawful to discriminate against veterans during the hiring process.¹⁵ However, it is difficult to prove hiring decisions were made solely on veteran status.

Additionally, you should encourage the veteran to explore federal employment; as discussed above, veterans are given preference in the federal system and the federal government has made it a priority to train and employ veterans.¹⁶ There are also several other private and public programs that seek to aid veterans in finding civilian jobs, some of which are available under "further reading."

2. Discrimination under USERRA

Broadly, USERRA is an anti-discrimination law for employed veterans. But what does it protect against exactly? Here are a few things to know about your potential client's rights under this law.

Under USERRA, veterans cannot be fired for reasons

Checklist for Possible USERRA Claims

- ✓ Was your client discharged honorably?
- ✓ Did your client have civilian employment prior to being deployed?
- ✓ Did your client reasonably notify their employer of their deployment?
- ✓ Were they gone for less than 5 years?
- ✓ Did they apply to return to their previous employment in a timely fashion?
- ✓ Did your client provide documentation of military service when prompted by their employer?

stemming from military service.¹⁷ Veterans can, however, be fired for other reasons, so it is important to further examine the circumstances under which the firing occurred and cross-check it with Montana's Wrongful Discharge from Unemployment Act as well as other regulations regarding discharge.

It is also unlawful under USERRA to discriminate by refusing to provide promotions or incentives to service members following their return to the workplace.¹⁸ This applies equally to pensions, which under the law must be continued during the time of the veterans' deployment.¹⁹ Additionally, it is unlawful to discriminate based on other benefits such as health care, and employers must allow veterans to continue to receive health care through their business while deployed.²⁰

Further, veterans who are disabled by military service must not be discriminated against due to their disability.²¹ If a veteran is unable to perform their previous job, their employer must provide a reasonable accommodation to make that job accessible upon return.²²

Finally, employers under USERRA may not count the veterans' military leave as part of their vacation time.²³ Employees can, however, elect to use vacation time during their deployment.²⁴

3. Re-employment under USERRA

The second provision of USERRA requires that veterans gone for less than five years be reinstated at their position immediately upon return.²⁵ The immediacy of reinstatement is based on objective reasonableness, and can include the amount of time that it requires an employer to give notice to the employee hired to replace the veteran.²⁶

More importantly, USERRA's escalator principle requires that veterans be re-employed in the position that they would have occupied if they had not left for military service.²⁷ This means that veterans have the right to claim trainings, promotions, and pay raises other employees relative to their position received during their absence.²⁸ It also means veterans can be legally demoted or fired upon their return if other workers in their position were similarly demoted or fired.

When advising a veteran on the employment reinstatement process, keep in mind applicable timelines within USERRA. For example, if the veteran's service period was for less than 31 days, they must notify their employer on the next regularly scheduled workday of their intent to return to their position after service completion. If the service period was between 31 and 180 days, the veteran must report to the employer within 14 days of service completion, and if the period is over 180 days, the veteran must submit an application for re-employment within

90 days of service completion.²⁹ Additionally, these timelines are established for standard cases, while also allowing extensions for servicemen and women who cannot reasonably complete the application and notification process within the given time.³⁰ Finally, advise the veteran that there is no specific form that needs to be completed for an application for re-employment, but rather that they should write a brief letter of notice to their employer of their intent to return to work. While there is not a specific form requirement, veterans and their counsel must ensure that notice letters to employers contain all requirements under USERRA provisions.³¹

4. Available legal actions under USERRA

While employers rarely purposefully discriminate against veterans, unfamiliarity with USERRA can lead to legal conflict. If a veteran comes to you with an employment complaint, here are some steps to aid them.

First, the online USERRA Advisor through the Department of Labor helps determine, through a series of online questions, whether your client has an eligible claim.³² If you determine there is a claim under USERRA, you can encourage the veteran to contact the Employer Support of the Guard and Reserve (ESGR), who provides free mediation services between veterans and their employers through ESGR's ombudsmen.³³

If mediation has been exhausted, there are two routes your client can take to resolve an employment dispute. Notably, once the veteran has proven that military status was the reason for discrimination, all legal actions give the employer the burden of proof.³⁴ Veterans can submit a complaint online or in person to the nearest Department of Labor, Veterans Employment Training Service (DVET).³⁵ DVET has limited enforcement power, but can encourage the veteran's employer to comply with the law.³⁶ If these negotiations fail, DVET can refer the complaint to the Office of Special Counsel (federal employees) or the state Attorney General (private/state employees).³⁷

A second option would be to file a private lawsuit against the employer. Attorneys are permitted to work out a normal fee agreement in these cases.³⁸ They can also request that attorney's fees be awarded under USERRA.³⁹ Aside from attorney's fees, damages are minimal for cases where the employer did not act willfully in discriminating against the veteran due to military service. If willful discrimination is the case, double damages can be awarded.⁴⁰

C. Tips for Advising Employers of Veterans

As a population, veterans are well-equipped to thrive in the workforce, due to the specialized training and work ethic taught in the military. Veterans are disciplined problem solvers with both group and individual work experience and are often cross-trained in a variety of different skills and systems.⁴¹ Veterans are often excellent hires, and attorneys must ensure client-employers are aware of the legislation surrounding veteran employment.

1. Private Employers

When advising clients about hiring veterans, be sure to discuss USERRA and the applicable considerations that will need to be taken if the employee gets deployed.

Additionally, you can provide your client with options to fill positions vacated by deployed veterans until the veteran returns

Contacts for Assistance Filing a USERRA Complaint

VETS (Veterans Employment and Training Service is authorized to investigate and resolve complaints of USERRA violations.

If VETS is unable to resolve your complaint, you may request that the case is referred to the Department of Justice or the Office of Special Counsel. Contact them at: 1-800-4-USA-DOL or find them online at www.dol.gov/vets

You may also bypass the VETS process and bring a civil USERRA action against an employer.

Employment Support of the Guard and Reserve

You can reach ESGR customer service at 1-800-336-4590, option 1 for questions or to refer cases to a trained Ombudsman or online at www.esgr.mil

Montana ESGR contact information:

Parker Sullivan – Volunteer Support Technician 406-791-0895

Dawn Lambert – Program Support Specialist 406-324-3128

Montana Director for Veterans' Employment and Training – Dan Bernhardt 406-447-3233

Montana Veterans' Program Assistant – Scott Mitchell at mitchell.scott@dol.gov

Note: all information current as of Jan. 21, 2017

from active duty. As Montana law provides that employment is not "at will" under the Wrongful Discharge from Employment Act,⁴² be sure to advise your clients to only hire replacement employees on either a temporary basis, or under a contract for the specific time that the veteran is on active duty. This will lessen the likelihood of the client facing a wrongful discharge suit or USERRA violation.⁴³ Because USERRA applies to all public and private employers, no matter their size, losing an employee to deployment can cause significant financial hardship. In this case, advise employers to look to the U.S. Small Business Administration (SBA), which provides Military Reservists Economic Injury Loans to qualifying small businesses to assist with expenses that cannot be met when an essential employee is called to active duty.⁴⁴

2. Self-Employed Veterans

For veterans who decide to start their own business, the SBA has multiple programs to ensure veterans have assistance and skills they need to successfully own and operate their own business. In connection with the DOD's Transition Assistance Program, veterans can enroll in the SBA Boots to Business program, a two-step program designed to teach business fundamentals and then guide veterans to implement these skills to develop their business plans.⁴⁵ These programs also focus on access to capital and periodically provide additional incentives on SBA loans for veteran-owned businesses.

In addition to loan and business startup assistance, veteran-owned small businesses can utilize the VA Office of Small & Disadvantaged Business Utilization programs to advance established businesses by procuring VA or other federal business contracts.⁴⁶ The OSDDBU can assist clients to ensure their business is capable and ready to secure government contracts, including opportunities that are specifically set aside for Veteran-Owned and Service-Disabled Veteran-Owned Small

Conclusion

Veterans are an integral part of both the workforce and society. They dedicate part of their life to protecting and serving our nation and its citizens. As a way of repaying veterans for their service, laws like USERRA have been established to ensure that servicemen and women have as smooth a transition into civilian life as possible. By educating yourself and your clients on USERRA and other resources for veterans returning from service, you will become a valuable source of knowledge for your clients and community.

Veterans may come across a variety of legal issues during their transition back into civilian life, outside of employment. To effectively represent a client with service experience, you may consider attending a CLE on veterans' law to familiarize yourself with scope of possible claims a veteran may encounter.

Further Reading

For more information about resources available to veterans and employers, see the following resources:

Print:

Barton F Stichman et al., *Veterans Benefits Manual* (2016 ed. 2016).

Online:

Department of Labor and USERRA,

<https://www.dol.gov/vets/programs/userra/USERRA%20Pocket%20Guide.html#6>

<https://www.dol.gov/vets/programs/userra/>

USERRA advisor for determining if you have a claim,

<https://www.dol.gov/vets/programs/userra/>

Employer Support of the Guard and Reserve,

<http://www.esgr.mil/>

Small Business Administration,

<https://www.sba.gov/starting-business/how-start-business/business-types/veteran-owned-businesses>

www.sba.gov

Resources for veterans looking for employment:

<https://www.vets.gov/employment/>

<https://www.va.gov/jobs/>

Bryce Burke, Jennifer Shannon, Molly Ricketts, and Tyler Morgan are students at the Alexander Blewett III School of Law at the University of Montana.

Endnotes

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https://www.dol.gov/vets/programs/fcp/federal_contractor_program_fs.htm (last visited Jan 21, 2017).

15 38 U.S.C.S. §§ 4301, 4335 (LexisNexis, Lexis Advance through Pub. L. No. 114-288, approved December 16, 2016).

16 See Veterans' Preference: U.S. Department of Labor Good Jobs for Vets.

17 38 U.S.C.S. § 4311 (LexisNexis, Lexis Advance through Pub. L. No. 114-288, approved December 29, 2016).

18 Id. § 4313.

19 Id. § 4318.

20 Id. § 4317.

21 Id. § 4313.

22 Id.

23 Id. § 4316.

24 Id.

25 Id. § 4312

26 Id. § 4313(a)

27 20 C.F.R. § 1002.192 (Lexis Advance through the January 18, 2017 issue of the Federal Register with the exception of 82 FR 5292, January 17, 2017, 82 FR 5790 and 82 FR 5844, January 18, 2017)

28 Id. § 1002.198.

29 38 U.S.C. § 4312 (2016)

30 Id.

31 Id.

32 USERRA Advisor, U.S. DEP'T OF LABOR, http://webapps.dol.gov/elaws/vets/userra/ee_disc2.asp (last visited Jan 21, 2017).

33 USERRA Contact, EMPLOYER SUPPORT OF THE GUARD AND RESERVE, <http://www.esgr.mil/USERRA/USERRA-Contact.aspx> (last visited Jan 21, 2017); File a Claim, U.S. DEP'T of Labor, <https://www.dol.gov/vets/programs/userra/fileclaim.htm> (last visited Jan 21, 2017).

34 20 C.F.R. § 1002.22 (Lexis Advance through the January 18, 2017 issue of the Federal Register with the exception of 82 FR 5292, January 17, 2017, 82 FR 5790 and 82 FR 5844, January 18, 2017).

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36 Id.

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38 38 U.S.C.S. § 4323(h) (LexisNexis, Lexis Advance through Pub. L. No. 114-288, approved December 16, 2016).

39 Id.

40 Id. § 4323(d)(1)(C).

41 Veterans' Employee Toolkit: Why Veterans Make Good Employees, U.S. DEP'T OF VETERAN AFFAIRS (Sept. 2, 2015), https://www.va.gov/vetsinworkplace/docs/em_goodemployees.asp.

42 Mont. Code. Ann. § 39-2-901 (2015).

43 Delaware v. K-Decorators, Inc., 1999 MT 13, 293 Mont. 72, 973 P.2d 818. (Employees are subject to the WDEA, but independent contractors are not).

44 Loans and Grants, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/loans-grants/see-what-sba-offers/sba-loan-programs/disaster-loans/types-disaster-loans/military-reservists-economic-injury-loans> (last visited Jan. 21, 2017).

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Hernandez retires after 42 years as Yellowstone JP

Yellowstone County Justice of the Peace Pedro Hernandez, the longest serving judge in Montana, announced his retirement from office Sept. 20.

Hernandez, 76, will leave office after 42 years effective Nov. 30.

In a letter to the Yellowstone County Commission and Billings media outlets, Hernandez noted that his wife, Debby, completed treatment for cancer in the past year. Debby Hernandez, Yellowstone County auditor, is also retiring Nov. 30.

"My place is with her," he said. "With the grace of God, I will have many more years to be her husband and the man that would make my family and my God proud."

The position is expected to be filled by appointment by the Yellowstone County Commission. Whoever is appointed must run for office to retain the position, which has a four-year term.

Hernandez has been on the bench for 42 years. He said he is the longest elected judge in the state. Pedro Hernandez,

76, said Wednesday he and his wife thought it "was a good time" to retire, saying he wanted to spend time with his family.

The Billings Gazette reports that the Yellowstone County commission intends to replace both officials by appointing committees to review applicants and make recommendations. The process is expected to begin shortly after the commission formally accepts their resignation letters at its Oct. 3 board meeting.



Yellowstone County Justice of the Peace Pedro Hernandez

Bar's Board of Trustees OKs new Water Law Section

The State Bar of Montana Board of Trustees voted to approve the formation of a Water Law Section at its meeting Sept. 20 at Fairmont Hot Springs.

The initial dues amount for the section is \$30 for general members, \$15 for law school members. The following people have agreed to serve as officers and council members upon election by section members:

Chair: Dana Pepper, Bozeman

Chair-Elect: Abigail R. Brown, Helena

Secretary: Ryan McLane, Helena

Treasurer: Joseph Breitenbach,

Billings

At Large: Andrew Gorder, Bozeman; Shane Morigeau, Missoula; Oliver Urick, Stanford; Jonah Brown, law student.

U.S. District Court for Montana seeks comment on proposed Local Rules amendments

The Local Rules Committee of the United States District Court for the District of Montana is now accepting public comment on proposed amendments to the Local Rules of Procedure. The deadline for comment is Wednesday, Oct. 25, at 5 p.m.

The rules and a table of the proposed

amendments are available at www.mtd.uscourts.gov/local-rules. Please send any comments you may have to LocalRules@mtd.uscourts.gov.

If adopted by the Judges of the District Court after the public comment period closes, amendments to the Local Rules are currently scheduled to go into effect on Friday, Dec. 1. This date may change. Please watch the District of Montana website for updates.



2018 Law Day theme focuses on separation of powers in US

The theme for the ABA's 2018 Law Day is "Separation of Powers: Framework for Freedom."

The 2018 theme will highlight the U.S. Constitution's provision for three distinct

and independent branches of government – Congress, the presidency, and the judiciary – and their relationship to one another as a check on power and ambition.

The 2018 Law Day will mark the 60th anniversary of the program. For more on the theme and on Law Day programs, ideas, and resources, visit the ABA's Law Day 2018 web page. If you are interested in putting on a Law Day program in your area please email at editor@montanabar.org.

Hurricane volunteers sought

Volunteer attorneys are needed to provide legal assistance to the residents of the several states and U.S. territories affected during this destructive hurricane season.

The ABA Disaster Relief page provides links to resources for those interested in volunteering or in donating to legal services providers. find out more at www.americanbar.org/groups/committees/disaster/disaster_relief.html#1%20

The ABA YLD, which coordinates legal services to disaster victims through an arrangement with FEMA, is making an urgent request for individuals to assist with relief legal services for individuals in Puerto Rico. Volunteers, particularly those conversant in Spanish, are asked to complete an intake form to be contacted by YLD coordinators.



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

We invite you to participate in the Modest Means program {which the State Bar sponsors}.

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

What are the benefits of joining Modest Means?

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

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

Questions?

Please email: ModestMeans@montanabar.org

You can also call us at 442-7660.



Are You Interested in Joining The Modest Means Program?

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

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

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Fehr, Harris, Raffiani nominated for 13th Judicial District judge seat

The Judicial Nomination Commission has submitted the following names to Gov. Steve Bullock for consideration for appointment to the vacant judicial seat in the 13th Judicial District (Yellowstone County):

- Jessica Teresa Fehr
- Donald L. Harris
- Joseph Mathieu Raffiani

The governor must fill the position within 30 days of receipt of the nominees. Fehr, Harris and Raffiani were among seven attorneys who applied to replace the Honorable Russ Fagg, who announced in July that he is retiring effective Oct. 13.

The commission's action comes after a 30-day public comment period. The commission also interviewed applicants.

The position is subject to election in 2018.

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

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

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

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

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

It's easy to join: Membership of the LRIS is open to any active member of the State Bar of Montana in good standing who maintains a lawyers' professional liability insurance policy. To join the service simply fill out the Membership Application at www.montanabar.org -> Need Legal Help-> Lawyer Referral and forward to the State Bar office. You pay the registration fee and the LRIS will handle the rest. **If you have questions or would like more information, call 406-442-7660 or email mhalligan@montanabar.org.**

Emeritus status: What is it and where do its members serve?



EQUAL JUSTICE

By Ann Goldes-Sheahan

Ann Goldes-Sheahan, JD, is the State Bar of Montana's Equal Justice Coordinator. A Helena native, she is a graduate of the University of Nevada-Las Vegas' Boyd School of Law.

The word *emeritus*, pronounced [i-mer'-ə-təs] is Latin, originally meaning "veteran soldier." It is also the name of a State Bar of Montana program designed to offer attorneys a limited license to practice pro bono legal services. The name Emeritus is intended to recognize the depth of experience and breadth of knowledge attorneys with years of practice have to offer.

In Montana, many members of the bar are nearing retirement or modifying their practice. Signing up as an Emeritus attorney is a great way to give back to your community by offering your significant experience, skills and training.

The State Bar of Montana's website (www.montanabar.org) contains a page explaining Emeritus Membership Status, under the Admissions tab. On this page, you will find all information needed to apply for and maintain Emeritus status including the application and the continuing legal education and service reporting form.

Additionally, this page contains information regarding "Qualified Service Providers." These providers are organizations approved by the State Bar as a site where Emeritus members can serve per Section 3(g)(vi) of the By-Laws of the State Bar of Montana. This section defines a "qualified provider" as: "a not-for-profit legal aid organization that is approved by the State Bar's Access to Justice Committee and provides malpractice insurance that will cover the emeritus member."

The State Bar's Justice Initiatives Committee is the entity referred to in the rule. This group was tasked with creating an application in order to effectively screen for the requirements set out in the rule. The application is brief and generally requests information regarding fees, if any, charged by the organization, any income

screening performed of clientele, the availability of malpractice insurance for volunteers, and whether the agency offers the opportunity for their volunteers to complete direct legal services per the State Bar encourages all nonprofit legal service entities to apply in order to be able to inspire Emeritus attorneys to volunteer with your organization.

You can find organizations that have already qualified and the link to the application to qualify on the Emeritus Status page on the bar website.

Direct any questions about becoming an Emeritus member or Qualified Service Provider to me, Ann Goldes-Sheahan, Equal Justice Coordinator for the State Bar of Montana. You can reach me at agoldes@montanabar.org or 406-447-2201.

In Montana, many members of the bar are nearing retirement or modifying their practice. Signing up as an Emeritus attorney is a great way to give back to your community by offering your significant experience, skills and training.

Montana Justice Foundation announces 2017 grant awards

The Montana Justice Foundation is pleased to announce the 2017 recipients of its Legal Aid Program Grants. This year, MJF awarded over \$220,000 to 17 nonprofit organizations across Montana that provide legal aid services, education on legal issues, and mediation. Award amounts range from \$1,700 to \$150,000.

Grantees include Montana Legal Services Association, YWCA Billings, Cascade County Law Clinic, Community Mediation Center in Bozeman, the Community Dispute Resolution Center in Missoula, and Montana Fair Housing. Grants have also been made to programs that serve survivors of sexual assault and domestic violence, including SAFE Harbor of Ronan, Sanders County Coalition for Families, and HAVEN of Bozeman.

MJF also awarded grants to Court Appointed Special Advocate programs in Kalispell, Hill County, Lake & Sanders County, Missoula, Great Falls, Yellowstone County, and eastern Montana. As many communities in Montana face alarming increases in child abuse and neglect cases, Montana Justice Foundation grants to CASA organizations help to meet this critical need by providing funding that helps recruit and train new volunteer advocates, ensuring that our communities' children have a voice in the legal system.

A priority for MJF's grant making is to fund projects that fill gaps in services to vulnerable populations. For example, with the help of an MJF grant this year, Montana Legal Services will continue to build a new program that uniquely serves Montana's low-income and vulnerable populations. In the Montana Health Justice Partnership MLSA works with four Montana community health centers to screen patients for potential legal issues, including those that harm their health. Patients identified as needing legal services are referred to MLSA for legal assistance. MJF is proud to support a project that combines resources with other community partners and has had clear, measurable success in serving Montana's most in-need populations.

Funding for MJF Legal Aid Program Grants is made possible through the generous support of donors and through revenue generated from Interest on Lawyers Trust Accounts.

Montana Justice Foundation Grant Awards

The following organizations received 2017 Legal Aid Program grants from the Montana Justice Foundation totaling \$220,000.

CASA for Kids, Inc (Kalispell)	\$4,300
CASA of Hill County, Inc.	\$2,750
CASA of Lake & Sanders County	\$3,500
CASA of Missoula	\$3,500
CASA of Yellowstone County	\$6,000
CASA-CAN (Great Falls)	\$6,000
Cascade County Law Clinic	\$4,000
Community Dispute Resolution Center	\$3,000
Community Mediation Center	\$5,500
Eastern Montana CASA GAL Inc	\$9,250
HAVEN	\$4,000
Montana Fair Housing, Inc.	\$5,500
Montana Innocence Project	\$3,000
Montana Legal Services Association	\$150,000
MLSA—Montana Health Justice Partnership	\$25,000
SAFE Harbor	\$5,000
Sanders County Coalition for Families	\$1,700
YWCA Billings	\$5,000

Source: Montana Justice Foundation

MJF Issues Call for Proposals for new grant program

The Montana Justice Foundation is pleased to announce it is now accepting proposals for a new grant program. The program is funded by a national mortgage-related settlement agreement between Bank of America and the U.S. Department of Justice. The settlement agreement and donation terms require MJF to distribute these funds to legal aid organizations for the purpose of foreclosure prevention legal assistance and/or community redevelopment legal assistance. MJF seeks to fund

creative projects that will have a far-ranging and lasting impact on the communities served.

Applications may be submitted by any nonprofit, government, or educational institution that provides legal assistance. Single- or multi-year proposals are equally welcome. Applicants may submit multiple proposals, but a separate application must be submitted for each project for which funding is sought.

Proposals must be submitted before midnight on Monday, Nov. 27, through MJF's online grant application system: <https://www.grantinterface.com/>

montanajustice/common/logon.aspx

MJF will review proposals and make funding decisions in December. The exact dollar amount of grant awards will vary depending on the number and quality of proposals received. Initial grant payments will be made in early January. All grant recipients will be required to collect and periodically report specified program data.

For more information or answers to questions about the application process, please contact Niki Zupanic or Crystine Miller at 406-523-3920 or mjf@mtjustice.org. More information is also available at www.mtjustice.org.



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When it comes to malpractice claims, if you didn't document it, it never happened

Mark Bassingthwaighe, Esq.
ALPS

Please, can we just acknowledge that lawyers as a group are terrible when it comes to properly and thoroughly documenting their files! Of course, not you, but all the other lawyers out there sure are.

You wouldn't believe how bad it can get. With almost every claim we handle, we have to deal with the lack of documentation of something. And I can assure you that at times a poorly documented file can become a very serious problem. Think about it. The fallout is now we may be forced to live with the reality that a word against word dispute between a lawyer and his or her client is in play and that rarely ends well for the lawyer. Here's just one story that highlights the problem.

Lawyer was retained by a client for the purpose of defending him in a contract dispute. No fee agreement or engagement letter was ever drafted. Lawyer prepared and filed an answer to the complaint that simply denied the allegations. There were no paragraphs specifically identified as affirmative defenses or a counterclaim, in part due to the fact that there was no copy of the subject contract in the lawyer's possession. The matter eventually ended up in early mediation. Lawyer failed to draft and submit a mediation statement based upon a belief that the issues were simple and doing so would not have been cost effective. The matter was settled at mediation. The agreement provided client would sign a promissory note secured with a confession of judgment. Lawyer recalls telling client that this was not a favorable settlement for him but client decided to agree to it anyway due to the potential costs of going to trial coupled with the risk of an adverse verdict. In other words, client just wanted to put it all behind him. Lawyer drafted and sent to the client the final documents for signature. There was no cover letter explaining the documents or setting forth the client's obligations under them. Client never signed the documents. Instead client hired another lawyer who renegotiated the settlement for slightly better terms. Client refused to pay the bill and lawyer turned the bill over to a collection agency. Client sued for malpractice.

There are all kinds of documentation missteps in the above example but there's an even bigger problem. In this situation there were no notes of any kind in the lawyer's file. There was nothing documenting the lawyers thinking, no record of what was communicated, no record of the decision making process. Apparently the staff person responsible for scanning closed files and shredding the original file once scanning was complete was never instructed to scan and preserve all attorney

notes. Now that's the real problem.

Here at ALPS, we hear all the excuses when it comes to the reason why a firm's documentation policies are not as thorough as they perhaps should be: "That step isn't necessary." "It takes too much time away from important work." "We didn't think keeping that was necessary." "There are too many others things we have to do." "The client would be offended if we did that." "We were trying to keep the costs down."

That's all well and good until someone questions what you did or why you did it. Memories are short, yours included. Never forget the following. If you didn't document it, it wasn't said or it didn't happen. That's how it's going to play out in our world.

While the basics such as documenting scope of representation, who is and who isn't a client, and that representation has ended are vitally important, my desire with this article is to identify a few documentation traps that if not properly handled could place you in a situation not unlike the one set forth above. Here's the ultimate goal: There should be a thorough written record of the advice given and the decision making process in every file, and this record must be preserved for the life of the file.

The first trap involves the client who wants to save a little green. It's a trap because there may be unintended consequences that the client hasn't thought through. If a client is cost conscious to such a degree that limitations are being placed on your scope of representation (e.g. taking shortcuts such as having you rely on documents prepared by others, severely limiting the amount of authorized research or discovery, not wanting to pay to have assets valued, not wanting to hire an expert, etc.), you must document that this client has been informed of the legal ramifications of the limitations being placed on your representation as well as the reasons why this client is making such a decision. Here's why. If this client is eventually harmed by his desire to save a little money he will turn to you and say, "Why didn't you tell me that could happen? If I had only known I would have ponied up."

In a similar vein, if your client refuses to follow your legal advice, it is **essential** that you document that the client has been informed of why you made your recommendation, the benefits of proceeding according to your advice, and the potential legal ramifications that might occur by not following your advice. Of course, don't forget to also document the client's stated reasons for making the decision to ignore your advice.

RISK, next page

RISK, from previous page

The next trap underscores one of the learnings from the story above. When closing a file, make certain that items like attorney notes, drafts of documents, memos, billing statements, and all substantive email exchanged are preserved because they serve as documentation of the work done, advice given, and the decision-making process. Again, these documents should be maintained for the life of the closed file. Pay particular attention to email. All substantive email should be captured and preserved with the relevant file. I have visited too many firms where this isn't the case, and frankly, that's asking for trouble.

Finally, don't get caught in the comfort trap. Many attorneys thoroughly document the files of "problem clients" yet remain slack in the documentation of files with their longstanding "good clients." More often than not, this is due to a level of comfort that has developed with longstanding clients. Be careful because too much comfort can cloud one's perception of what needs to be documented. Understand that problem clients are not the only clients who sue. Take whatever time is necessary to thoroughly document all files throughout the course of representation. The peace of mind that follows will be much better than the feeling of regret for not having

done so should a claim ever arise, particularly one brought by a long-term good client.

This comfort trap also arises in another situation you should keep in mind. In short, never forget that you don't get a pass when doing a legal favor for a friend or family member. Treat this matter the same as you would if you were going to charge a paying client for the same work. Deadlines need to be calendared, conflict checks need to occur, phone calls need to be documented, etc. Friends and family do sue when things don't turn out the way they expected; and when they do, if you happen to have no documentation of the advice given and the decision-making process, you're about to learn a hard lesson just like the lawyer in our story above did.



ALPS Risk Manager Mark Bassingthwaite, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Contact him at mbass@alps.net.

Alexander Blewett III

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To submit articles for In Memoriam, email to editor@montanabar.org. Please use the subject line "In Memoriam." Submissions are subject to editing for style, length and content.

Peterson — longtime chief bankruptcy judge, '03 Jameson winner — dies at 83

John L. "Jack" Peterson passed away Sunday, Sept. 10, surrounded by his wife and children, with a view from his room of the federal courthouse and Butte's famous mining headframes.

Jack was a Butte guy. He was born on Sept. 11, 1933, to Roy and Lena Peterson in Butte at St. James Hospital, the same place he expired one day prior to his 84th birthday.

Jack attended the Montana School of Mines and played basketball for one year. He then attended the University of Montana from 1952 to 1957, where he was a member of the Sigma Nu Fraternity, graduating with a BA in business and a law degree. He would say "any could get in, but few could finish." Of his graduating class of about 30, over half became

federal judges. Somehow he maintained a relationship with the love of his life through all that adversity. He married Jean Hollingsworth June 10, 1957, the same day he graduated from law school.

Following graduation, Jack joined his golfing mentor, Joe McCaffery, in his Butte law practice in 1957. He joined the firm of McCaffery, Rowe, Kiley and Joyce, becoming a partner from 1963 to 1985. While in practice, Jack was asked to take on "a little project" for the Montana Power Company called Colstrip 3 and 4 in the 1970s. This took up a

good part of his law practice for over seven years, with Jack arguing cases all the way to the U.S. Supreme Court. He was extremely proud of the jobs this helped create for Montana and the West, and especially for Butte. He served as a part-time Montana bankruptcy referee starting in 1963. After the Bankruptcy Code was enacted in 1984, Jack made the difficult decision to sell his law practice and become a full-time federal bankruptcy judge in 1985. He was loyal to Butte and worked tirelessly to move the Bankruptcy Court from Great Falls to Butte. Jack retired as chief bankruptcy judge for the District of Montana in November of 1999, but he continued to serve as a judge and did not fully retire until 2013 at the age of 80. At the time of his retirement, Jack was the longest serving bankruptcy judge in the United States. Jack's published legal decisions fill 18 volumes and provide a comprehensive body

of bankruptcy and commercial law to which lawyers still refer today.

Jack was dedicated to community service in Butte. He served on the Butte School Board from 1971 to 1977. He was appointed to the Board of Regents in 1976 and served until 1982. He was instrumental in developing Montana Tech into a four year institution and the preservation of Western Montana College in Dillon. He worked hard to make college education affordable in Montana. This led to the higher education fund supported by the coal severance tax that provided an affordable college education for many Montana students.

He was also an old school Butte Democrat. He worked hard for the common man and felt everyone deserved "a shot" and a "fair shake." He represented Montana at the Democratic National Convention in 1968 in Chicago working for lifelong friend Hubert Humphrey. Whether he was on the phone with Mansfield, Metcalf, Baucus, Tip O'Neill or a myriad of Montana's governors, you could bet he was on the lookout for Butte. He made a difference.

Jack received many life achievement awards including the State Bar of Montana's prestigious William J. Jameson Award, the Distinguished University of Montana Alumni Award, the Montana Trial Lawyer Award, the distinguished Ninth Circuit Award, and Montana State Bar Highest Honors. But the most meaningful accomplishments to Jack were the ones that benefited Butte and its residents.

He was extremely proud and close to his family and his extended Griz family. He was preceded in death by his parents Roy and Lena Peterson, his brothers Leroy and Don Peterson, cousin Bob Peterson and his wife's parents VC and Betty Hollingsworth. After the loss of his mother at age 13 and his father at age 19, he and his three siblings were raised by his mother's twin sister Hermie Westling. His "nose to the grindstone" Butte kid work ethic benefitted him not only in school, but also throughout his entire life.

Jack is survived by his wife of 60 years, Jean (Hollingsworth) Peterson and their three children: Michael (married to Gay), John (married to Nanette), and Carol Jean (CJ.) He is also survived by his sister Anna Lee Kuhr, and his grandchildren Mikaela and Joe Purvis, Kelly Peterson, Mary and Michael Langguth, Cian Peterson, Cody Merrill and Ashley Merrill.

In lieu of flowers, memorials are suggested to the UM Alumni Association (406-243-5211); Montana Tech Foundation Development (406-496-4804); or a charity of your choice.



The Honorable John L. "Jack" Peterson

Job Postings and Classified Advertisements

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

ATTORNEYS

ASSOCIATE ATTORNEY: Are you wanting to be challenged in your career as an attorney? Do you value hard work, customer service, teamwork, Bozeman personal development, team success and raving clients? Silverman Law Office is searching for an associate attorney to join our Office. We have an amazing support team that provides a positive work and life atmosphere. We believe that customer service, personal growth and best business practices are a key to a successful legal practice. Our practice focuses on business, tax, transactional, and estate planning in a rapidly expanding business environment. Applicants must have strong communication, teamwork and people skills, and an ability to provide customer service to a wide array of clients. Applicants must be admitted to practice or in the process of obtaining admission to practice in Montana. We offer a fantastic compensation and benefits package.

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CONTRACT ATTORNEY: Established law firm is seeking a Contract Attorney. Candidate must be licensed to practice in the State of Montana and/or California. Candidate should have respect for and familiarity with Native American tribal law, culture and history. Candidate must have a strong work ethic, proven case management skills and outstanding research skills. Must possess excellent communication skills (both written and oral) and analytical skills. To apply send cover letter, resume and references to Theresa Taylor at taylorzoo@centurytel.net.

DEPUTY COUNTY ATTORNEY: The Roosevelt County Attorney's Office is seeking a full-time deputy county attorney. Applicants must be

licensed to practice law in Montana. Advising the Board of County Commissioners will be a primary concern. The position will also require knowledge of criminal law. Salary is set at 85% of County Attorney's salary with applicable County benefits provided. Submit a letter of interest, curriculum vitae and two (2) recent letters of recommendation to: Donna K. Reum, Legal Assistant, Roosevelt County Attorney's Office, 400 Second Ave. South, Suite A, Wolf Point, Montana 59201 or by email to dreum@rooseveltcountry.org and rpatch@rooseveltcountry.org. Closing date: Open until filled.

LITIGATION ATTORNEYS: Knight Nicastro, LLC is a regional litigation firm with offices in Billings, Colorado and Missouri and is seeking attorneys with litigation experience. The preferred candidate would have 2-4 years of litigation experience. Candidates with more experience will also be considered. Candidates must be licensed to practice in Montana, have excellent communication skills, attention to detail and a strong work ethic. The firm offers competitive compensation, CLE and marketing budget and excellent benefits. Send resume, cover letter and references to Jan Mc-Minn at mcminn@knightnicastro.com.

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LAW PRACTICE FOR SALE: Successful Missoula-based personal injury law firm. Several hundreds of thousands of dollars in revenue. Willing to discuss systems, exclude certain clients, etc. Serious inquiries only. Please email mtfirmforsale@gmail.com if interested. All information exchanged is confidential."

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