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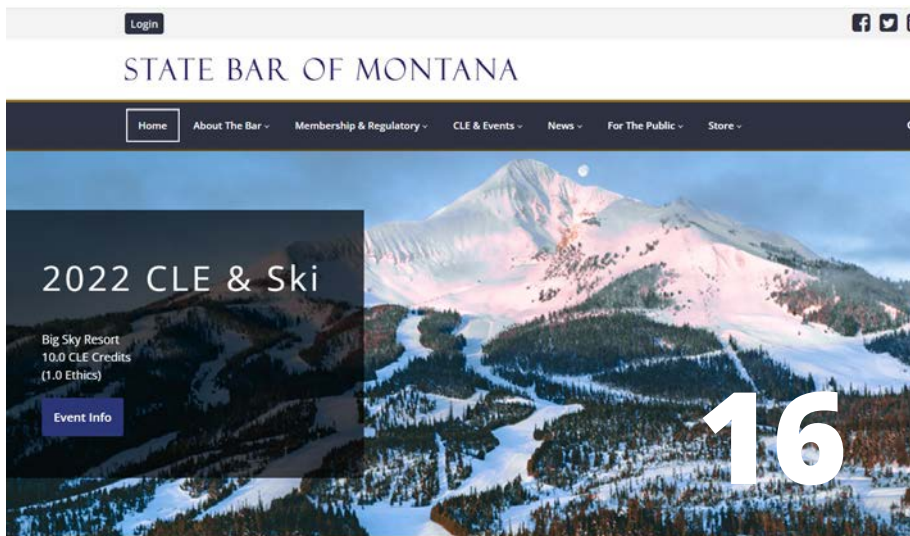
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FEATURE ARTICLES



BUILDING A LEANER, NIMBLER STATE BAR

New State Bar of Montana website is part of a larger push to make organization leaner, nimbler and more technologically savvy now and into the future.



COMPLEX NATURE OF TRIBAL CRIMINAL JURISDICTION

Fort Belknap's chief prosecutor discusses some of the special considerations and limits of criminal law in Indian Country.

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Addressing Trustee reallocation, representation for eastern Montana are proving to be vexing challenges

Happy New Year! As we head into the new year, business at the State Bar hums. The Board of Trustees met and adopted a new budget this month. The financial position of the State Bar continues to shine and the State Bar's projections into the future are stable. COVID has had some impact, by reducing some expenses and increasing others. We are still trying to figure out what the new normal will look like. Thanks again to Browning Kaleczyc, Barry and Hoven for letting us use their conference room for the Trustee meeting. After a 2020 COVID break, this year we were back in Helena, mostly in person. It is a very nice space, and we appreciate their hospitality. Sam Alpert and company have presented us with (see what I did there)... a new State Bar website. Big things are happening behind the scenes. Betsy Brandborg continues to transition into retirement. Reality is she played a role that isn't replaceable. We'll do the best we can, but she will be sorely missed.

However, there was one agenda item the State Bar Trustees addressed that wasn't all cheer and merriment. It is something the State Bar has struggled with for several months. How do we make sure the make-up of the Board of Trustees appropriately reflects the make-up of the attorney membership across the State? (And, for a later date, how do we represent our out of state lawyers?) The Bylaws of the State Bar require the Board to review, at least every ten years, the make-up of the Board of Trustees and reallocate as appropriate to "reasonably reflect one member-one vote." Put another way, the areas with the greatest number of attorneys should

have the greatest number of trustee representatives. This is a challenge for a rural state like Montana.

Trustees are elected by areas identified in the Bylaws, grouped by Montana counties. The Trustee areas are also required to mirror the areas designated by the Supreme Court for the Commission on Practice. As it stands right now, the areas containing Helena, Missoula, and Billings, the areas with the most attorney population, each have three trustee positions. The areas containing Bozeman and Great Falls each have two trustees, and Kalispell, Butte, and a large eastern Montana area made up of 27 counties, have one trustee. The Board of Trustees is unable to change the trustee areas absent action by the Supreme Court to change the Commission on Practice. Currently, the Kalispell and Missoula areas are dramatically underrepresented, while Great Falls, Butte and eastern Montana are overrepresented, when comparing the number of attorneys per one trustee. The State Bar has been evaluating this issue for the last year and several attorneys have devoted significant time to this re-evaluation as required by our bylaws. But there isn't an easy solution to be had. And in the end the Board's decision was not to change the area allocations and to inform the Supreme Court of the ongoing issues related to the attorney population and shift to urban areas. The hope is the Supreme Court will empower a working group to provide a solution that will work for both the Commission on Practice areas and the Trustee areas.

Anyone working on this issue in the future will have to recognize that rural Montana, even though its population is



BRIAN C. SMITH

Brian Smith is a longtime criminal defense attorney from Missoula who currently serves as Public Defender Division administrator with the Montana Office of State Public Defender.

lower, has an important perspective to offer in our state. It is also nearly impossible to have a single trustee represent 27 rural eastern Montana counties. Just ask Kent Sipe, who for a long time represented almost half the state. Thanks, Joel Krautter, for taking on the task right now. Also, what do we do about our out-of-state attorneys? Their population continues to grow. Is increasing the number of trustees, currently limited to 16, a solution? What was clear from our meetings is a fair solution will likely require a change to the representation areas and coordination with the Commission on Practice areas. It is a challenge for the new year but a problem worthy of making better. Maybe we can't solve it, but we can make it better, and we are committed to making it better.

Enjoy the new year and, as Judge Dillard would say, be kind to each other.

Building for tomorrow

As I complete my fourth year as executive director of the State Bar of Montana, I want to express my deep gratitude to all of you for the opportunity to continue to lead this organization.

Since arriving on the job in January of 2018, my focus has been to build on the efforts of my predecessors, and to work toward a State Bar that is both efficient and effective in delivering on our mission to serve the public and our members.

Toward that end, this year we completed several important information technology projects. Some were behind-the-scenes changes as we work to improve organizational efficiency.

Other projects are more visible. In December, after months of diligent work, we began a soft launch of our new association management software. This database software is what sits behind the website that you see when you visit our online home. It manages your membership records, as well as things like our online store, event pages and powers the State Bar website.

After more than a year exploring options for a new software platform, we

settled on a vendor that is now supplying these services to our neighboring western states of Utah, Nevada, New Mexico and Colorado.

When you log in, you will see a new member dashboard where you can update your profile and preferences, see your purchases, pay your dues and assessments and even print a certificate of good standing and your license card.

In the coming months, as we test them, you will be seeing even more new features, including Licensed Lawyer. This new lawyer referral platform ultimately will replace the State Bar's older, mainly telephone-based, referral service.

Licensed Lawyer uses a series of questions to help point potential clients to your profile, which you control. Current members of the State Bar's Lawyer Referral and Information Service will be automatically moved to this new platform. Of course, new members are also free to sign up. A new, flat annual fee of \$185, less than \$4 a week, will be billed to all Licensed Lawyer subscribers through our new system.

While there will always be some



JOHN MUDD

John Mudd is the executive director of the State Bar of Montana, a position he has held since 2018.

bumps with changes such as these, and we do hope those are minimal for you, we truly believe that this new association management system will continue to pave the road to a seamless member experience for you in the coming years.

It has been a busy year here at the State Bar. On behalf of our team, I want to thank you for your continued work on behalf of your clients and support for our profession.

We wish you and yours a happy, healthy and prosperous 2022!

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CAREER MOVES



Orr



McDonnell

Orr and McDonnell open new Missoula firm

Missoula attorneys Thomas C. Orr and Gregory A. McDonnell proudly announce the opening of their new Missoula law firm; Orr McDonnell Law, PLLC. The firm evolved from the long-established Thomas C. Orr Law Office, P.C. which has served clients in western Montana for nearly two decades. Orr McDonnell Law, PLLC offers a diverse practice representing clients in personal injury, contract disputes, wrongful termination, landlord/tenant issues, and family law.

Orr grew up in Bozeman, Montana. He is a graduate of Montana State University and a 1990 graduate of the University of Montana School of Law. He practiced at the Missoula City Attorney's Office and has had more than 20 years in private practice. Orr currently specializes in representing landlords with a myriad of complex legal issues, property disputes, and family law.

McDonnell is a Missoula native and graduate of the University of Montana School of Law. He previously worked as an associate at Datsopoulos McDonald & Lind, P.C. before joining Orr's firm in 2019. McDonnell is a combat veteran and is currently serving with the Montana Army National Guard as a Judge Advocate. His practice focuses on civil litigation including personal injury, negligence, and contract claims.

Orr McDonnell Law, PLLC's website can be found at www.omlmt.com.

Lindsey joins Ries Law Group as an associate attorney

Ries Law Group, P.C. is pleased to announce the hiring of Taiyler Lindsey as associate attorney.

Lindsey graduated from Alexander Blewett III Law School in 2021. While in law school, she excelled as an intern with the Domestic Violence Clinic at Ries Law Group.

Lindsey received her undergraduate degree from Seattle Pacific University in Business Administration and prior to attending law school she worked for the Yakima County Courts in Washington. She is licensed



Lindsey

in Montana state courts and the Confederated Salish & Kootenai Tribal Court. Lindsey joins the RLG team to focus on the representation of survivors in a variety of civil matters. Formed in 2016, Ries Law Group provides civil legal assistance to survivors of domestic and sexual violence in Western Montana, with a special focus on trauma-informed family law, crime victim rights, orders of protection, and guardian ad litem cases. Attorneys Brandi Ries, Emily Lucas, and Robin Turner have a combined 30 years of legal experience in family law and other holistic civil legal services for survivors of gender-based violence. Attorneys Brandi Ries and Emily Lucas also act as mediators and settlement masters in family law cases.

All RLG attorneys provide free legal services to survivors through grant partnerships with Sanders County Coalition for Families, Safe Harbor, and the YWCA – Missoula. The firm helped to originate and currently supervises the Domestic Violence legal clinic at the Alexander Blewett III School of Law at the University of Montana.

Wells handles veterans compensation claims in Moscow, Idaho, practice

Michael S. Wells is a Montana lawyer and Iraq War veteran who practices federal law in Moscow, Idaho.

Wells handles Veterans



Wells

Administration compensation claims all the way to the U.S. Court of Appeals for Veterans Claims. Recently, Wells has been handling agent orange claims for Vietnam veterans.

Additionally, Mr. Wells handles all types of claims for veterans of all U.S. wars.

Wells is an Iraq War veteran and recipient of the Presidential Unit Citation, Army Good Conduct Medal, Bronze Star Medal and Purple Heart.

Reed And Hixson join Brown Law Firm's Missoula office

Brown Law Firm, P.C., with offices in Billings and Missoula, has



Reed



Hixson

announced that Anthony P. Reed and Zachary A. Hixson have joined the firm in Missoula.

Reed received his undergraduate degree from the University of Montana in 2015. He then went on to law school at the University of Montana School of Law in Missoula, graduating in 2021. During law school, he served as managing editor of the Public Land and

Resources Law Review and president of the Environmental Law Group. He

interned with the Brown Law Firm during his third year of law school and began working full-time for the firm in September 2021.

Zachary A. Hixson graduated from Lewis and Clark College in Portland, Oregon. He worked in international trade assisting U.S.-based customers with regulatory compliance before attending the University of Montana School of Law, graduating in 2019. While in law school, Zac was a member of the ABA Negotiations and National Trial Competition Teams, completed his clinic with the Powell County Attorney's Office, and served as class commencement speaker. Following law school, Zac clerked for the Honorable

Ray J. Dayton, Montana Third Judicial District Court, and the Honorable Sam E. Haddon, United States District Court for the District of Montana.

RETIREMENT

Tillman retiring from Boone Karlberg after 23 years as a partner with the firm

Ross Tillman is retiring from the practice of law After 34 years of serving in the legal field and 23 years of partnership with Boone Karlberg P.C.



Tillman

Throughout his career, Tillman has focused on personal injury litigation, insurance coverage evaluation and litigation, insurance bad faith litigation, and defamation work. In addition to his law practice, Tillman has served in the local community as a member of the board of directors for Montana Food Bank Network, volunteered his time at the Missoula Humane Society, and is a licensed foster care provider. Ross also held membership positions within legal organizations such as Montana Defense Trial Lawyers Association and Defense

Research Institute. It is never easy to bid farewell. Ross will be deeply missed, and we wish him all the best along with his wife, Marta Pierpoint, and his two children, Matthew Tillman and Rachel Tillman.

Boone Karlberg is grateful for Tillman's many accomplishments and his legacy, work ethic, and passion will continue to inspire us well into the future.

HONORS

Jordan Crosby elected president of Montana Defense Trial Lawyers

Jordan Crosby, shareholder with Ugrin, Alexander and Zadick, Great Falls, was recently elected president of the Montana Defense Trial Lawyers.

Other officers elected at the Nov. 19 annual meeting include vice president Patrick Riley of Bozeman and secretary-treasurer Elizabeth Hausbeck of Missoula. Jill Laslovich of Helena will serve as past president.

New board members elected to serve three-year terms include: Jon Wilson, Billings, and Bryan Kautz, Billings. Additional board members are Sean Goicoechea, Kalispell; Gerry Fagan,

MORE MEMBER, PAGE 9



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Is pleased to announce the following
Associates to the firm:



Brett Amrine practices in the firm's Missoula office. He works with the firm's intake department and general counsel. Brett received his J.D. from Gonzaga University.



Madeline Clarke practices in the firm's Billings office. Her practice focuses on commercial transactions and water law. Madeline received her J.D. from Gonzaga University.



Robert Joki practices in the firm's Billings office. His practice focuses on banking, finance, creditor rights and bankruptcy. Prior to his legal career, Robert served in the United States Marine Corps. Robert received his J.D. from the University of Montana.



Cole Morgan practices in the firm's Bozeman office. His practice focuses on commercial litigation. Cole received his J.D. from the University of Utah.



Matt Peterson practices in the firm's Helena office. His practice focuses on litigation. Prior to his legal career, Matt worked for the office of Senator Max Baucus. He received his J.D. from the University of Montana and clerked for the Hon. John Parker.



Lars Phillips practices in the firm's Bozeman office. His practice focuses on commercial, tort, and appellate litigation. Lars received his J.D. from the University of Montana in 2016.

The firm also welcomes:

Martha Amdahl (Williston, ND), Teddy Boyer (Bismarck, ND), Logan Caldwell (Bismarck, ND), Kari Hartman (Cheyenne, WY), and Saige Smith (Sheridan, WY)

Billings; Elizabeth Lund, Bozeman; Marshal Mickelson, Butte; and Tyler Smith, Missoula.

Carlson, Newbold, Mudd named to posts with national Institute for Well-Being in Law

John Mudd, State Bar of Montana executive director, and Chris Newbold, executive vice president of ALPS, have joined the board of the national Institute for Well-Being in Law.

Additionally, Bob Carlson, a past president of both the American Bar Association and the State Bar of Montana, has been named to the institute's advisory board. As ABA president, Carlson spoke often on ABA initiatives to promote lawyer and law student wellness; advance diversity in the association and the profession; fight for access to justice for all, including those seeking refuge in the United States; and argue in defense of an independent judiciary.



Carlson

Newbold will serve as the institute's VP for Governance. He oversees business development and sales strategy at ALPS and is its chief liaison to bar associations. Additionally, he is a recognized strategic planning facilitator in the bar association and bar foundation worlds, a leader in the lawyer well-being movement and advises states/bar association exploring the merits of mandatory malpractice insurance or disclosure rules.



Newbold

Newbold has been at the center of the national discussion on lawyer well-being since 2016. As co-author of the movement igniting report *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, his leadership as co-chair of the National Task Force on Lawyer Well-Being, his participation on the ABA's Working Group to Advance Well-Being in the Legal Profession and his role as co-host *The Path to Well-Being in Law* podcast,



Mudd

he has been at the forefront of a movement intent on creating a culture shift in the legal profession and on advancing personal and professional satisfaction in all sectors of the legal field.

Mudd will serve as the institute's VP of Fund Development. Prior to joining the State Bar, Mudd served as the director of development and alumni relations at the Blewett School of Law at the University of Montana. He currently serves on the boards of the Max S. Baucus Institute, the Montana World Affairs Council, and the Montana Justice Foundation (ex officio), among others. He is also a frequent presenter on lawyer well-being topics.

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Fort Belknap chief prosecutor discusses tribal criminal jurisdiction's complex nature

By Kathryn Seaton

Kathryn Seaton (KS) of Montana Legal Services Association and Lillian Alvernaz (LA), Chief Prosecutor and Presenting Officer for the Fort Belknap Indian Community, discuss the complexities of tribal criminal jurisdiction, the unique role of tribal prosecutors, and the scope and limits of criminal defendants' rights in tribal courts. *Edited for length and clarity by Henry O'Brien, Class of 2022, University of Montana's Alexander Blewett III.*

KS: Can we start with the very basic question of what does the job of a tribal prosecutor entail?

LA: I imagine it is similar to other prosecutors. Our office handles any type of violation of the Criminal Code, as well as criminal violations of our Fish and Wildlife Code. I personally handle all the juvenile cases, the more complex criminal cases, and all of the abuse-of-a-family-member cases. As Presenting Officer, I work with our Tribal Social Services to present all of their Youth in Need of Care cases to the Court. We also handle petitions to exclude non-members from the reservation.

KS: Can you describe in broad brushstrokes the jurisdictional limits your office is subject to in prosecuting crimes in Indian Country?

LA: The Fort Belknap Tribal Court is a court of general jurisdiction. This means it will reach as far as it can to take jurisdiction over cases. In the criminal aspect, we see any crime that occurs on the reservation that is by an Indian and against an Indian. I use Indian specifically as a legal term of art because a defendant or victim doesn't necessarily have to be a member of Fort Belknap. We have tribal members from all over the United States in our court. To be clear, these limits have been put in place by Congress and the Supreme Court.

KS: Are there any cases that



Lillian Alvernaz is Chief Prosecutor and Presenting Officer for the Fort Belknap Indian Community.

are prosecuted in both federal and tribal court? Does that violate double jeopardy?

LA: Cases can be prosecuted in both federal and tribal court. We share concurrent jurisdiction with the federal court for any Major Crimes Act crimes, which includes things like murder, rape, aggravated assault with a weapon, etc. Federal courts can also have jurisdiction over "habitual offenders" pursuant to the 2013 VAWA Reauthorization. It doesn't violate double jeopardy because we are separate sovereigns. However, it can be pretty unfair for Indian defendants because they could end up being prosecuted by two separate sovereigns for the exact same thing, unlike any other group of people.

KS: What determines if someone is

a habitual offender?

LA: Per the 2013 VAWA Reauthorization, if an individual has two prior domestic violence convictions (from any jurisdiction), a third charge may be charged as a felony in federal court. The Supreme Court has said that we can count those prior two tribal court convictions towards your third one that may ultimately become a felony. Where this becomes an issue is that while the Indian Civil Rights Act guarantees our defendants many of those rights contained in the Bill of Rights, notably, the right to appointed counsel is not included. This means that when tribal court convictions are used for stacking purposes, those are

MORE TRIBAL, PAGE 13



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TRIBAL FROM PAGE 11

more often than not uncounseled prior convictions. From a victims-rights perspective it is important to hold offenders accountable, particularly across jurisdictions. However, from the perspective of individual civil rights, it is difficult to justify charging offenders with a felony when they were probably not aware of that consequence at the time of their first or second offense and were convicted without counsel, again, unlike any other group of people.

KS: Do you see any criminal defendants at Fort Belknap who have counsel?

LA: Yes, but probably only around 5–10%. Some pay for attorneys and others are represented by lay advocates at their own expense. In either case, anyone providing representation in our courts needs to take the tribal bar exam, just like other jurisdictions.

KS: Does a tribal court prosecutor have a different role than a prosecutor in a state or federal court, in your opinion?

LA: Yes, I think so. Of course, I need to do what is best for the Tribes, but I also have to consider that the defendant likely doesn't have counsel. So, I provide more information and procedural clarification to the defendant than a state prosecutor likely would. I also have to do more investigating because our law enforcement is really short staffed. So I wear several hats rather than just

prosecuting the case and focusing on the evidence the police provide.

KS: Is the Fort Belknap Tribal Court implementing criminal justice in ways other than those that mirror the "western" adversarial system?

LA: In some ways, tribal courts need to become more like the federal and state systems—we need to offer the right to counsel and be able to sentence beyond the current limits. In that way, the federal system should honor our prosecution and sentencing. But in other ways, tribes can step out of the non-Indian, adversarial court system and incorporate more traditional remedies. I am really passionate about this, and our tribal council and court is on board. We offer creative alternative sentencing that is more teaching and healing than just punishment, and we consider how systemic issues like mental health affect defendants.

KS: Is there a role for Montana attorneys in the tribal criminal justice realm?

LA: Yes. Again, I'd like to see our system become more traditional and less adversarial. But in the meantime, there is need for pro bono criminal representation and victim's rights advocacy. More access to mediation would also be helpful.

KS: We've talked about how tribal courts are different, but of course that isn't to say the tribal court is somehow a "lesser" forum. Do you ever face resistance to the Tribe's status as coequal

IS YOUR CLIENT AN INDIAN FOR CRIMINAL JURISDICTION?

Prong 1: Some degree of Indian blood. "[E]vidence of a parent, grandparent, or great-grandparent who clearly identifies as an Indian is generally sufficient to satisfy this prong."

Prong 2: Recognized by or affiliated with a tribe. Factors to consider, in declining importance "1) tribal enrollment; 2) government recognition formally and informally through receipt of assistance reserved only to Indians; 3) enjoyment of the benefits of tribal affiliation; 4) social recognition as an Indian through residence on a reservation and participation in Indian social life."

United States v. Bruce, 394 F.3d 1215, 1223-24 (9th Cir. 2005) (interpreting *United States v. Rogers*, 45 U.S. 567 (1845)).

sovereigns with the states?

LA: I'm dealing with this right now with an individual and court that do not want to honor a tribal court order. I doubt this happens with other jurisdictions' orders.

KS: Thank you so much for your time, Lillian!



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– **Michael A. Viscomi, Esq.**

“Over the past several years, I have had the opportunity to mediate many cases in which Cory Gangle was involved. Cory has evolved into an outstanding litigator in both his approach to resolution and demeanor. I believe Cory would be a very good mediator, studious, and balancing arguments to effect an acceptable resolution. I recommend Cory as a choice for your mediation”.



– **Dennis E. Lind, Esq.**

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Rural Incubator Project seeks new round of fellows

The Rural Incubator Project for Lawyers (RIPL) is now accepting applications on a rolling basis for a new round of fellows.

A five-day Boot Camp for new fellows will be held virtually this coming April or May. Visit <https://www.mtlsa.org/rural-incubator-project-for-lawyers/> or email ripl@mtlsa.org for more information.

RIPL is a 24-month program designed to train and support attorneys as they develop and launch their new solo and small firm law practices. RIPL was established in partnership with the Montana Justice Foundation, State Bar of Montana, Supreme Court of Montana, Alexander Blewett III School of Law at the University of Montana, and Driscoll Hathaway Law Group.

RIPL has successfully trained thirteen lawyers, providing intensive training, education, mentoring, and the basics of building a solo practice. RIPL has helped 1,189 low income clients and their family members in the first three years. These clients live in 48 counties, including 43 counties outside the state's five biggest

urban areas. Fellows receive referrals for clients that need assistance addressing family law, housing, consumer, tax, wills and probate, and employment issues.

Estate planning clinics planned across Montana in 2022

The Department of Public Health and Human Services' Legal Services Developer Program is seeking volunteers for a series of estate planning clinics in 2022.

The clinics, presented through the Legal Services Developer Program's Senior Defense Grant, will be held in five cities, in addition to two remote clinics staffed by student volunteers.

At the clinics, volunteer legal professionals will work with seniors and tribal members to draft documents like wills, powers of attorney, and transfer on death deeds free of charge. Volunteers will also screen for potential financial exploitation, neglect, and abuse.

There will be training sessions associated with each clinic at which local professionals will learn about working with older adults, assessing capacity, looking for red flags, and reporting suspected abuses. The program is applying for CLE accreditation

for the trainings.

To sign up as a volunteer for any of the clinics or the training sessions, email Richard.heitstuman@mt.gov, or call 406-417-8648.

Clinic/Training schedule

Helena

Training: Wednesday, April 6, 2 to 4 p.m., Ramada by Wyndham (Jorgenson's), 1714 11th Ave

Clinic: Thursday, April 7, 9 a.m. to 4 p.m., Ramada by Wyndham (Jorgenson's), 1714 11th Ave

Frenchtown

Training: Wednesday, June 22, 2 to 4 p.m., Frenchtown Community Church, 16250 Mullan Road

Clinic: Thursday, June 23, 9 a.m. to 4 p.m., Frenchtown Community Church, 16250 Mullan Road

Thompson Falls

Training: Wednesday, July 27, 2 to 4 p.m., Blackbear Ballroom, 925 W. Main St.

Clinic: Thursday, July 28, 9 a.m. to 4 p.m., Blackbear Ballroom, 925 W. Main St.

Butte

Training: Monday, Aug. 8, 2 to 4 p.m., Belmont Senior Center, 615 E. Mercury St.

Clinic: Tuesday, Aug. 9, 9 a.m. to 4 p.m., Belmont Senior Center, 615 E. Mercury St.

Baker

Training: Wednesday, Sept. 14, 2 to 4 p.m., Baker Senior Center, 420 W. Montana Ave.

Clinic: Thursday, Sept. 15, 9 a.m. to 4 p.m., Baker Senior Center, 420 W. Montana Ave.

STATE BAR OF MONTANA LAWYER ASSISTANCE PROGRAM NEW WOMEN'S GROUP MEETING



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Lean, nimble and ready for the future

Improved business infrastructure, modernized technology and a strong financial outlook have the State Bar of Montana established on solid footing for many years to come

By Montana Lawyer Staff

The State Bar of Montana has begun to roll out a series of technological improvements that promise a modernized bar infrastructure and improved member experience.

The bar has been able to make these improvements while staying well under 2021 general fund and reducing budgeted general fund expenses in each of its two successive budgets.

According to Executive Director John Mudd, the bar's newly redesigned website and accompanying association management system, launched in December 2021, is probably the most noticeable change members will see, but that is only one piece of a larger vision he has for transforming the bar into a thoroughly modern organization — lean, nimble, data driven and technologically cutting edge.

Early in 2022, the bar will also be launching an online lawyer referral service, Licensed Lawyer, connecting to a network developed by the Utah State Bar and also used by state bars in Colorado and Alaska. Licensed Lawyer will replace and offer major improvements on the bar's current, mostly telephone-based referral service. The service will give attorneys full control over their profiles and ability to market to prospective clients, and screen clients to make sure only the right ones are referred. (See ad on page 20 for more information about Licensed Lawyer.)

Members who haven't yet logged into the new website are encouraged to set up their new password now. (See breakout on facing page for more information on logging in for the first time.)

State Bar Trustees Approve FY23 Budget

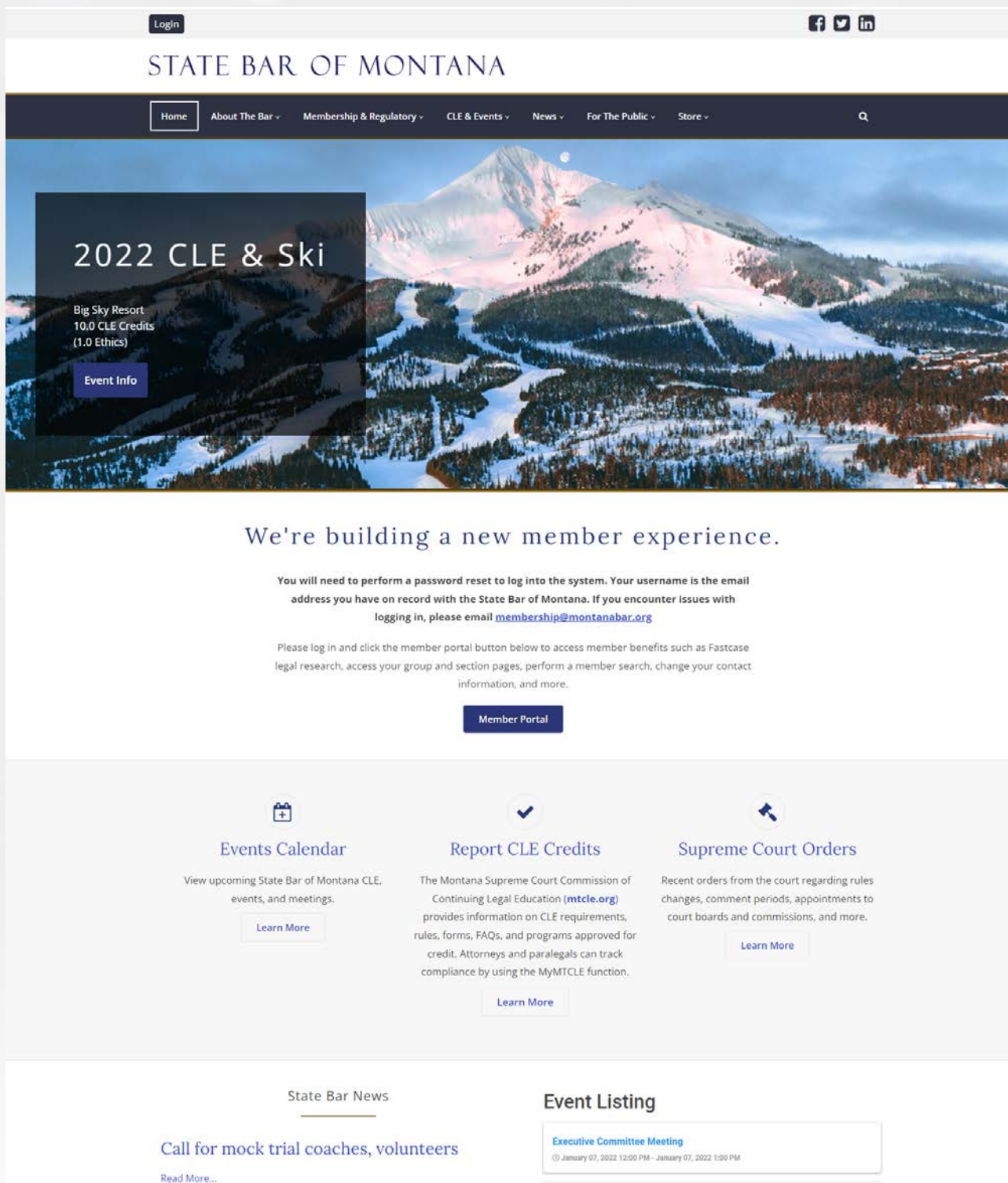
The State Bar Board of Trustees approved the bar's FY23 budget at its Dec. 3, 2021, meeting, as the FY21 review and FY22 results continue to show to general bar operations with positive cash flow and a stabilized budget.

"While there was a lot of uncertainty at the outset of the pandemic and the potential effects of that on general operations of the State Bar, I believe we've been able to navigate all of that successfully," said John Mudd, executive director of the organization. "FY21 added to the new stability in operations, and we are continuing to perform on-budget for FY22." The bar's current fiscal year closes on March 31, 2022.

The FY21 independent financial review, completed this fall by Anderson Zurmuehlen, P.C., covers all consolidated State Bar operations including revenue from dues, assessments for the Office of Disciplinary Counsel, admissions fees, bar section revenue, mandatory CLE assessments and the like.

Of the State Bar's annual dues and assessments, \$300 goes toward general bar operations, with the other assessments, the MCLE fee, disciplinary counsel assessment,

MORE BAR, PAGE 18



Logging into the State Bar's new website

Members' new username for logging into the state bar website (still located at www.montanabar.org) will be the email address the bar has on file for them, and members must create a new password to log in. To log in, either click the "Member Portal" button in the center of the page or the "Login" button at the top of the page. If you have problems logging in, contact membership@montanabar.org. The new website launched in early December 2021.

BAR

FROM PAGE 16

the Lawyers' Fund for Client Protection assessment, and section dues, each allocated to those particular operations.

The FY21 independent review showed that the organization was in good financial condition. Between the audited financials in FY20 and the reviewed financials in FY21, the total liabilities and net assets increased from \$5.2 million to \$6.9 million.

"Like our members, we were very cautious with general operations spending in FY21 and the bottom line benefited from a move to online platforms for many of our traditional activities," said Mudd. "Of course, as we hopefully leave the pandemic, the key will be to see what efficiencies we've gained can continue in order to lengthen the time before we would need to explore another increase in membership dues."

Mudd noted the particularly strong demand for online CLE in coming years. "Both the bar generally, as well as the sections, saw strong demand from members for live, interactive online CLE, which also has the added benefit of reduced delivery costs and higher net revenue."

Budget forecasts contained in the bar's 2017 dues increase petition indicated that another general dues increase (not including other assessments) could be needed as soon as FY23. However, that date now has been pushed out further.

"As we sit today, with our operating

surplus and contributions we've made to our invested reserves, we hope that it will be several more years before we need to explore a general dues increase and that's a positive development for the members," noted Mudd.

The FY23 budget for general operations (excluding mandatory CLE, disciplinary counsel and admissions operations) continues to forecast positive net operating revenue, even while the organization makes new investments in technology.

"One of the Trustees' strategic priorities for general operations has been to invest in new technology to create long-term operational efficiencies," said Alanah Griffith, the Board of Trustees' Secretary/Treasurer. "We've been able to utilize some of the unexpected positive net revenue from the pandemic to build for the future."

Those investments, and strategic staffing decisions with retirements, have added to the positive cash flow. "The 2018 dues increase, which went into effect during FY19, provided structural stabilization to the budget, and we've added to that by adjusting our staffing mix and consolidating positions through retirements," said Mudd.

The Office of Disciplinary Counsel also continues to remain in a structurally sound budget position. "As with the State Bar's general operations, ODC has continued to look for efficiencies, including reducing expenses and staff," said Pam Bucy, Chief Disciplinary Counsel. ODC significantly reduced its expenses

between FY20 and FY21. "We remain strongly committed to our mission to protect the public and to do that in the most cost-effective manner we can."

The Lawyers' Fund for Client Protection remains solvent, with \$1.4 million in designated net assets as of March 31, 2021. "Unfortunately, we've seen an uptick in claims to the fund over the past year," said Mudd. "That said, the fund remains solvent and the Lawyers' Fund for Client Protection Board continues to handle those claims effectively and efficiently."

The Montana Supreme Court's Commission on Continuing Legal Education, which is supported through bar staff, has asked for an increase in the mandatory CLE assessment for coming years. The MCLE assessment hasn't been raised in the 20 years since the Commission was created.

In its response to that petition, the State Bar trustees supported an increase in that fee, at a minimum, to keep pace with inflation. "That MCLE portion of the overall budget continues to require some attention," said Griffith. "Thus, the Commission has asked the court to consider a fee increase to bring that portion of the budget into structural stability."

In summary Griffith noted, "I think that the bottom line is that the State Bar of Montana is in an overall healthy financial position and that's very good news as we head into the new year."

The FY21 consolidated independent financial review is available through the State Bar offices.

New member profile page

When members log in to the bar's new website they will see a new, easier to navigate member profile where they will be able to quickly access important information and even print a bar license card or a certificate of good standing.

Account Summary			
Outstanding Dues	0	Outstanding Fees	0
Future Registrations	0	Active Subscriptions	7
Certifications	0	Continuing Education	0

Leaner staffing

Over the past several years, the bar has said goodbye to a number of staff members, including the retirement of General Counsel Betsy Brandborg in December 2021 (see photos on page 21).

When possible, the bar has responded by consolidating job responsibilities rather than replacing employees when they move on.

The bar — along with much of the rest of the world — has had a major test of its nimbleness and adaptability during the pandemic. As with most other organizations, there were struggles along the way as staff adjusted to remote work environments, but despite disruptions, staff was able to seamlessly continue its core function, including a successful dues season and coordinating three administrations of the bar exam.

Mudd said that while there are now fewer staff members taking on the same amount of tasks as before, the bar is focused on providing a positive work environment for its remaining employees.

“Employees are continuing to utilize the remote work capabilities rolled out during the pandemic and we anticipate some flexible work arrangements in a more formal manner in the future,” he said. “We want well compensated, happy employees, using modern equipment and technology to help them more effectively perform their tasks,” Mudd said.

Pandemic cloud brings silver lining

Mudd said that while the pandemic made bar operations more difficult in many ways, it also brought the benefit of lessons learned.

For example, when all in-person CLE and other events were canceled early in the pandemic, paper brochures for CLEs was eliminated and the bar relied on emails and its website. This resulted in significant savings in printing and postage costs. Rather than a negative impact from this, the bar saw increased both CLE attendance and increased revenue.

The bar hopes to apply these lessons to delivery of services and information to members in other ways going forward.

“We remain very optimistic about the future for the State Bar of Montana and look forward to applying knowledge

gained through the pandemic to improving our operations in the coming years,” he said.

As the bar moves forward it will continue to focus on using technology to offer better and more efficient service. The association management system that integrates the bar’s member database with its new website will be a big part of that, allowing for a robust member portal.

While the website is a work in progress, it offers improved flexibility, and as new elements are rolled out in coming weeks and months, members should notice a more seamless member experience and a system that reduces the need for multiple passwords for various tasks.

“We’ve worked hard on all these things,” Mudd said. “We have more work to do, but we’re getting there.”



LARSON TAKES ON ADDITIONAL ROLE OF DEPUTY EXECUTIVE DIRECTOR

Mike Larson, coordinator of the State Bar of Montana’s Lawyer Assistance Program, took the open position of deputy executive director in May of 2021.

Larson continues to be the LAP coordinator in addition to his new duties at the bar.

A Montana native, Larson is a 2000 graduate of Michigan State University’s Detroit College of Law. After law school he returned to Montana as an attorney at Max A. Hansen and Associates, P.C., in Dillon. Larson was at the firm until taking the LAP director position at the bar in 2006.

Prior to law school, Larson earned an associate degree in chemical dependency counseling from the College of Great Falls and a bachelor’s degree from University of Montana Western.

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BAR BIDS FAREWELL TO BETSY



LEFT: Betsy Brandborg speaks to well wishers during a retirement party in her honor on Dec. 2 in Helena. Brandborg retired after 25 years with the bar, most recently as general counsel.

BELOW: State Bar of Montana Trustee Randy Snyder of Bigfork, right, gives a hug to Brandborg after his performance of a song he arranged in her honor to the tune of The Irish Rovers song "The Unicorn."



You've been warned: Lurking issues remain with transfer on death deeds

By Nick LeTang and Joe Passamani,
Passamani & LeTang, PLLC

For convenience and simplicity in estate planning, Montana law allows for *transfer on death deeds* (TOD deeds)—a deed, executed and recorded during the lifetime of the grantor(s), which allows real property to pass to the designated beneficiaries outside of probate. For those people whose situation does not necessitate a trust, TOD deeds were the “last piece of the non-probate puzzle for estate planners.”¹

TOD deeds are a relatively new estate planning device in American jurisprudence, and there are certainly wrinkles that need ironing out. In 2019, Montana adopted the *Uniform Real Property Transfer on Death Act* (URPTDA). Despite the URPTDA's intent to allow Montana real property to pass easily outside of probate, there are lurking issues regarding: (1) creditor claims, (2) title insurance coverage, and (3) the ability for a subsequent purchaser to obtain a mortgage on real property sold by a beneficiary who holds title based upon a TOD deed. The purpose of this article is to warn you of these issues.

I. TOD deeds may pass Montana real property to beneficiaries without the need for probate.

A TOD deed is a non-testamentary instrument that allows an individual to transfer property to one or more beneficiaries effective at the time of the grantor's death. MCA § 72-6-404, 406. If there is one grantor owner, the real property will automatically pass to the designated beneficiaries upon that owner's death. If there are two or more

grantor owners, the real property will automatically pass to the designated beneficiaries upon the passing of the last grantor owner.

The personal representative of any grantor decedent need not open a probate for the purpose of passing title to the real property; instead, with a TOD deed, the real property never becomes part of the decedent's estate because title has passed to the beneficiaries “at the transferor's death.” And in order to record title in their names, beneficiaries need only bring an *affidavit of death* and *Realty Transfer Certificate* to the clerk and recorder in the county where the TOD deed is recorded. Simple. Easy. Or so we all thought...

II. Real property passed pursuant to a TOD deed is still subject to a decedent's creditor claims.

Under Montana law, creditors may still satisfy a claim against the decedent's estate with non-probate estate property. This includes real property transferred to beneficiaries via TOD deeds and any subsequent transferee a beneficiary sells their real property interest to.

Under MCA §72-6-414:

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in 72-6-112.

Under MCA § 72-6-112(2):

Except as otherwise provided by statute, a *transferee* of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory

allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

The plain language of who is liable to creditor claims under URPTDA is clear: *beneficiaries* to a TOD deed is subject to claims against the decedent grantor's estate, and so too are *transferees*. MCA § 72-6-414 and § 72-6-112(2).

“Beneficiary” is defined in URPTDA to mean a person that receives property under a TOD deed. “Transferee”—however—is not defined in Title 72, Chapter 6 of the Code, making it unclear whether in person purchasing title from a beneficiary would own title free and clear of all creditor claims. This issue—unfortunately—is not clear in Montana. And title insurance companies have taken note and reacted with exceptions to title coverage. And these exceptions are fatal to all purchasers hoping to finance a purchase within a year of the decedent grantor's death.

III. TOD deeds, title insurance coverage issues, and the ability for a subsequent purchaser to obtain a mortgage on property sold by a beneficiary who holds title based upon a TOD deed.

Currently, for certain counties in Montana, title insurance underwriters will not insure title (without a coverage exception) from a TOD deed beneficiary to a subsequent purchaser unless one of two conditions occur:

A probate has been opened, the personal representative has published

¹ Stephanie Emrick, *Transfer on Death Deeds: It Is Time to Establish the Rules of the Game*, 70 Fla. L. Rev. 469 (2018).

notice for 3 successive weeks in the county that is situs to the real property, and four months have passed since the date of first publication. (At this time, subsequent creditor claims against the estate are time-barred in accordance with MCA § 72-3-801.)

Regardless of whether a probate has been opened, one year has passed since the decedent's death. (At this time, subsequent creditor claims against non-probate estate property are time-barred in accordance with §72-6-228(8).

To summarize, in regard to potential sales of real property sold by beneficiaries to purchasers within a year of the grantor decedent's death, title insurance companies are unwilling to issue policies without one of the two aforementioned conditions. However, they will do so with an exception to coverage. An example of such exception includes:

It appears ___ is deceased. The Company finds no probate of the decedent's estate in ___ County. This commitment is therefore subject to the rights of heirs and devisees, creditor (including liens under ___), liability for inheritance tax, or other matters that a probate estate might disclose.

Including an exception to coverage—however—is not a solution to the problem. This is because any subsequent non-cash purchaser will not be able to obtain financing to purchase the property with such exception to coverage. In other words, banks will not finance real estate purchases where their collateral is subject to a decedent's creditors.

This creates a real dilemma for beneficiaries of TOD deed when attempting to sell the real property that has been inherited (which most like to do). Under the status quo, beneficiaries to a TOD deed will not be able to sell their inherited real property unless: (1) they open a probate, publish notice, and wait

four months; (2) wait for a year after the decedent passes prior to selling the real property; or (3) sell the real property and hold the proceeds in escrow for a year, awaiting any creditor claims.

This is contrary to the intent of TOD deeds. What is the purpose of a TOD deed if the beneficiaries must open a probate in order to sell the property with insurable title? What is the purpose of a TOD deed if—in order to avoid probate—the beneficiary must wait for a year after the decedent passes to sell the real property? One could argue that TOD deeds are nearly worthless in Montana for a beneficiary wishing to sell their inherited real property, within a year of the decedent grantor's death, unless they first: open a probate and wait for the creditor claim period to close; wait a year after the decedent's death to sell; or sell the real property and hold the proceeds in escrow for a year after the decedent's death.

IV. Solutions

So what can be done, and what has been done in certain counties? Some title insurance underwriters are allowing the personal representative's attorney to issue affidavit(s) stating that there are no outstanding creditors of note, including Medicare, last hospital bills, credit card bills, etc. However, this dubious back door to title coverage is not a real solution since: (1) no attorney can provide absolute assurance about a decedent's creditors until the creditor claim period has lapsed; and (2) title insurance companies will only allow such back door coverage in this instance on a case-by-case basis, thereby creating uncertainty and unreliability. This is not a real solution to the problem.

Another option is a legislative fix.

If Montana wanted to resolve this issue, Montana would enact a statute similar to Colorado Revised Statute § 15-15-410(1), which states:

Subject to the rights of claimants under section 15-15-407 (2), if the property acquired by a grantee-beneficiary or a security interest therein is acquired for value and without notice by a purchaser from, or lender to, a grantee-beneficiary, the purchaser or lender shall take title free of rights of an interested person in the deceased owner's estate and shall not incur personal liability to the estate or to any interested person.

C.R.S § 15-15-410 cuts off creditor claims against the real property at the beneficiaries of the decedent grantor's estate. That way, purchasers of the real property are able to obtain clear, insurable title without an exception to coverage based upon the decedent grantor's creditor claims. And with clear, insurable title, purchasers are able to obtain a loan to finance the purchase.

Colorado's § 15-15-410 provides certainty to buyers, sellers, title companies, and lenders where Montana's URPDTA does not. Also, it leaves liability for creditor claims where it is best suited: with beneficiaries of the estate who, at the very least, are aware that their inheritance is subject to creditor claims until the creditor claim period is over.

In summary, TOD deeds are a probate avoidance device. Real property passed via TOD deed is still subject to creditor claims from the decedent grantor's estate for up to a year after the decedent's passing. Title insurance companies will not insure title on real property passed pursuant to a TOD deed (without an exception to coverage) unless certain conditions occur. And without clear, insurable title, purchasers are unable to obtain a loan to finance their purchase. This situation has undermined the usefulness of TOD deeds in Montana. Some solutions exist, but ultimately legislative intervention may be necessary.

“ A legislative fix similar to one instituted in Colorado could provide certainty to buyers, sellers, title companies, and lenders that Montana's URPDTA does not. ”



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Wellness wisdom from Montana attorneys

Over the past six months I have put miles on my car, minutes on my zoom, and time on the phone line talking with Montana attorneys about their experiences with stress, burnout, and resilience. Here are some tips and insights, in no particular order, that may speak to you. These ideas are all credited to the fabulous Montanans who are speaking up about well-being, who are eager to work together to bring well-being to the forefront:

It's hard to pinpoint why we keep saying yes when we should say no to accepting work. For some it's outside of our control — public defenders, judges, associates low on the totem pole, or attorneys in crisis-driven subject areas. For some, we're afraid if we say "no" the client will take all of their business elsewhere and we'll lose a large insurance company or other impactful contract. Out of fear, we'll take a case we know we can't handle. Or finally, it's just the way we've always done it: we don't turn down work. I have not interviewed a single attorney who's happy with not being able to say no, or who thinks it is a good idea to take work that will push them beyond capacity, and yet it remains the number one concern amongst our colleagues.

To find the strength to keep working at something difficult, a strong personal mission and vision is key. When asked what gives her the strength to litigate complicated cases, tolerate high stakes pressure, and be away from her family, a fabulous trial-attorney-young-mom-of-young-kids tells me, "because it's Bull@#\$!" She is skilled at pinpointing injustice and knows it's what she's

meant to do. She also tells me she works at a firm where everyone supports one another and she knows her colleagues have her back. She does not have to hide her frustration.

When the pressure of helping a particular client seems too great, practice radical acceptance of your miniscule role in the universe. We can't change anyone's life, really, and their circumstances are their own. Try this morbid exercise: remind yourself for a second that all of your clients will someday die. When they're on their death bed, will they really be thinking of what you are doing today? With some particular motion, issue, or seemingly emergent need? They will be focusing on what really mattered in their lives, and it's unlikely to be you.

It's important to recognize when something you're doing becomes compulsive. When you really can't control your actions and you don't know why you're doing it (whether it's drinking, eating, scrolling mindlessly, snapping at colleagues, or arguing needlessly) it's time to ask for help. Willpower alone cannot overcome a compulsion.

Use technology to help with work-life balance. One large international firm I spoke with had their tech department add popups to their email and other software that would ask "It's after hours! Are you sure you want to be working?" when trying to open documents or send emails. The brilliant fix helped assure attorneys it was OK to quit at 5.

Do you struggle to leave your desk to take a break? It's easy to feel like

MORE WISDOM, NEXT PAGE



MERI ALTHAUSER

Meri Althaus is an attorney of 10 years practicing family law and mediation in Missoula. Her practice focuses on collaboration and solution-finding for her clients and their families. She also offers consulting services in workplace wellness, with a certification as a Workplace Wellness Specialist through the National Wellness Institute and as a Resilience and Thriving Facilitator through Organizational Wellness and Learning Systems.

“ We need to share and acknowledge that our work is emotionally taxing. The emotional toll cannot be kept in the shadows and it is not a sign of weakness. ”

WISDOM

FROM PREVIOUS PAGE

you can't let things go without your response for five minutes much less an hour lunch break or workout session. For nearly 20 years, one attorney colleague felt she literally could not take a break without fears of tasks piling up, or without feeling guilty about not attending to kids and family. She set a goal to take an exercise break most every day, which was hard at first because of all of that worrying. But as she gained traction she realized she was more refreshed and she could handle the tasks that were left at the office better when fueled by mid-day exercise, so the habit stuck. The takeaway: keep at it until it becomes easier, then you will realize you CAN leave your desk, you CAN relax, and you DO deserve that break.

Facilitate emotional SWAT team

meetings. When an attorney has a particularly difficult case or day — an emotional hearing, a blameful client, or a big loss — hold a meeting where your team can just vent and acknowledge the trauma. No one needs to share advice, provide a takeaway, or create a to-do. Instead, just being there for one another helps you to leave the emotion on the workplace conference table instead of letting it fester or bringing it home to your family. Overall, the takeaway from this strategy seems to resonate the most with participants in this project — that is: we need to share and acknowledge that our work is emotionally taxing. The emotional toll cannot be kept in the shadows and it is not a sign of weakness.

If you would like to add your input to the conversation, or have an answer to any of our not-so-rhetorical questions (no, really — why do we have so much work??) contact Meri to chat!

CHRONIC STRESS PILOT PROJECT

Meri Althaus is developing a pilot project aimed at curing the legal profession in Montana of chronic stress and is seeking input from Montana attorneys. Please contact her at meri@forwardlegal406.com or 406-325-7100 to participate in an interview or focus group, or to hold a workshop on resiliency for your law firm.

BETTR SECTION MENTORSHIP PROGRAM



NEW TO TRANSACTIONAL PRACTICE? DON'T KNOW WHERE TO FIND ANSWERS?

Providing limited-scope input within the mentor's discretion, a mentor from the Business, Estates, Trusts, Tax and Real Property Section may be able to help. To learn more, or to find a mentor, email Brand Boyar, Mentor Program Chair of the BETTR Section, at bboyar@wordenthane.com.

Don't neglect protecting your personal devices

These days, most lawyers are taking appropriate steps to see that all work-related servers, computers, mobile devices, and cloud-based apps are properly secured. Unfortunately, the same can't be said about all their personal devices and accounts. While many give it the old college try, one personal device that is often overlooked is the wireless router in their homes.

Even if the amount of time spent working from home is minimal, all lawyers and staff need to make sure this device is properly secured. Not only is such a step now ethically mandated in a number of jurisdictions; but as their lawyer, your clients also expect you to take whatever reasonable steps are necessary to keep their personal information and your communications with them secure. Given that much of the work force shifted to working from home in 2020, securing home routers has become particularly important because cyber criminals have shifted their focus to home devices. Heaven forbid your home router, or the home router of a staff person, ends up being the weak link that enables a successful breach into your office network.

The good news is that you don't need to be an IT security expert to take care of most of the basics. Start by pulling out your instruction manual. If that's no longer available, instruction manuals are often available online. Just do a search for it using your router make and model number. With that in hand, make sure to address the following recommendations if they have not already been taken care of.

1) Because the default administrative username and password are easy to guess, you should change both. Best practices now call for a complex password of at least 20 characters consisting of uppercase and lowercase characters, numbers, and symbols. And since many router manufacturers all set the default username as Admin on all their devices, pick a username that's unique to you.

2) Change the network SSID (the name of your network) defaults. Every

router comes with a default network name. Change it to something unique to you but don't have it be something that might identify you. As with the router's administrative password, also create a similarly strong network access password.

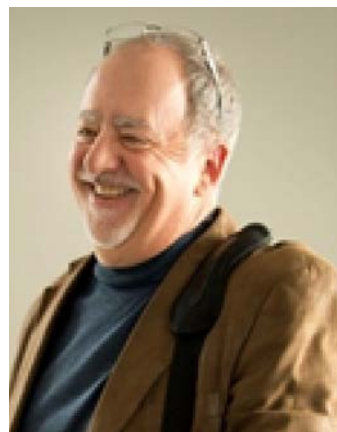
3) Setup a guest network with its own unique SSID and password because all guests, to include friends of any kids, should never have access to your home network.

4) Make sure the firmware version of your router is current. Update to the most current version if it isn't because version updates are how security patches are delivered to your router. If your router has an auto update option, make sure that is enabled. If no firmware updates have been released in the last 12 to 18 months, replace your router with a newer model.

5) Confirm that the network authentication method is set to WPA2-personal, or even better, WPA3-personal if that option is available. WPA3 is the more secure encryption language of the two. If neither of these options are available on your router, replace your router with a newer model.

6) Turn off UPnP (Universal Plug and Play). Yes, I know this can make connecting new devices to the network less convenient; but leaving it on provides hackers an access point that can be used to insert malware on to your network, to include things like programs that seek to capture login credentials to your bank accounts.

There are additional steps one can take to further secure a home router but a follow-through with these most basic steps will go a long way toward seeing that your home router is properly secured. That said, one final note. I know that keeping track of long complex passwords can be a stumbling block for some. That problem can be easily solved with a password manager. Given all the login credentials we're all trying to manage nowadays, the use of a password manager has quickly become a true necessity.



MARK BASSINGTHWAIGHTE

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1,200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School



Law Day provides chance to educate public on law

The 2022 Law Day theme is “Toward a More Perfect Union: The Constitution in Times of Change.”

Law Day is held on May 1 every year to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession. Law Day provides an opportunity for state and local bars and individual attorneys to host or participate in discussions about law and its role in society. Resources are available for schools, state and local bar associations, civic organizations, and others to plan programs, lessons, and activities for a variety of public audiences, in-person and virtually.

About the 2022 Law Day theme: “The Constitution is a dynamic document, as it not only outlines a blueprint for government, but also delegates power, articulates rights, and offers



mechanisms for change. It is neither perfect, nor exhaustive, as our nation’s history makes clear. Legislation, court rulings, amendments, lawyers, and “we the people” have built upon those original words across generations to attempt to make the “more perfect Union” more real. That effort continues today, as contemporary leaders and everyday citizens raise their voices as loud as ever to fulfill the promise of the Constitution. Defining and refining those words of the Constitution might be our oldest

national tradition, and how each of us works—together—toward a more perfect Union.”

Explore the 2022 theme and find resources for planning 2022 Law Day events – including lesson plans and classroom activities, tips for publicizing your event, and downloadable resources – online at abateacherportal.org/law-day/.

Outstanding Law Day events will be recognized through the ABA’s Law Day Awards. This program lets outstanding state and local programs get the national recognition they deserve. Awards are given to programs that have found creative ways of reaching out to schools and the community and have forged strong partnerships with other groups to deliver the message about the benefits of the rule of law.

JEST IS FOR ALL

BY ARNIE GLICK

Another Resolution Destined to Fail



“Whereas it is New Year’s Day, I hereby resolve to cease, desist, and otherwise refrain from the unnecessary and/or excessive use of legalese.”

Robert Morrison

Robert "Bob" Morrison, 99, died of natural causes at his residence in Kalispell Nov. 25.

After graduating from Havre High School in 1940, Bob joined the military, flying for the Army Air Corps during World War II. He earned the Distinguished Flying Cross and the Air Medal for his service. After the war, Bob earned a Juris Doctorate from the University of Montana.

Bob worked as a special agent for the FBI, after law school before moving back to Havre and opening a law practice with partners Chan Ettien and Van Barron that grew to include numerous

associates and partners. Bob served as city attorney, was elected county attorney (14 years), was a past president and director of Montana Legal Services Association, past president of the 12th Judicial Bar, served on the Supreme Court's Advisory Committee on Rules of Criminal Procedure, and the Advisory Commission on Rules of Civil and Appellate Procedure. He was a member of the Montana Bar, Montana Trial Lawyers and American Bar Associations, and graduate of the National College of Criminal Defense Lawyers.

Bob was active in numerous community organizations, helped start the Bear Paw Ski Bowl and improve the Elks (later Beaver Creek) golf course. He was an Elder in the First Presbyterian Church, served on the Northern Montana Hospital board, the Northern Montana College Foundation board, the University of Montana Alumni board and was a founding member and chairman of the

board of First Security Bank-Havre (now Independence Bank).

Bob was an avid sportsman, hunting, fishing and running in his younger years. He was a proud member of the 1940 State Champion Blue Pony basketball team and played football and baseball in high school, the military, during and after college. He loved to ski and was still skiing Big Mountain slopes at age 85.

Bob was preceded in death by his wife Pat, daughter Karen Morrison, brothers Edward and Jack Morrison, and parents Edwin and Gena Morrison. Daughters Lynn Morrison-Hamilton (Miles) of Lakeside and Robyn Morrison (Gerald Hill) of Helena survive.

The family suggests memorials to the Northern Alumni Foundation in Havre, the University of Montana Foundation in Missoula, or an organization of the donor's choice.

Bradley Dugdale

Bradley E. Dugdale, Sr., 85, passed away due to natural causes at his residence in Havre, Montana on Oct. 28.

Brad was born on Jan. 24, 1936, in Butte to Raymond and Susana (Schamer) Dugdale. Raised in Butte, he graduated from Butte High School in



Dugdale

1954. He enlisted in the U.S. Army in November of 1954, and served in Korea until 1957. In 1955, Brad married Sally Gilham, and the couple had four children, divorcing in 1974.

After receiving his Juris Doctorate in 1965 from the University of Montana Law School in Missoula, he moved to Havre, where he took a position at Weber, Bosch, Kuhr Law Office. Over the years, Brad worked hard, and he became a partner at what is now Bosch, Kuhr, Dugdale, & Brown.

Brad was a cornerstone of the Hi-Line and the legal community for decades providing countless people with legal advice, guidance and friendship. Brad loved his business partners and support team. He worked for the same firm for 56 years and was still working when he passed away.

In December, the 12th Judicial District held a memorial service for Brad and Keith Maristuen, who also died in 2021 and was a longtime partner in the firm, a cornerstone in the Havre legal community, and a past president of the State Bar of Montana.

Brad attended the University of Montana, majoring in accounting, and received his Bachelor of Science degree from the University of Montana with honors in 1960. He was admitted to the Montana Bar in 1965 and became a certified public accountant in 1960. Brad was a member of the State Bar of Montana, Twelfth Judicial District, and the American Bar Association. Brad received his 50-year pin from the Montana Bar Association in 2015. In 2018, Brad

earned a Martindale-Hubbel's AV Preeminent rating for Highest Level of Professional Excellence as an attorney.

Brad was raised in the Depression and understood the value of hard work and having a strong moral compass. That wisdom was transferred to his children and grandchildren. Brad had many strengths and a desire to help others. His sharp mind, quick wit and soft-spoken demeanor were his trademarks. He taught many valuable life lessons and was open to learn from others. Brad was a good citizen.

Brad married Cheryl Heinrich, with whom he had a daughter. The couple later divorced, and he married Dorothy Rucinsky. With this marriage, Brad gained Dorothy's three daughters whom he loved dearly. Dorothy passed away in 2016, and Brad married Anne Neal, who survives.

Donations are to be directed to the Havre Salvation Army in Brad's memory.

Memorial submissions

The Montana Lawyer will publish memorials of State Bar of Montana members at no charge.

Please email submissions to editor@montana-bar.org using the subject line "Memorial." Memorial submissions are subject to editing for length and content.

CLASSIFIEDS Contact | To post a job on our online Career Center, visit jobs.montanabar.org (Montana Lawyer classified included in price). For all other classified inquiries, email editor@montanabar.org or call 406-447-2200.

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CORPORATE COUNSEL – Sioux Falls or Helena, MT. NorthWestern Energy is seeking applicants for a Corporate Counsel position based in Sioux Falls, South Dakota or Helena, Montana. The selected attorney will provide support to NorthWestern Energy's Legal Department, with responsibility for drafting and negotiating contracts, reviewing transactional matters, resolving disputes, researching issues and assisting as part of a team in developing and implementing various strategies within the energy industry. To review a summary of the position, salary range (\$82,000 to \$135,500 based on experience) and to apply, visit <http://www.northwesternenergy.com>. NorthWestern Energy is an equal opportunity employer.

DEPUTY COUNTY ATTORNEY POSITIONS: The Ravalli County Attorney's Office seeks one Civil Deputy County Attorney and one Criminal Deputy County Attorney. The civil deputy attorney will undertake the civil legal work of Ravalli County under the supervision of the Chief Deputy Attorney and the County Attorney. The Criminal Deputy Attorney will prosecute misdemeanor crimes and offenses in Justice Court and felony crimes in District Court and Youth Court including all aspects of criminal prosecution. \$65,000-73,000 DOE. Applicants must submit a resume, cover letter, writing sample, law school transcript and Ravalli County employment application, which can be found at: <https://ravalli.us/Jobs.aspx>.

DEPUTY OR SENIOR DEPUTY COUNTY ATTORNEY

Yellowstone County Attorney's Office is seeking a Senior Deputy (\$68,054.83 to 102,082.24 DOQ) or a Deputy County Attorney (**County Attorney bargaining unit currently under collective bargaining negotiations. Starting salary is anticipated to increase. Currently- \$64,000) + longevity and benefits. Duties include routine to complex criminal prosecution. Senior Deputies may act as lead counsel on major felony prosecutions. Related duties as required. To apply, email atolzien@yellowstonecountymt.gov.

ASSOCIATE ATTORNEY: Griffith & Cummings, PC seeks an associate attorney to join its Big Sky, MT and Whitefish, MT practices. The position is located in Big Sky. G&C focuses on community association law including litigation. Ideal candidate will have three or more years of legal experience. Sense of humor is a must. Experience as a judicial staff attorney is a plus. Applicant must have excellent legal research, brief writing and organizational skills, ability to meet deadlines, make court and deposition appearances, and work in a fast-paced atmosphere. Must be self-motivated but able to work as a team. Experience in real estate development and drafting and litigating Covenants/Contract is preferred. Must be licensed in Montana. Salary DOE and includes benefits and bonuses. May be able to assist with housing. Please send cover letter, resume, writing sample and references to alanah@bigskymtlaw.com.

ASSOCIATE ATTORNEY POSITIONS:

Garlington, Lohn & Robinson is looking for associate attorneys to join our team. Garlington is an established, well-respected, busy Montana law firm with roots that trace back to 1870. We are a litigation and transactional firm that serves solopreneurs up to Fortune 500 companies. Our practice areas include insurance defense, labor and employment law, construction law, healthcare, medical malpractice, real estate law, environmental law, business, and tax law. We focus on delivering quality legal solutions to our clients, with attention to detail and high ethical standards. Send resume, cover letter, transcripts and a writing sample to crsportsman@garlington.com

ATTORNEY: Disability Rights Montana (DRM) is seeking to hire an attorney with administrative law and litigation experience to work in our Benefits and Employment Work Unit. Disability Rights Montana's mission is to protect and advocate for the human, legal, and civil rights of Montanans with disabilities while advancing dignity, equality, and self-determination. The Benefits

and Employment Unit focuses on protecting the rights of people with disabilities who are in the process of regaining, maintaining, and seeking employment. Our clients are generally people with disabilities who are social security beneficiaries, applicants, or clients of vocational rehabilitation and, in some cases, persons seeking Medicaid benefits. Email katherine@disabilityrightsmt.org to apply.

ASSISTANT FEDERAL DEFENDER The Federal Defenders of Montana, Inc., the community defender organization serving the State and District of Montana, is soliciting applications for the position of Assistant Federal Defender at the Helena Branch Office. To apply, email your cover letter, resume, brief writing sample, and references to mtx_employment@fd.org in a single Adobe PDF file using the subject line "MTX-HELENA-AFD". Applications must be received no later than 3:00 p.m. Mountain Time on Monday, January 17, 2022. Multiple positions may be filled from this announcement. Women and minorities are encouraged to apply. No telephone inquiries please. Only those selected for an interview will be contacted. Employment is contingent on a satisfactory background investigation. The Federal Defenders of Montana, Inc., is an equal opportunity employer and maintains a drug-free workplace.

ASSOCIATE ATTORNEY: Beal Law Firm, PLLC, a Missoula-based firm practicing civil litigation, construction and design defense, business law, commercial and business transactions, real estate, insurance defense, employment law and negligence defense, is seeking an Associate Attorney with 2-5 years experience to join our team. Strong research and writing skills, as well as litigation experience in at least one of our practice areas is required. We have a full work load, so the candidate need not bring cases with him/her. Please submit resume, cover letter, wage requirements, writing sample, billable hours capabilities, and references to kriordan@beallawfirm.com.

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PARALEGAL: Disability Rights Montana seeks to hire an experienced Paralegal. The Paralegal works under the supervision of the Attorney Work Group to support and assist staff attorneys to carry out the legal priorities, objectives, and casework of the agency. Email katherine@disabilityrightsmt.org to apply. Disability Rights Montana is a private non-profit civil rights organization whose mission is to protect and advocate for the rights of Montanans with disabilities.

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