

CHRONIC STRESS

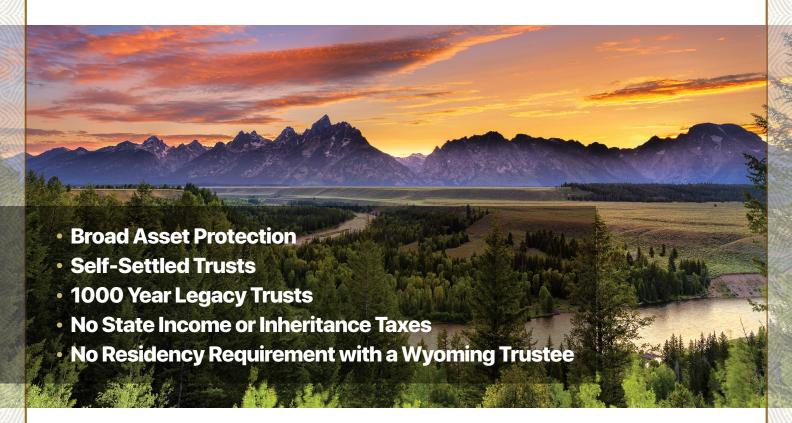
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FEATURE ARTICLES



CHRONIC STRESS IN THE PROFESSION

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A heartfelt thank you to all who serve our profession

A couple of years ago, long before the COVID-19 pandemic, I decided I would throw my hat in the ring to serve as president of the State Bar of Montana. Little did I know then what these past months would bring, or how national and global events would impact my presidential year here in Montana.

Like all of you who volunteer your time and talent to serve the public and our profession – directly through State Bar leadership positions and those in sections, committees and boards, or in innumerable other ways in your own communities – each day I reminded myself of our shared commitment to the State Bar's mission to continue to improve the administration of justice for all Montanans.

Through the challenges of the past year, we developed even more resilience as a profession. I believe we will grow stronger for having lived through these extraordinary times. In fact, I know we already are.

You can see that strength in our recent online election. The membership has selected David Steele of Missoula to serve as the president-elect of the organization and succeed our incoming president Brian Smith in 2022. Alanah Griffith of Big Sky will take on a new role as the Secretary-Treasurer this fall.

Additionally, three new trustees will be joining the Board of Trustees in September: Antoinette (Toni) Tease of Billings, Anna Kecskes of Helena and Joel Krautter of Sidney. Toni will be replacing Ben Sather, Anna will be replacing Danna Jackson and Joel will move into the position long held by Kent Sipe. I want to thank Ben, Danna and Kent for their outstanding service to the State Bar and congratulate Toni, Anna and Joel on their

election.

These new leaders will join newly elecected Trustees Sam Aarab and Gregg Smith, both of Great Falls, and Matthew Haus of Bozeman and Beth Hayes of Missoula, as well as Randy Snyder of Bigfork, who rejoined the Board after his prior service, including as president of the organization.

Our organization continues to evolve to meet the changing landscape of the law practice and the changing needs of Montana. This dynamic group of volunteers join other leaders in our now 20 sections and those serving on our 19 committees and boards.

Our success as a self-regulated profession dedicated to improving the administration of justice for all Montanans truly is dependent upon each of you and all of us working together. And you continue to meet that call.

My year as president of the State Bar of Montana was certainly different than I anticipated. My ability to travel to see all of you in your communities was impacted by a global pandemic that fundamentally altered how we live and work. But with summer upon us and my presidential year entering its final months, my message to each of you is "thank you" – for all that you do for your clients and for your dedication to the profession.

We are a big tent covering an equally big state, but we are all "Montana Lawyers," stronger through our challenges and with a vibrant State Bar to carry us into the future.

State Bar of Montana President Kate McGrath Ellis is an attorney with the Montana Auditor's Office.



KATE McGRATH ELLIS

2021 State Bar of Montana elections

The results of the 2021 State Bar of Montana Elections are:

President-ElectDavid J. Steele, II,
Missoula

Secretary/ Treasurer Alanah N. Griffith, Big Sky

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Area F Trustee Aislinn W. Brown, Helena Anna Maria A. Kecskés, Helena J. Stuart Segrest, Helena

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"Our success as a self-regulated profession dedicated to improving the administration of justice for all Montanans truly is dependent upon each of you."

You can register for upcoming State Bar of Montana CLE presentations by going to the calendar at www. montanabar.org. If you have questions, please email salpert@montanabar.org.



Other upcoming CLE

Investigating Sexual Assault Crimes | June 14-15 in Havre, June 17-18 in Great Falls | 14.5 CLE credits (2.5 ethics) | Free: The Montana Law Enforcement Academy is offering a 16-hour course covering

best practices to effectively respond to and investigate sexual assault crimes. Email bryanfischer@mt.gov to register. Additional classes may be added.

IP Section's Explorations Series: Laney Griner v. Steve King: Copyright, Fair Use, and Memes

June 23 | 1.0 CLE credit (pending). Presented by Professors Cathay Smith and Stacey Lantagne - Webinar. Register in advance for this webinar: https://zoom.us/webinar/register/ WN_L1QRNKKjSM-e1iTrXoXLOg

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CAREER MOVES

Reed joins Billstein, Monson & Small as associate attorney

Billstein, Monson & Small in Billings has announced that Anna M. Reed has joined the firm as an associate attorney.

Reed was born and raised in Cody,



Reed

Wyoming. She attended Montana State University in Bozeman and received a degree in film and photography, followed by law school at the University of Montana School of Law, in Missoula, Montana. She has

practiced law in Billings since 2019 and is admitted to practice in Montana and Wyoming.

She enjoys spending her free time in the outdoors with her husband, Chase, and two dogs, Annie and Sue.

HONORS







Edwards

Edwards finishes historic 2-year term as IATL president; Racicot inducted into IATL

Billings lawyer Cliff Edwards marked a couple of firsts in his tenure as International Academy of Trial Lawyers president, which ended in March.

Edwards' term ended at the IATL's Virtual Annual Meeting in March. Former Montana Gov. Marc Racicot as an honorary academy fellow. Racicot is one of only 48 people the IATL has ever given that honor, and Edwards said inducting him was one of the highlights of his presidency.

Edwards was the first Montanan to be IATL president in the organization's 67-year history. And thanks to the COVID-19

pandemic – during which the organization froze all officers and committee members for a year – he also became the first to serve a two-year term as president.

"It has been the highest honor of my life to serve as academy president these past two challenging years – countless hours spent each and every week for two years," Edwards said. "Thank God my sons have tended the firm and moved our cases."

Racicot on National Judicial College Board of Visitors

Joe Racicot is a member of the Board of Visitors of the National Judicial College.

The Board of Visitors is a group of



Racicot

nationally recognized individuals who serve as goodwill ambassadors, enhancing awareness of the College, and assisting with fundraising efforts.

Racicot is general counsel for Montana Rail

Link, a railroad covering over 900 miles through Montana and northern Idaho. He is responsible for all legal matters for the company, including litigation management, contract drafting and negotiation, collective bargaining, and corporate governance.

Previously, Racicot served as counsel to the Washington Companies, a group of individual privately held companies throughout the United States and western Canada.

He is an alumnus of Carroll College and the University of Notre Dame Law School.

Gross has article published in Kentucky Law Journal

Professor Jordan Gross of the University of Montana's Blewett School of Law recently had an article published in the Kentucky Law Journal.

The article is titled "Incorporation by Any Other Name? Comparing Congress' Federalization of Tribal Court Criminal Procedure with the Supreme Court's Regulation of State Courts." The article examines the different experience of states and tribes with uniform national standards of criminal procedure imposed by the federal government.

UPDATE

Additional lobbying expense reported

The final calculation for the 2021 lobbying rebate has been updated to reflect an additional and final expense of \$189.39 that was received after the May issue of the Montana Lawyer went to press. The final rebate is calculated at \$5.55 per member (rather than the \$5.51 per member reported in the May issue) to reflect this expense.

HAVE NEWS TO SHARE?

The Montana Lawyer welcomes news about Montana legal professionals including new jobs, honors, and publications.

There are no word count limits for submissions, but submissions should be limited to information about professional and educational background, practice areas and other relevant professional information.

Head-and-shoulder photos should be at least 200 ppi by 2 inches wide for shots. Email editor@montanabar.org with submissions or questions.

Judge Lovell assumes inactive senior status

Senior United States District Court Judge Charles C. Lovell assumed inactive senior status in April after 36 years of service on the federal bench in the District of Montana.

Judge Lovell has relinquished his pending caseload and will no longer maintain a chambers in the Helena Division of the District of Montana.

Judge Lovell was nominated by President Ronald Reagan on March 27, 1985, to a new seat authorized for Montana. He was confirmed by the U.S. Senate on April 3, 1985, and received his commission on April 4, 1985. He assumed senior status on June 14, 2000. He maintained a regular case load following his transition to senior status, resulting in 36 years of service as a federal judge.

The court produced a biographical film depicting Judge Lovell's career in 2017. In it, the judge said his role model as a judge was the Honorable William James Jameson, former chief judge of the District of Montana, and he tried to emulate as best as he could like his idea of what Judge Jameson was like on the bench.

"He was probably the finest judge I have ever known," Judge Lovell said in the film. "He was an absolutely wonderful human being, a great student of the law, a hard worker, even tempered. Every trait about him was commendable."

Judge Lovell added that he never cared for it when judges would frequently bang the gavel to maintain order. He said



U.S. District Court Judge Charles C. Lovell is shown in an image from a 2017 biographical film about the judge produced by the District of Montana.

that when he became judge: "I made up my mind I was not going to touch that gavel for at least six months. It's been 30 years now and I still haven't touched that gavel. If you can't maintain control, of course, you need to do whatever it takes to do so, but Judge Jameson could always put me in my seat by just raising an eyebrow."

The film can be viewed at www.mtd. uscourts.gov/district-montana-history.

Following his graduation from the University of Montana in 1952, Judge Lovell entered active duty for the U.S. Air Force as a weapons controller. He

transferred to active reserve in 1954 and reached the rank of captain before he was released to honorary retired reserve in 1967.

Following his graduation from the University of Montana School of Law in 1959, Judge Lovell was in private practice from 1959-1985. During that time, he served as the Chief Counsel for the Office of the Montana Attorney General in Helena from 1969-1972.

Judge Lovell presided over numerous notable cases he during his time on the

MORE JUDGE, PAGE 10



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KARLA M. GRAY EQUAL JUSTICE AWARD

to a judge who has demonstrated dedication to improving access to the Montana justice system





NEIL HAIGHT PRO BONO __AWARD

to a lawyer, other individual or organization which has provided pro bono services to Montanans in need.





GEORGE BOUSLIMAN PROFESSIONALISM AWARD

to a lawyer or firm that has established a reputation for and a tradition of professionalism



Nomination Forms & More Information Available at MONTANABAR.ORG/PAGE/AWARD_NOMINATIONS

JUDGE, FROM PAGE 8

bench, including several of the Montana Freemen trials, litigation over a management plan for Yellowstone bison and the Montana state prison riot trials. He issued an interpretation of the Brady Bill, and Unabomber Ted Kaczynski made his first court appearance before Judge Lovell after his 1996 arrest in Lincoln.

"Judge Lovell is an institution in the District of Montana, and his absence will be felt throughout the federal court family," reads an announcement from the district about his transfer to inactive senior status. "The judges and staff of the District of Montana deeply appreciate Judge Lovell's contribution to the administration of justice in Montana."



Judge Lovell walks into his chambers in an image from a 2017 biographical film about the judge.

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Workshops offered by Meri Althauser, J.D., Worksite Wellness Specialist, and Resilience & Thriving facilitator. www.forwardlegal406.com

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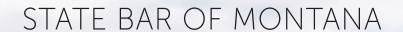
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My 7-year-old was nervous for her first day of school. She grabbed one of her kids' mindfulness-meditation cards (solve the world's problems with a deck of meditation prompts for kids! Zen in your house, only \$25!) and plopped herself in the bathroom. I don't think she really ever follows the cards, but she knows they're for reading and playing with when she's feeling nervous. So, she did.

A while later she finally emerged from the bathroom. She got dressed, saw that her friends were all outside on their usual walking train to school - this time masked up - and gleefully bounded out the door. Back to normal! I returned from our walk to school to find it: the meditation card, floating in a sea of backed-up toilet water on the bathroom floor. The delightful cartoonish characters and whimsical fonts all getting distorted as the card took on water. It floated closer to me in the slight current. "Change is hard!" it let me know.

Well, that about summed it up. A diorama of 2020, captured on my bathroom floor. I'm not sure whether it made me laugh so hard I cried, or if I was close enough to tears already that they just came out at the same time I laughed. Either way, the irony was not lost. 1

Tips for knowing when your stress is manageable

As if our lives weren't stressful enough already (did we choose a life in law because it looked so *laid back?*) the events of the past year have added to and amplified our stressors. It's time to evaluate whether we're laugh-crying in a manageable, and managed way, or whether it's time to ask for help. Here is how you know:

1) Tackle your stressors. To the extent possible, it's important to identify the things, situations, or tasks that cause you stress, and come up with a better way to streamline or eliminate those stressors. We can all probably think of



someone who skips this step and goes straight to self-care:

"OMG... I can't POSSIBLY do this spreadsheet until I do my yoga!...

goes to yoga...

still doesn't do spreadsheet...

you do the spreadsheet.

You need to evaluate and tackle the stressor before you can move on to handling the stress. It won't work for everything (world peace!) but strategize for things like:

- time management
- conflict management
- overburdensome billable hour requirements
- tasks at home, relationship stress, healthy eating
- even basic legal skills like writing, questioning of witnesses, and research.

Take the time to take a class, learn a new method, work with your team, or adopt a new technology that helps reduce the impact of those stressors.

2) Tackle the stress itself. Know the early warning signs that something is

getting to you so that you can take steps to de-stress. Even when the stressor is gone, the stress itself remains in almost every system of your body. Stress hormones affect your digestion, memory, blood pressure, neurological functioning and more. We all know that feeling. Like campfire smoke that's still in your hair even after you're done camping, you need to do something to wash out the stink of stress! It is important to recognize a) how long it takes you to realize that these warning signs are present, b) whether these symptoms seem to come from something in particular, or a generalized sense of overwhelm (anxiety, or what have you), and c) how hard it is for you to stick to a self-care routine that resolves these symptoms.

What are early warning signs? These are the signs that you're getting stressed in a manageable way. Self-care is still your best tool. Early warning signs can include headaches, muscle tension, becoming ill easily (upset stomach, colds), irritability, anxiousness, mulling events over, inattentiveness, distraction,

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¹ A close second prize for "most 2020" occurrence of the year goes to: Group Text From Ski Coach "If you're thinking of skiing today, don't. Due to a vehicle on fire on Snowbowl road, please stay home." (what the...??? luckily no one was hurt!)

inability to decide what to do next, snappiness, oversensitivity, loneliness, grumpiness, skipping self-care routines like exercise and packing lunch, and over-reliance on tension release (drinking, eating, zoning out online). Try to become aware of these symptoms creeping into your day and label them as soon as possible. Noticing and labeling them as soon as possible gives you the power to tackle them.

Easier said than done? Well, good news! There are many ways to flush stress from the system. You will know best when you've found the best way, and the only commitment you need to make is to find that method then de-stress every day that you experience stress. Thirty minutes of exercise, singing along to your favorite playlist, exposure to the outdoors, laughing with friends, doing nice things for others (I like to go talk to my barista!), volunteering, and snuggling pets are all good ways to flush the bad out with good. Even just watching a good old-fashioned movie that makes you cry or laugh is a good way to flush the system.

A second great option is to take preventive measures to make stressful events less psychologically stressful. Savor and celebrate positive events. Be optimistic, Practice gratitude, mindfulness, or have a meditation daily practice. People who do these things actually handle stress better or don't even experience the same volume of stress as their less optimistic counterparts. Of course, we can't take this too far and stick our heads in the sand of optimism (everything's GREAT!!), but there are many benefits that come from using mindfulness, gratitude, and optimism to increase our resilience without having to deny reality.

If these tasks seem daunting because you're not intuitively focused on self-care, or you have a hard time sticking to these types of goals: welcome to the club! Most of us aren't innately wired to pick a well-being goal, stick to it, and get happier straight away. Approach these goals like any other difficult task you decided to stick with. It takes the same amount of practice and dedication to be well that it does to learn the law. It is

not easy, but you're ready and you've done it before. Choose a method that helps you to be consistent, like putting exercise on your calendar, starting your practice with an accountability buddy, or tying your self-care endeavor to another habit that is automatic, like "before I brush my teeth, I meditate for 5 minutes."

3) When later warning signs emerge, ask for help. How stressed is too stressed? Isn't it self-indulgent to feel like I can just go to a spin class and ignore the ills that we're facing in this day and age? We can't allow the overwhelm of the real problems we face in 2021 prevent us as individuals from taking care of ourselves. When stressors and stress are cumulative, and just making an effort to de-stress is insufficient, you may begin to experience these more severe symptoms. If you feel plagued by even one of the following warning signs, it's time to make a plan.

These later warning signs include: changes in sleep patterns, change in eating habits causing weight loss/gain, lasting feelings of the blues (even dinner with friends doesn't cheer you up), increased use of drugs and alcohol, feelings of hopelessness, perpetual foggy thinking, inability to control anger, overactive feelings (e.g. crying a lot) or perpetually suppressed feelings, fighting, disturbing dreams, major avoidance of stress (e.g. skipping work, not returning home), and feeling all alone or like a stranger to others/in your own home. If you simply can't even try steps one and two (tackling stressors and stress), or you can give it a go but the feelings of stress come flooding back as soon as your workout is over, it is time to reach out. These can be signs of burnout, clinical issues with mental health, or even precursors to major medical issues like stroke and heart attack.

We tell our clients all the time that counseling, coaching, or an action plan to help them deal with their stressors will be beneficial and in their best interests. We tell them that counseling will "look good in court" yet we have a hard time seeking help for ourselves because of how it might look to others. There are simple tools that a person with an

CHRONIC STRESS REDUCTION PROGRAM

Meri Althauser 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.

outside perspective can give you, and a less-stressed version of yourself could be on the horizon. As a profession charged with taking care of itself, your colleagues will be empathetic and ready to help, so reach out to any trusted attorney friend. Reach out to the Lawyer Assistance Program, (www.montanabar.org/page/ LAP, 406-660-1181), your local 2-1-1 referral service, your list of preferred providers from your health insurance, or perform a google search for counselors in your area. For a step down from counseling, in this day and age wellness coaches are available in multitudes including anything from life coaches, executive coaches, diet and nutrition coaches, mindfulness coaches and programs, and many more. The magic that comes from having a trusted third party totally on your side is invaluable in gaining insight into your own behavior, needs, and objectives, and to help you feel like you are not alone. These folks' passion is to help you, so please reach out.

So, back to my bathroom floor. Something had to be done before the tides of toilet water spread to the hallway. Picking up the kids' mediation card, I reviewed the advice as I cleaned it off and gathered towels to clean up:

When things change, does it make your tummy feel queasy?

When things change, does it make you sad to miss out on the way things were before?

MORE STRESS, PAGE 19



Considering Medicare before settlement can prevent bad surprises for plaintiffs, lawyers

By Jack Meligan and Jeremy Babener

Most trial lawyers have now heard, or soon will, about Medicare's increased enforcement against personal injury plaintiffs and their lawyers. In this article we identify the key risks, illustrating the importance of considering Medicare before settlement.

The American Association for Justice has diligently educated lawyers on an important Medicare fact – Medicare Set-Aside accounts, or MSAs, are not "required" in liability cases. Don't believe defendants, insurers, or advisers saying otherwise – Medicare guidance and case law explicitly contradicts them.¹

MSAs can be useful in solving a key Medicare risk for plaintiffs and attorneys after settlement: denial of Medicare coverage for case-related medical services (see Risk #3 below). But, in many cases there are better and simpler solutions, which often depend on finding the right advisor. For example, clients might benefit from obtaining an "MSA Allocation Study." Often, that analysis can either (i) confirm that a plaintiff does not need an MSA, or alternatively, (ii) add hundreds of thousands of dollars to a settlement, even millions, by documenting even greater future medicals.

Before walking through the "Top 10" risks, we provide a quick recap of how Congress inserted Medicare into personal injury cases.

How We Got Here

In 1980, Congress passed the Medicare Secondary Payer Act (the "MSPA").² In various circumstances the law empowers Medicare to deny coverage and demand reimbursement from plaintiffs receiving lawsuit proceeds. In 2007, to help Medicare monitor plaintiff recoveries, Congress imposed new reporting obligations for defendants and insurers, plus a non-compliance fine of

\$1,000 per day.³ Medicare began enforcing these rules in late 2011.

From 2007-2015, advisors of plaintiffs and plaintiff lawyers observed a slow but consistent increase in Medicare enforcement and aggressiveness. For example, in 2011, the Department of Health & Human Services advised (i) that Medicare will not recognize allocations of future medicals without a court order, and (ii) that "[e]ach attorney is going to have to decide, based on the specific facts of each of their cases, whether or not there is funding for future medicals and if so, a need to protect [Medicare's] funds."4 Defendants and insurers also began taking unfriendly positions on Medicare issues at settlement.

Then, in 2018 and 2019 Medicare significantly stepped up its enforcement. Medicare is now denying coverage and demanding reimbursement based on theories practitioners haven't

seen Medicare pursue before. And, since 2016, plaintiff lawyers have been sued for millions of dollars by the U.S. Department of Justice and insurance companies offering Medicare Advantage plans – both of which can seek "double damages" under the MSPA.⁵

In this environment, plaintiffs and their lawyers who settle without considering both past and future Medicare issues run a disturbing number of risks. We note 10 of them here: five for plaintiffs and five for plaintiff lawyers. Many professionals offer supportive services on this front, including members of the Society of Settlement Planners (SSP), the Academy of Special Needs Planners (ASNP), and the National Association of Medicare Set-Aside Professionals (NAMSAP). In many cases, lawyers prepared with template materials and information can handle Medicare issues without outside professionals. Here are the "Top 10" risks we believe you should consider as you proceed.

Five Medicare Risks for Plaintiffs

- 1. When a plaintiff recovers money, Medicare requires repayment of case-related medical expenses that Medicare "conditionally" paid (the "Repayment Amount"). In the last couple of years, Medicare has substantially increased its pursuit of repayment, going after former plaintiffs and their lawyers (see Risk #8).
- 2. In many cases, <u>Medicare has reduced a plaintiff's net recovery</u> by erroneously inflating the Repayment Amount. Medicare is often over-inclusive in its list of plaintiff expenses that it claims to have "conditionally" paid. Without a line-by-line audit and challenge pursuant to Medicare's stated procedures, a plaintiff may significantly overpay.
- 3. When a plaintiff recovers money, Medicare is not supposed to pay related medical expenses until the plaintiff pays a certain amount of them (the "Future Medical Amount"). In recent years, Medicare has increased enforcement of this rule. In general, the Future Medical Amount is the amount that the

settlement agreement allocates to future medical expenses. Unless the plaintiff saves that portion of the recovery, she might be unable to pay (or get Medicare to pay) for medical care that she needs. In many cases, it is possible to reduce the Future Medical Amount – in a manner that Medicare will accept.

- 4. Long after settlement, Medicare may deny a plaintiff's coverage for case-related medical care if Medicare disapproves of how the Future Medical Amount was spent or reported to Medicare. For this reason, many plaintiffs benefit from voluntarily creating an MSA account, which can protect, grow, and properly report the correct use of a Future Medical Amount.
- 5. Misunderstandings by defendants about Medicare rules can reduce a plaintiff's net recovery and delay Medicare coverage. A plaintiff who does not address the Future Medical Amount before the other side involves an outside vendor is sometimes saddled with an unnecessary or "overfunded" MSA that wastes settlement money on expenses otherwise covered by Medicare. Under the guise of minimizing risk of Medicare's objection, and with no cost to them, defendants sometimes condition settlement on the use of larger vendors who profit as more money is placed in an MSA. Courts have described the defense's rationale for an MSA as an "abundance of caution" based on "no credible threat."6

In settling a personal injury action, many plaintiffs face all of these risks and complications. Unfortunately, sometimes plaintiff risks turn into plaintiff lawyer liability.

Five Medicare Risks for Plaintiff Lawyers

6. Plaintiff lawyers <u>risk legal mal-practice suits</u> from clients who suffer any of the five risks above. The rising standard of care in plaintiff work now includes non-litigation issues like Medicare. In fact, ABA continuing education materials hold that a plaintiff lawyer "has a duty to ensure

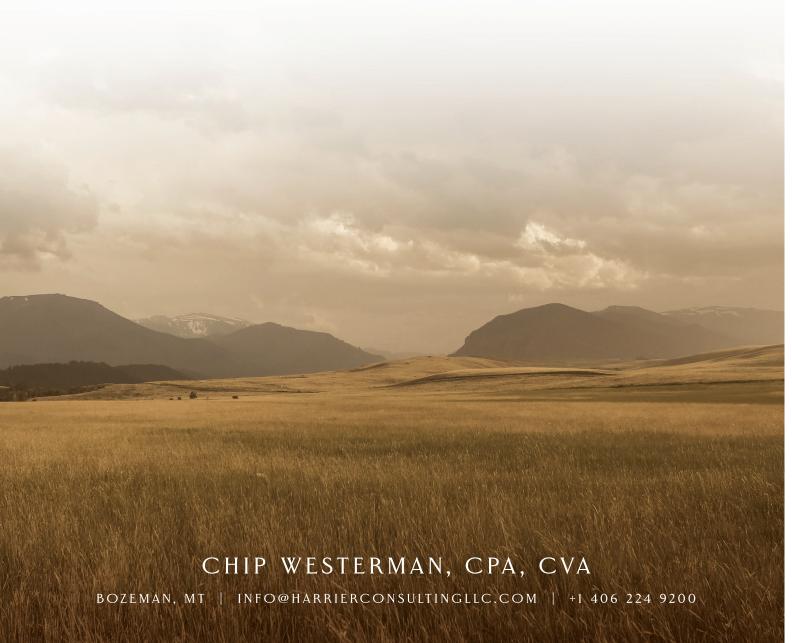
his client is informed about ... the effect of the judgment or settlement on the client's public benefits eligibility," as well as "the options of structured settlements [and] trusts." The ABA's litigation section guidelines go further, advising that "competent representation" requires "considering the tax implications of [any] settlement."

- 7. Also due to the rising standard of care, plaintiff lawyers are at risk for <u>disciplinary actions</u>. So far, we're only aware of a single case in which a plaintiff lawyer forfeited his license for failing to follow basic Medicarerelated protocols.⁹ But, surely there are more disciplinary complaints to come if basic protocols are not followed.
- 8. Perhaps most concerning is Medicare's increasing practice of pursuing plaintiff lawyers post-settlement for their client's Repayment Amount, sometimes referred to as the "Conditional Amount" (see Risk #1). The U.S. Department of Justice has taken a shockingly aggressive tone on this front. After settling with a Baltimore plaintiff firm, the prosecuting U.S. Attorney announced, "We intend to hold attorneys accountable for failing to make good on their obligations to repay Medicare for its conditional payments, regardless of whether they were the ones primarily handling the litigation for the plaintiff."10 After settling with a Philadelphia firm, another U.S. Attorney said, "When an attorney fails to reimburse Medicare, the United States can recover from the attorney — even if the attorney already transmitted the proceeds to the client."11 We expect other U.S. Attorneys to follow suit.
- 9. Even if Medicare and the U.S. Department of Justice slow their efforts, which doesn't seem likely, for-profit companies administering Medicare Part C benefits and Medicare Advantage plans have every reason to increase collection actions against plaintiff lawyers and they

MORE MEDICARE, PAGE 19



BUSINESS VALUATION | FINANCIAL LITIGATION SUPPORT



MEDICARE, FROM PAGE 17

have.¹² One of the most widely known examples is a \$20 million lawsuit against five plaintiff firms in Texas by Humana, UnitedHealth, and Aetna. The three previously paid that much in medical expenses for the firms' asbestos-litigation clients.¹³ The case settled confidentially in 2018.¹⁴

10. Not only are plaintiff lawyers exposed to direct liability, they are pursued under the MSPA for "double damages,"15 and potentially on the hook forever. Courts are currently split as to whether for-profit companies can charge plaintiff firms with double damages.16 But, there is no question that Medicare can do so. And worse, malpractice insurers might deny coverage for double damages pursuant to policy exclusions for "punitive damages" - in fact, that recently happened to Virginia firm Paris Blank.¹⁷ And, as suggested by the 11th Circuit Court of Appeals, this type of liability may not be limited in time or by a statute of limitations, at least for private insurers.18

Where to Turn

The risks of ignoring Medicare at settlement are daunting, but don't need to be. While past experience is no guarantee of future results, we expect

that roughly one-third of plaintiffs can significantly reduce their Repayment and Future Medical Amounts – and, that roughly two-thirds can eliminate them entirely. This means a larger net recovery, a shorter wait for Medicare coverage, and liability protection for plaintiff and lawyer.

With the increased aggressiveness of Medicare, the U.S. Department of Justice, and for-profit Medicare administrators, plaintiffs and their lawyers are well served by addressing Medicare's rules head-on when closing cases.

Jeremy Babener is a tax lawyer specializing in settlement issues. He is Chair of the Society of Settlement Planners Legal Committee and a former Tax Policy Fellow at the U.S. Treasury. Jack Meligan is a settlement planner, financial advisor, and government benefits specialist. He has advised lawyers and plaintiffs for over 30 years and founded Plaintiff's MSA & Lien Solution.

Endnotes

1 E.g., Dep't of Health & Human Servs., Sally Stalcup (May 25, 2011); Sipler v. Trans Am Trucking, Inc., 881 F.Supp.2d 635 (D.N.J. 2012) ("[N]o federal law requires setaside arrangements in personal injury settlements for future medical expenses.").

2 42 U.S.C. § 1395(y)(b). 3 42 U.S.C. § 1395(y)(b)(8).

4 Dep't of Health & Human Servs., Sally Stalcup (May 25, 2011).

5 42 U.S.C. § 1395(y)(b)(3).6 See Silva v. Burwell, 2017 WL

5891753 (D.N.M. Nov. 28, 2017).

7 ALI-ABA, Krooks, Bernard, Special Needs Trusts: The Basics, The Benefits, and The Burdens (2009).

8 ABA, Ethical Guidelines for Settlement Negotiations, August 2002.

9 In re Gammage, 290 Ga. 440 (2012).

10 U.S. Dep't of Justice, Baltimore Plaintiffs' Law Firm Saiontz & Kirk, P.S., Pays the United States Over \$90,000 to Settle Allegations that it Failed to Reimburse Medicare for Payments Made on Behalf of Firm Clients (Nov. 4, 2019).

11 U.S. Dep't of Justice, Philadelphia Personal Injury Law Firm Agrees to Start Compliance Program and Reimburse the United States for Clients' Medicare Debts (June 18, 2018).

12 See e.g., Humana Ins. Co. v. Paris Blank LLP, 187 F.Supp.3d 676, 680 (E.D. Va. 2016).

13 Humana, Inc. v. Brent W. Coon, 2016 WL 4702759 (S.D. Tex., Sept. 6, 2016). 14 Order of Dismissal. Humana, Inc. v. Brent W. Coon, 3:16CV00240 (S.D. Tex., Nov. 28, 2018).

15 See 42 U.S.C. § 1395(y)(b)(2)(B) and (b)(3)(A).

16 Humana Ins. Co. v. Paris Blank LLP, 187 F.Supp.3d 676, 680 (E.D. Va. 2016) (concluding that a company can recover double damages); In re Avandia Mktg., Sales Practices & Prod. Liab. Litig., 685 F.3d 353 (3rd Cir. 2012) (same); but see Aetna Life Ins. Co. v. Guerrera, 300 F. Supp. 3d 367, 378 (D. Conn. 2018) (holding that only the U.S. can get double damages).

17 Telephone Discussion between co-author Jack Meligan and Keith Marcus, formerly of Paris Blank (Dec. 2016).

18 MSPA Claims 1, LLC v. Kingsway Amigo Ins. Co., 950 F.3d 764, 772 (11th Cir. 2020) ("the provision simply allows Medicare to overcome any time limits prescribed").

STRESS, FROM PAGE 15

Change is hard!

Think of times in the past that change has occurred in your life. Can you make a list of all the good things that happened after a change? Use as many colors as you can find when you make your list! Color a picture of your favorite new things or routines!

Thinking through this task I was awash (get it?) with a brief reprieve from the overwhelm of the day. Hands soaked in toilet water, I imagined what I would put on my list and pictured my second-grader's cute, brightly colored and misspelled mindfulness homework. I optimistically envisioned she'd be returning at the end of the day totally

happy with seeing her friends and finding the COVID protocols at school to be no big deal. For just a second, I thought of not sending out a swearword-laden S.O.S. text to my husband. But then my 2020 Zen bathroom moment was disturbed:

UGGGHHHHhh!!! MOOOOMMM!!! How am I supposed to get ready!? Gross! I hate this house!!

The sweet coos of a teenager in the morning brought me back to reality.

As the school year winds down I'm thankful we made it through. It was hard, for sure, but we managed, and the craziness of the year made it absolutely concrete that we (me and my family) need to have a proactive and clear plan for managing our stress. Outdoor time

and exercise every single day, and being mindful about releasing tension with alcohol or food have been critical survival tools for the year. I realize we are a lucky bunch. For help with managing stress, avoiding later warning signs, or seeking help when the stress is too much, please reach out, your colleagues care.

Meri Althauser 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.

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The Docket Sheet: A Docket Research Primer for the Modern Attorney Featuring Docket Alarm

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Introduction to Legal Research on Fastcase

Date: Thursday, June 17 **Time**: 11 a.m. Mountain

Introduction to Boolean on Fastcase

Date: Thursday, June 24 **Time**: 11 a.m. Mountain

Introduction to Legal Research on Fastcase

Date: Thursday, July 1 **Time**: 11 a.m. Mountain

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Introduction to Boolean on Fastcase

Date: Thursday, July 22 **Time**: 11 a.m. Mountain

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Date: Thursday, Aug. 5 **Time**: 11 a.m. Mountain



UM law grads post impressive employment rate even as national numbers trend down

The employment rate for University of Montana law graduates climbed in 2020 compared to 2019, bucking a national downward trend caused in part by COVID-19.

According to UM's Alexander Blewett III School of Law, 94% of graduates of the class of 2020 were employed or seeking a post-graduate degree 10 months after graduation, and 86.9% were in full-time, long-term, bar-passage-required positions.

In comparison, only 77.4% of 2020 graduates from 197 American Bar Association-approved law schools were employed in full-time, long-term barpassage-required or JD-advantage jobs roughly 10 months after graduation, according to the ABA.

"Despite the uncertainty of the past year, our graduates have been able to achieve their career goals and find employment at an exceptionally high rate," said Katy Stack, the UM law school's director of career development.

UM class of 2020 graduate Brandon Zeak had been nervous about how the pandemic would impact his future employment, but the internship he had throughout law school at a local Missoula firm turned into a position as a litigation associate after graduation.

Although just starting his career as a civil attorney, Zeak saw the Missoula County Attorney's Office job opening for a deputy position inviting experienced attorneys to apply and decided



to give it a shot because of his passion for criminal law. He said he hoped to at least make an impression on the county attorney's office, where he envisioned himself working in the future. To his surprise, he was offered the position.

"I could not be happier in my career right now," Zeak said. "This job has made me feel like I have found where I belong, and I believe that this is where I will practice until the end of my career."

Among 2020 Blewett School of Law graduates, 33.3% began work in law firms, 21.7% found employment in public interest or government positions and 30.4% went on to clerkships.

"Our law school enjoys a high

clerkship placement rate, and the class of 2020 was no exception," Stack said. "Twenty-one of our 69 graduates were placed in state or federal court clerkships upon graduation, a percentage that is three times higher than the national average. Clerkships are a wonderful introduction to the practice of law and provide graduates with benefits that can last their entire careers."

"It's so gratifying to see our students complete their law school journeys and go on to careers of meaning serving their communities, state and nation," said Paul Kirgis, dean of the Blewett School of Law.

86.9% of the Blewett School of Law's 2020 graduates were in full-time, bar-passage-required or JD-advantage jobs, compared to the national rate of 77.4% of graduates from ABA-accredited law schools. The school's numbers were buoyed by 21 graduates who landed state or federal court clerkships.

State Bar of Montana's 2021 Annual Meeting

Met us Missoua

Holiday Inn Missoula Downtown Save the dates • September 9-11

It's been a long year for us all.

It may not be time to turn the page on COVID-19 yet, but we are ready to move forward with holding a safe, in-person Annual Meeting this fall.

Not ready for in-person gatherings?

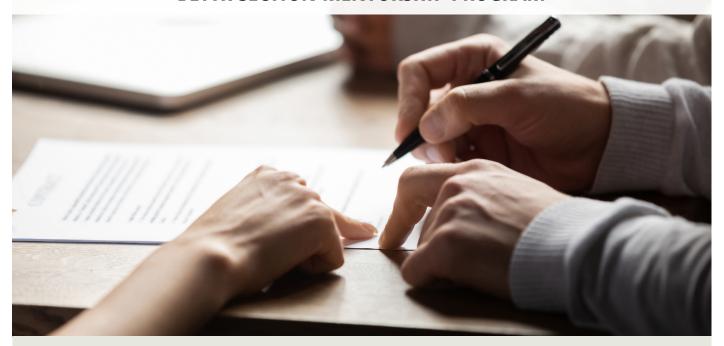
If you don't yet feel comfortable with in-person meetings, we still have you covered. We will offer a live-streaming option for the CLE programming from this year's Annual Meeting.

UM Griz football game on Saturday

Griz fans will have another reason to make the trip. Montana is scheduled to host Western Illinois on the gridiron.

We are excited to see you again this fall in Missoula!

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**.



jobs.montanabar.org

Gov taking comments on judge applicants

Gov. Greg Gianforte has announced he is seeking public comment on applicants to the vacancy in the Eighth Judicial District.

The governor has received applications from the following attorneys:

- Rebekah J. French
- David Joseph Grubich
- Michele Reinhart Levine
- Tracy Labin Rhodes
- Matthew S. Robertson

Applicants must receive at least three letters of support to be considered for appointment. Letters of support or other comments, which will be part of the public record, will be accepted through June 30, at 5 p.m. Submit comments by email to nominatejudges@mt.gov; by fax to 406-444-4151; or by mail to Attn: Hannah Slusser, Governor's Office, P.O. Box 200801, Helena, MT 59620. Comments will be posted at nominatejudges.mt.gov. The governor's appointee is subject to election in 2022.

SUPREME COURT APPOINTMENTS

3 new members tapped for District Court Council

The Honorable Gregory Todd of the 13th Judicial District has been re-elected by the Montana Judges Association to a three-year term on the Montana Supreme Court's District Court Council.

Fergus County Clerk of District Court Phyllis Smith also was appointed to the council. Montana Association of Clerks of District Court nominated her.

The council consists of four district court judges elected by the Montana Judges Association, the Supreme Court chief justice, and four ex-officio, non-voting members representing stakeholders in the district court system.

3 new members tapped for Judicial Standards Commission

The Honorable Mike Menahan of the First Judicial District and the Honorable Randal I. Spaulding of the 14th Judicial District have been re-elected to four-year terms on the Montana Supreme Court's Judicial Standards Commission.

The court in May also re-appointed Missoula lawyer Jill Gerdrum as the attorney member of the commission for a term expiring June 30, 2025.

The commission consists of two district judges elected by the district judges, one attorney appointed by the Supreme Court and two non-attorneys appointed by the governor.





10 simple steps to make your client intake process seamless and efficient

By Jordan Turk

The client intake process is arguably the most critical part of your law firm management. This is how you get clients. This is how you procure retainers and generate cash flow. The initial client consultation sets the tone for the entire case, so make sure you start off on the right foot every time by adhering to these ten simple steps:

1. Streamline your conflict check process so that anyone in your office can do it. Sometimes the receptionist is out or busy, so it behooves you to train your paralegals to do it, too.

- 2. Collect the consultation fee prior to the initial meeting taking place. If you charge a fee, make it very clear, in writing, that payment of said fee is due prior to the consultation. The easiest way to accomplish this is to email a link to the client that enables them to pay online.
- 3. Instruct the potential client to fill out their intake paperwork online or to email the completed form back to you prior to the initial consultation. This saves time and works great if you offer virtual meetings. Be cognizant to not have the client email

sensitive information (i.e., social security numbers) to you.

- 4. Beware of waiver of privilege. Many clients want to bring a family member or friend with them to their initial meeting. This is problematic in that it could constitute a waiver of attorney-client privilege. Explain this issue and its potential ramifications to your client at the outset of your meeting before proceeding.
- 5. Be clear about the cost of the case. The retainer is not the actual

MORE INTAKE, PAGE 28

My Former Client Posted What???

No one enjoys hearing feedback about themselves that is critical in nature; but don't get me wrong. Sometimes we need to hear that we're not meeting the expectations of others. Critical feedback shared respectfully can be a wonderful opportunity for personal and professional growth. That said, when a former client posts a review, on something like an attorney rating site, which is full of vitriol and outright lies, well that's something else entirely. Now the temptation to fight back and defend one's reputation is in play. The interesting ethical question is this: Can you?

The answer isn't as simple as you might think. Yes, there is an exception in our confidentiality rule (Rule 1.6) that permits an attorney to reveal information relating to the representation of a client to the extent the attorney reasonably believes necessary to establish a claim or defense in a controversy between the attorney and the client. This is often referred to as the self-defense exception. Unfortunately, every authority who has considered the question has held that an attorney facing this situation cannot disclose confidential information to rebut a former client's allegations about the attorney's representation of that person. Why? Because there is no legal controversy. The exception really doesn't come into play unless and until you are having to deal with the likes of a bar complaint, legal malpractice claim, or fee dispute. A negative online review simply doesn't get you there.

Although, while you can't disclose client confidences to defend yourself,

there is no ethical prohibition against disagreeing with this client's publicly voiced criticisms of you in more generic terms. As a risk guy, however, I need to suggest that doing so may not be the best idea depending upon how you end up handling the exchange. Think about how others, some of whom might be potential new clients or even current clients, might respond to the debate you are about to enter into.

For example, don't take the bait on a fight you won't win. Participating in name calling, a war of words, or worse can too easily be viewed as you being someone who can't handle a little criticism; and truth be told, the consuming public isn't interested in trying to figure out who's right and who's wrong in their respective opinions. Making matters worse, the very fact that you feel free to fight with a former client on an online forum would suggest to any viewer that they risk being treated similarly were they were ever to voice dissatisfaction with your services.

The better choice is to view the negative review for what it is, a marketing opportunity. Josh King, former General Counsel for Avvo, has shared the following advice to lawyers fearful of the fallout of a negative online review and I agree with him wholeheartedly.

Negative commentary can be a golden marketing opportunity. By posting a professional, meaningful response to negative commentary, an attorney sends a powerful message to any readers

MORE RISK, PAGE 28



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**



Rather than getting into a war of words, a better idea is to view a negative review for what it is:

A marketing opportunity

RISK, PAGE 27

of that review. Done correctly, such a message communicates responsiveness, attention to feedback and strength of character. The trick is to not get defensive, petty, or feel the need to directly refute what you perceive is wrong with the review. ... [A] poorly handled response to a negative review is much worse than no response at all. It makes you look thin-skinned and defensive. Worse yet, if you argue and reveal client confidences (or even potential harmful non-confidences), you may be subject to discipline. 1

What might such a response look like? While the specifics of the negative review matter, here's just one idea:

It is unfortunate that the author of this negative review chose not to leave any identifying information which would have allowed me the opportunity to address his or her specific concerns directly. Understand that as a lawyer I am ethically prohibited from revealing information relating to my representation of any client in a public forum; however, I always welcome the opportunity to discuss the concerns any client, former or current, might have with the service I provide. It is with pride that I share that I have handled over 500 matters of this type during my 21 years of practice and I have yet to have anyone directly express any concerns with the representation they received.

I know that the desire to stand up

and defend oneself can be strong, particularly when your professional skills and reputation are called into question. Should you ever find yourself staring at a negative review that starts to make your blood boil, just stop and take a few breathes. Remember what Rule 1.6 says, think about what it means to be a professional, and take the high road by drafting a response along the lines of what I've suggested. As I see it, there's no better ethically permissible way to try and shut the criticism down and why not take advantage of Josh's "golden marketing opportunity" at the same time!

INTAKE, FROM PAGE 26

cost of the client's case, and that needs to be made abundantly clear so as to manage their expectations (and avoid future headaches).

- 6. Give the client a roadmap of the process and realistic expectations. Too often, attorneys make promises at initial meetings because the matter seems so simple at first. Be careful about using absolutes and making any promises at the outset of the case (no matter how sure you might be). Curveballs happen in every matter.
- 7. Have the fee agreement already filled out. The only thing you should need to do is plug in the retainer amount and print it out or email it to the client at the conclusion of your

meeting. Having it ready to go at the meeting eliminates friction and prevents awkward pauses during the consultation.

- 8. Have the client initial by the evergreen clause. Many attorneys utilize retainers, as opposed to flat fees, for their payment. When the retainer dips below a certain amount, the client will be sent an evergreen letter, which asks the client to replenish their retainer up to the original amount. If you utilize this practice (and you should), make sure to explain this in detail to the client and have them initial by a clause explaining the same in their fee agreement.
- 9. Seal the deal. Make it very clear to the client that you do not begin working, and you are not retained as their attorney, until you receive (1)

their fully executed fee agreement; and (2) their retainer payment.

10. Trust your gut. When it comes to red flags during the intake process, be prepared to decline representation. If you would be the client's fifth attorney on the case, chances are they will cause more headaches than they are worth. Also ask yourself, would this person be a future liability to the firm? No one ever wants to put a phone call into their malpractice carrier, so know when to say no.

Attorney Jordan Turk is Legal Content and Compliance Manager for LawPay.



Make sure the client truly understands the cost of your representation. If you charge a retainer, be clear that the retainer is not the actual cost they will pay.

¹ Josh King, *Your Business: Some-one Online Hates You*, THE RECORDER (Aug. 16, 2013, 4:40 PM) http://www.therecorder.com/id=1202614786352/Your-Business:-Someone-Online-Hates-You?slreturn=20140026162748.

David L. Johnson

David L. Johnson, a longtime Billings lawyer, died on May 20, 2021, at age 83. He was born on Oct. 18, 1937, in Dayton, Ohio, the third son of Clarence and Gladys Johnson. He grew up in Kettering, Ohio, graduating in 1955 from Kettering Fairmont High School.

David earned an undergraduate accounting/business administration degree



Johnson

from the University of Cincinnati in 1961. David had the good fortune of marrying Judith Shriner in 1961. David and Judy would have celebrated their 60th anniversary in August 2021. David attended law school

at Ohio State University (OSU) while Judy taught seventh grade.

After law school, David and Judy moved to Billings, where Judy had grown up. That began a wonderful career of 57 years at the firm of Crowley Fleck - formerly Crowley, Haughey, Hanson, Toole and Dietrich. David soon found his niche in the area of wills, trusts, estate planning, and estate and gift tax. He especially enjoyed presenting seminars on trust and estate topics. David was elected a Fellow in the American College of Trust and Estate Counsel, and was active in the American Bar Association's Probate and Trust section, becoming friends with many colleagues around the country.

David's passion for public libraries began at an early age when he bicycled or hitchhiked to the downtown Dayton Public Library. That continued with weekly visits to the Billings Public Library. He was an early supporter of the Billings Public Library Foundation and served as its president and for many years on its finance committee. David was appointed by the governor to the Montana State Library Commission and served as its chairman. He helped other Montana libraries to form endowments; over one-half have since created foundations.

David's other passion was charitable giving. He encouraged clients to make

charitable gifts and provided legal counsel to many charities to form endowments and foundations to achieve financial stability. He served on many boards and was president or chairman of the Yellowstone Art Museum, United Way of Yellowstone County, SCORE, YWCA of Billings Endowment Foundation, and the American Lutheran Church of Billings.

Donations in David's honor may be made to the Billings Public Library Foundation or a charity of your choice.

Condolences may be made at www. michelottisawyers.com.

Tammy Bauer

Browning Kaleczyc, Berry and Hoven, PC is saddened to say farewell to dear friend and loyal colleague, Tammy Bauer. Tammy worked in our financial department for 32 years, and her competence and calm demeanor carried us through many challenging times. Tammy left us on Jan. 4, 2021, after succumbing to cancer.

Tammy joined BKBH in its infancy as our early members were establishing the foundational culture and character of our success in Montana. From her start in 1988 in our Helena office as a financial assistant, Tammy assumed an ever-widening array of responsibilities for shepherding the fundamental business functions of the firm. The manner in which Tammy served BKBH throughout her tenure has honored our retiring members, shareholders,



Bauer

associates and staff. Tammy's competencies and talents allowed the lawyers of BKBH to focus on client services and the practice of law, knowing that Tammy always had our backs. Tammy was "fiercely loyal" to

the firm and to its members.

Tammy's dedication and commitment to the success of the firm was further revealed by the attention and compassion she showed for the wellbeing of her coworkers and their families. Tammy was a calming consoler and confidant. Tammy wore her fondness and feelings on her sleeve, with courage to be both vulnerable

Memorial submissions

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

Please email submissions to jmenden@montanabar. org using the subject line "Memorial." Memorial submissions are subject to editing.

and candid with all of us. In this very endearing way Tammy gave special attention and advocacy to the young women around her. Over the spectrum of Tammy's career as a working mother, wife and friend, she mentored many not only through words, but also by her own actions and decisions.

We will always cherish Tammy's laugh and smile and the humorous side of her personality. Tammy's sense of firm accomplishment and personal contribution was her own reward. She never sought the recognition she so earnestly deserved.

Tammy's loyalty throughout her time with us at BKBH was purposeful and intentional. Her commitment to firm culture was on display as she lived it. To her work team Tammy was a resource of institutional knowledge and guidance. She was a "go to person" for all. Throughout the span of her professional growth and contributions as BKBH's Financial Administrator, she exhibited and preserved the firm's guiding principles. Her courage and forbearance in her last illness was an inspiration to us all. She made us better in all the ways that matter and we will miss her. Tammy made BKBH a better place.

We are eternally grateful for having counted Tammy as a friend and colleague and for the time her family shared the gift of her presence with us. We express our sincerest condolences to her family, which meant the world to her. She praised her husband, Dave, and cherished her children Alyssa and Bryce. In her memory, we have contributed to the St. Peter's Cancer Center, where she received excellent care, and we welcome others to do the same. Tammy would have wanted some part of her kindness and compassion to benefit others. That was the kind of person she was. Thank you, Tammy.

JOBS & CLASSIFIEDS

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.

ATTORNEY POSITIONS

ASSOCIATE ATTORNEY: Boone Karlberg, Established AV-rated Missoula law firm is seeking an articulate and ambitious associate attorney as a long-term addition to our litigation team, which is rated among the top firms in Montana according to Benchmark Litigation (Highly Recommended), Chambers and Partners (Band 1), and other independent rating groups. The position involves working alongside our experienced attorneys to represent the firm's clients in civil litigation matters in both state and federal courts. Qualified candidates must have outstanding analytical and writing skills, a strong work ethic and dedication to exceptional client service. All interested candidates must send a resume together with a cover letter, references, undergraduate and law school transcripts, and writing sample to Anna-Maria Murray at ammurray@boonekarl-

ASSOCIATE ATTORNEY: Crowley Fleck PLLP seeks an associate to join our Bozeman, MT office. Successful applicants should have 3 – 5 years of legal experience. Applicants must have a good standing reputation in the legal community and be licensed or willing to be licensed in Montana. Competitive salary and benefits for region. All applications will be held in confidence. Please send cover letter, resume, law school transcripts, and writing sample to Tiffani Swenson at tswenson@crowleyfleck.com

ASSOCIATE ATTORNEY: Hendrickson Law Firm, P.C. seeks an attorney with litigation experience to do primarily commercial litigation, including contract, property, construction and estate cases, with the opportunity to be a major part of a small, well established, highly rated, general practice firm in Billings. This is an opportunity for virtually unlimited future financial success, primarily based on productivity, while keeping a strong emphasis on professionalism. Two to three years' experience preferred. Immediate client involvement and experienced mentoring. Several members are at or nearing retirement and want to keep their good clients in capable hands. Please send letter of application, references, resume, transcript, and writing sample to katie@hendricksonlawmt.com.

ASSOCIATE ATTORNEY: Silverman Law Office is changing the way law is practiced, and we're looking for the right attorney to join us. As our Bozeman office continues to grow, we're seeking an associate with at least Two years of experience in estate planning, business, contracts, and real estate matters. You will get the opportunity to work with an effective team and connect with clients in a meaningful way — all while living under the beautiful Big Sky. We're looking for applicants who are humble, hungry and smart. That means they're willing to learn

and grow, strive to do their best and work well with clients and colleagues. Our extraordinary team — from secretaries to paralegals to fellow attorneys — provides support and a positive atmosphere. Our compensation and benefits are at the top of the industry in Montana, and we provide bonuses based upon individual and team performance. Applicants must be admitted to practice in Montana or in the process of obtaining admission to practice here. To apply, send your cover letter, resume, references, and writing sample to Julie@mttaxlaw.com.

ASSOCIATE ATTORNEY: Nelson Law Firm in Billings seeks a full-time litigation attorney. Experience preferred, but exceptionally qualified recent graduates will be considered. Must be compatible with fast-paced, deadlinedriven environment, have strong research and analytical writing skills, and possess a superior work ethic. Salary DOE, but competitive with larger firms. Benefits include retirement plan, and health, dental, and vision insurance. Applications will be kept confidential. Please respond to administrator@nelsonlawmontana. com.

ASSOCIATE ATTORNEY: Halverson. Mahlen & Wrighta busy Billings civil defense firm looking for motivated associate attorney candidates to join our Billings office. 2021 graduates, judicial law clerks, and experienced associate attorneys are invited to apply. We provide an excellent starting salary, four weeks of paid annual leave, exceptional legal staff support, paid health insurance, 401(k) with employer match, a lucrative associate incentive program, and exposure to a broad range of civil and insurance litigation. Candidates must possess exemplary analytical, research and writing skills, the ability to follow instruction and independently manage time, and a willingness to swiftly progress to independent handling of cases. Must be licensed in Montana, or sitting for the July 2021 Montana Bar Exam. To apply, send a resume, cover letter, current writing sample, and a law school transcript to tmahlen@ hglaw.net. Applications are confidential.

ASSOCIATE ATTORNEY: Bismarck, ND-based Braaten Law Firm (www.braatenlawfirm. com) has an opening for an associate attorney. We are staunch advocates for landowners and perform most of our work on behalf of farmers and ranchers. Our practice has been called "good guy law" because we stand up for the little guy, take on the toughest cases, and prove that landowners can use the judicial system as the great leveler to take on Goliath and win. Please email a cover letter, resume, law school transcript, names and contact information for three supervisory references, and at least one writing sample to lisa@braatenlawfirm.com.

PROSECUTOR (Ravalli): It is anticipated that the Deputy Attorney will prosecute misdemeanor crimes and offenses in Justice Court,

DEPUTY COUNTY ATTORNEY. CRIMINAL

meanor crimes and offenses in Justice Court, with possible secondary responsibility for the prosecution of felony crimes in District Court and Youth Court. See full listing at https://ravalli.us/jobs.aspx

DEPUTY COUNTY ATTORNEY II(Lewis

& Clark): Under the general direction of the County Attorney, this position prosecutes criminal and civil offenses, represents county government in legal proceedings, and advises county officials on civil matters. 2 years of experience preferred but all candidates will be considered. Closing date is June 22. For additional information or to apply, visit www.lccountymt.gov/hr/jobs.html.

DISASTER LAW/HOUSING: This Montana Legal Services Association Staff Attorney will provide poverty law services to clients who have been impacted by COVID-19 and housing law services to low income clients. Poverty law services will include, but not be limited to consumer protection, public benefits, family law, and housing. This Staff Attorney will work closely with MLSA's Montana Eviction Intervention Project to handle housing law cases and to provide training to pro bono volunteers. This position is funded for 18 months with the possibility of extending if funding is available. Full listing at https://www.mtlsa.org/employment-opportunities/

LITIGATION ATTORNEY: Gangle Law Firm is hiring attorneys with 3 or more years of litigation experience in general business, contract, agricultural law (including water), real estate and/or construction law. GLF is an extremely busy firm with a litigation practice throughout the state. GLF offers a highly competitive wage package commensurate with a candidate's work experience, work ethic, and ability to work independently. This is a perfect position for someone who wants to practice law, be paid well, and have some independence, but not have to deal with the hassle of associates, partnerships, corporate drama, etc. Please submit a cover letter and resume which outlines your litigation experience along with a writing sample of any motions, arguments or appellate briefs you have drafted to info@ganglelaw.com.

INTAKE ATTORNEY: Crowley Fleck PLLP seeks a part-time Intake Attorney to work with the firm's General Counsel team and Intake Department. Successful applicants must have a J.D., a strong academic record, and license or willingness to license in Montana. Applicants must have a good standing reputation in the legal community. Competitive salary and benefits for region. All applications will be held in confidence. Please send resume, cover letter, law

school transcripts, and writing sample to Tiffani Swenson at tswenson@crowleyfleck.com

SENIOR DEPUTY COUNTY ATTORNEY (Yellowstone): Yellowstone County Attorney's Office is seeking a Senior Deputy (\$68,054.83 to 102,082.24 DOQ) or a Deputy County Attorney (\$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. See http://www.co.yellowstone. mt.gov/human_resources/ for application requirements.

PERSONAL INJURY LAW: Franklin D. Azar & Associates is seeking experienced Personal Injury Law attorneys to join its large and growing practice. A qualified candidate will: Be able to demonstrate strong dedication to personal injury law and a passion for helping people; Have experience with complex litigation; Possess strong organizational and writing skills; Be energetic, hard-working, and a team-player; Be licensed to practice law in Colorado or eligible to get a license on-motion.

PARALEGALS

LEGAL ASSISTANT/PARALEGAL: Small well-established estate planning/special needs/elder law firm needs help. Due to staff retirement and office growth, the firm needs personnel for the following functions: Receptionist, scheduler (client coordinator), file clerk, document processing (WordPerfect and Word), office management, light bookkeeping (QuickBooks), and timekeeping (Timeslips). Medicaid and/or probate experience a definite plus. We are considering hiring one or two people, and are flexible re part/full-time and office/remote work. Salary dependent on experience and functions assigned. If you can do three or more of the above, we want to talk to you. Send resume and cover letter describing which of these areas you can address by email at pdeneault@lovaslaw.com, or by mail to Legacy Law Center, PO Box 399, Billings, MT 59103.

LEGAL ASSISTANT/PARALEGAL:

Bozeman law firm seeks a legal assistant/paralegal. Duties include document preparation, file management, communication with clients and other parties, scheduling, records review/ organization, and general legal paralegal duties. This position requires strong organizational, multi-tasking and people skills. Attention to detail, reliability and the ability to work as part of a team are a must. Salary depending upon experience and background. Firm offers benefits, including health insurance, retirement and paid time off. Please email cover letter, resume, and references to marty@westernjusticelaw.com. No phone calls please!

LEGAL ASSISTANT/PARALEGAL:

Established AV-rated Missoula law firm is seeking a full-time litigation paralegal to join our litigation team. Our firm is rated among the

top firms in Montana according to Benchmark Litigation, Chambers and Partners, and other independent rating groups. Must be able to work in a fast paced, deadline driven environment with attention to detail and the ability to multi-task. Must also possess strong interpersonal, administrative and organizational skills and be able to work independently, as well as part of a team. Candidate should have excellent written and verbal communication skills and be proficient with Microsoft including Office Suite and law firm timekeeping software (firm uses Orion). Prior experience preferred. Send resume with a cover letter, and references, to ammurray@boonekarlberg.com.

PARALEGAL: Goodrich & Reely, PLLC seeks an experienced paralegal to join our Missoula, Montana office. We are a small firm serving a sophisticated client base with varied needs including estate planning, business transactions, complex real estate matters, and liquor and gaming licensing and compliance. The ideal candidate will have at least 5 years' experience as a transactional paralegal, but we will consider relevant experience in lieu of a law firm background. Attention to detail, strong client communication skills, and ability to work efficiently are crucial. Compensation is highly competitive and dependent on experience. Please send your cover letter, resume, and references, to jess@goodrichreely.com.

PARALEGAL/LEGAL ASSISTANT:

Christensen & Prezeau, PLLP, in Helena is seeking to hire a paralegal to assist with legal document production, litigation support, case preparation, scheduling, file management, and general administrative support. The individual must be proactive, able to multi-task, and comfortable working as part of a team. Christensen & Prezeau offers a highly competitive salary with a signing bonus and an excellent benefits package, including health insurance. Position may be full-time or part-time. Please provide cover letter, resume, and references by email to amy@cplawmt.com.

CONSULTANTS & EXPERTS

BANKING EXPERT: 34 years banking experience. Expert banking services including documentation review, workout negotiation assistance, settlement assistance, credit restructure, expert witness, preparation and/or evaluation of borrowers' and lenders' positions. Expert testimony provided for depositions and trials. Attorney references provided upon request. Michael F. Richards, Bozeman MT 406-581-8797; mike@mrichardsconsulting.com.

EXPERIENCED BANKING EXPERT/

CONSULTANT – 40+ years of banking experience 30 years of which were in executive management positions in banks ranging in size from community banks to multi-billion-dollar, multi-state banking organizations. Executive responsibility for all phases of lending, lending disciplines and credit assessment.

Special expertise in determining borrower creditworthiness and the appropriateness of lender behavior. Outstanding legal references upon request. Please contact Leon Royer by telephone at 406-932-4255 or backcastranch@qmail.com.

CONDEMNATION EXPERT: 21 years
Condemnation litigation for state agency. 40+
years active litigation. Services include case
analysis, evaluation of appraisals, negotiation
assistance and strategy. Expert testimony
on recoverable attorney fees and costs.
Opportunity for lead and co-counsel on select
cases. Email inquiries to ed@mtjustcomp.com.

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

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

EVICTIONS

EVICTIONS LAWYER: We do hundreds of evictions statewide. Send your landlord clients to us. We'll respect your "ownership" of their other business. Call for prices. 406-549-9611, trevor@ montanaevictions.com. See website at www.montanaevictions.com

INVESTIGATIONS

SKIPTRACING AND ASSET LOCATION SPECIALISTS: Merlin Locate Services is a Montana licensed private investigation agency (PI# 9630) that specializes in finding individuals and businesses that are difficult to locate as well as the location of garnishable assets such as place of employment and bank accounts. Our team of expert skiptracers are all licensed investigators, trained and supervised by Merlin Locate Services' owner and lead investigator, Mike Dores, a licensed investigator since 1981. For more information, please contact Kristin Hall at 855-321-4960 or khall@merlinlocate.com.



State Bar of Montana P.O. Box 577 Helena MT 59624

