

MONTANA LAWYER

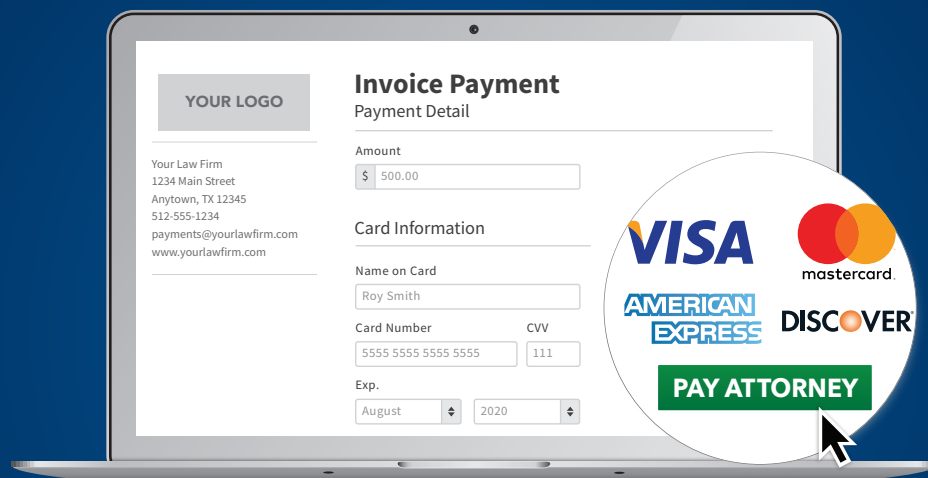
MARCH 2019

An illustration of a large ship with a black hull and a red stripe, tilted at a steep angle as if sinking. The ship has yellow upper decks with several portholes. A woman in a blue business suit is on the upper deck, holding a rope that extends upwards towards a small orange light source in the sky. A man in a dark suit and red tie is on the lower deck, looking down. The ship is surrounded by stylized white waves on a blue background.

DO LAWYERS &
THEIR CLIENTS
HAVE TO GO

DOWN WITH THE SHIP?

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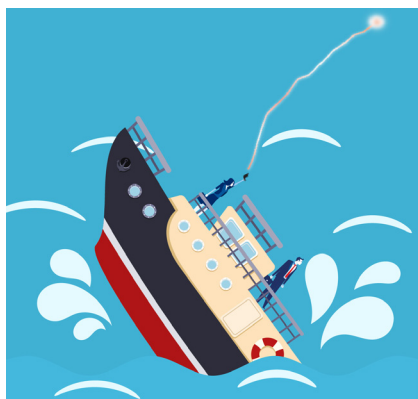
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ON THE COVER



Confidentiality rule and organization as a client. State Bar petitions for changes to rules governing these and other rules of professional conduct. **Page 14**

FEATURE ARTICLES



ETHICS RULES FOR A 21ST CENTURY PRACTICE

The State Bar of Montana, after a comprehensive review, has petitioned the Montana Supreme Court for multiple changes to the Montana Rules of Professional Conduct.



LAW SCHOOL PRO BONO PROGRAM

Program expansion provides students more opportunities to aid in access to justice.

OFFERING STOCK OPTIONS IN BENEFIT PACKAGES

Stocks can add zing — but employers should be aware of the regulations that may be associated with them.



Get involved – it's good for your practice, and for society

The legal profession is fundamental to the operation of our society. Whether it is in our immediate communities, or at the state or national levels, attorneys provide the guidance and expertise upon which our system is based. Attorneys are fundamental to the creation of laws, the interpretation of laws, and the enforcement of laws. We form and advise the entities that are the economic engine of our country. When there is an issue of national, or even international, importance, attorneys are consulted to provide expertise and guidance.

When I meet with leaders from other bar associations, I am always proud to inform them that the attorneys within our Bar are extremely involved in civic activities, pro bono matters, and volunteering, generally, for the benefit of our society. It is one of the hallmarks of our Bar that we share our expertise willingly for the benefit of our communities whether we are paid for it or not.

Expertise comes from both education and experience. The State Bar of Montana provides opportunities for both to its membership. One of the best ways to gain both knowledge and experience is involvement in specific sections and committees of the Bar. Whether one is interested in business law, Indian law, nonprofit law, judicial relations, ethics, or federal practice, there are specific organizations within the Bar where participation can enhance a member's expertise, skills, and relationships. In these sections and committees, members share information with each other and create networking relationships that are beneficial to all.

Beyond just the benefits to their members, bar sections and committees provide benefits to the wider Bar community. Sections often put on continuing legal education seminars to all Bar

members. These seminars provide a platform for members to share expertise and promote their skills. As recognized experts, section members can be a great resource to those attorneys who are not members of the section, and referrals often get made to the section members since they are recognized as experts in their field.

For the benefit of your own practice as well as other members of the Bar, and the general public, consider membership in either a Bar section or committee. Also, consider promoting the legal profession through presentations or written articles on legal topics to the general public as well as involvement in Law Day on May 1.

President Dwight Eisenhower established the first Law Day in 1958 to mark the nation's commitment to the rule of law. In 1961, Congress issued a joint resolution designating May 1 as the official date for celebrating Law Day, which is subsequently codified (U.S. Code, Title 36, Section 113). Every president since then has issued a Law Day proclamation on May 1 to celebrate the nation's commitment to the rule of law. This year, Law Day offers the opportunity to explore free speech and free press through the theme of Free Speech, Free Press, Free Society. This theme focuses on these cornerstones of representative government and calls on us to understand and protect these rights to ensure, as the U.S. Constitution proposes, "the blessings of liberty for ourselves and our posterity."

Your involvement in the Bar and the promotion of the rule of law is fundamental to our society. Thank you for your continued involvement in all aspects of the Bar and our judicial system.

Eric Nord is a partner at Crist, Krogh and Nord in Billings.



ERIC NORD

Sharing your expertise — whether through membership in a bar section or committee, giving presentations, or writing legal articles — can benefit your own practice, other members of the Bar and the general public. Your involvement in promoting the rule of law is fundamental to our society.

Explore proposed changes to Montana ethics rules

Can a lawyer blow the whistle on client malfeasance affecting the financial condition of a third party? The answer to that question may change if the Montana Supreme Court adopts proposed changes to the Montana Rules of Professional Conduct to bring those rules in line with national norms.

The proposed changes to the Montana Rules are out for public comment and this month's issue of the Montana Lawyer explores those and other proposed changes. The State Bar's general counsel, Betsy Brandborg, takes us on a tour of the proposed changes suggested by the Ethics Committee and adopted by the Board of Trustees.

Meanwhile, the Supreme Court has been busy on another front, issuing its decision in *Cross v. Warren*, a case argued at last fall's annual meeting and the question of whether liability auto insurance can be stacked. We will update you on the holding.

The 2019 Legislative Session has now

passed its midpoint. In this issue, we receive an update on the work of that body and its several attorney members, as well as a status update on the bills that the State Bar of Montana has been monitoring, including the budget for the court system.

Also in this edition, Holland & Hart lawyers Beth Nedrow and Amy Bowler share some information about offering stock compensation as an employee benefit – as well as a few things to be aware of for employers who do.

Finally, regular contributor Abbie Cziok returns with more tips for effective legal writing, this month focusing on breaking through writer's block, while Mark Bassingthwaighe of ALPS offers his own practice pointers to keep you out of trouble.

I hope this month's issue finds you thawing out from this winter's deep freeze and I look forward to seeing you at various upcoming events this spring.



JOHN MUDD

For an in-depth examination of a State Bar proposal to amend 18 rules and the preamble to the Montana Rules of Professional Conduct, see Betsy Brandborg's article starting on page 14.

MONTANA LAWYER

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CAREER MOVES

Vana named director of Montana Land Reliance

Jordan Vana has joined the Montana Land Reliance as a managing director.

Prior to MLR, Vana worked with several conservation organizations in the West, including Colorado Open Lands, Colorado Conservation Trust and the Green River Valley Land Trust in Wyoming (now part of the Jackson Hole Land Trust).

He began his career as an attorney in Billings, where he helped clients with tax planning, estate planning, and commercial transactions.

He earned a Bachelor of Arts in English Literature from Colgate University and a Juris Doctorate from University of Wisconsin Law School. Call Vana at 406-443-7027, or jordan@mtlandreliance.org.

Roath joins as associate at Luxan & Murfitt in Helena

Shenandoah R. Roath has joined the law firm of Luxan & Murfitt, PLLP as an associate attorney.

Roath completed her undergraduate degree at Indiana University in Bloomington in 2004, where she

**Roath**

studied biology and philosophy. Before attending IU, she completed two years in AmeriCorps, serving one year in northern Indiana, and a second across the southeastern United States and Caribbean territories. After completing her undergraduate degree, Shena worked in microbiology in Bloomington, Indiana and Bozeman before attending the University of Montana School of Law, earning her

Juris Doctor in 2014. She was admitted to practice in 2015 and began practicing immediately with the small general practice firm Karl Knuchel, P.C. in Livingston. She joined the Office of the Public Defender in Helena two years later, where she represented indigent clients in Lewis and Clark, Jefferson, and Broadwater Counties. She is excited to join Luxan & Murfitt's diverse civil practice, and to continue her criminal defense practice.

Other firm attorneys include Gregory G. Gould, Mark I. Lancaster, DarAnne R. Dunning and Lucas R. Hamilton. Dale E. Reagor fully retired as of Jan. 1, after 40 years of service to the firm and its clients. Candace C. Payne has left the firm to open her own solo practice effective Jan. 1. The firm continues its general civil law practice from its offices on the 4th floor of the Montana Club Building in downtown Helena.

Parkin named a shareholder at Missoula law firm

Milodragovich, Dale & Steinbrenner, P.C., welcomes Rachel Parkin as its newest shareholder.

Parkin represents individuals, small business owners, and corporations in cases involving insurance coverage and defense, professional liability, employment matters, and administrative proceedings. She also has a successful track record in handling complex federal litigation and appellate matters.

**Parkin**

Parkin interned at the U.S. Attorney's Office and at MDS while attending law school at the University of Montana, where she earned a scholarship for excellence in legal writing and helped teach legal research skills to new law students as part of the Junior Partner Program. As an attorney, her research, composition, and communication skills have propelled the firm to success on a number of complex and high-profile cases.

Parkin is a 2016 graduate of

Leadership Missoula, serves as a board member for A Carousel for Missoula, and runs a weekly writing workshop at the Missoula Public Library.

Damrow joins Billings office of Hall & Evans

Hall & Evans, LLC, is pleased to welcome Peter M. Damrow to its Billings office. Damrow is a litigation associate with a practice focusing on professional liability, medical malpractice defense,

**Damrow**

construction defect matters, municipal liability, and complex commercial litigation. Prior to joining Hall & Evans, Damrow worked at another civil defense firm where he briefed numerous matters

before the Montana Supreme Court and acquired jury trial experience in his first years of practice.

He was inducted into the Order of Barristers at the University of Washington School of Law and earned his Bachelor of Arts in Criminology and Sociology from the University of Montana.

Hall & Evans, LLC is a regional law firm with offices in Colorado, Montana, New Mexico, Utah, and Wyoming.

Tappan named partner in Bloomquist Law Firm

Bloomquist Law Firm, P.C., in Helena is pleased to announce that Rick C. Tappan has become a partner in the firm.

**Tappan**

Tappan is a 2014 graduate of Gonzaga University School of Law. He received his undergraduate degree in geology from Northern Arizona University. Prior to attending Gonzaga, Rick was an environmental consultant and professional geologist.

Tappan's areas of practice include commercial litigation, natural resource litigation, oil and gas law, private and public lands issues and water law.

Henke joins Vicevich Law in Butte

Vicevich Law in Butte has announced that Larry Henke has joined the firm.

Henke is a Montana native, born and raised in Great Falls. He graduated from Anaconda Senior High School, then obtained his undergraduate degree from the University of Great Falls. He worked for the Montana Highway Patrol before he left for law school at Southern Methodist University, where he gradu-

ated magna cum laude in the top 3 percent of his law school class.

Henke's expertise is the representation and counseling of clients in civil litigation matters. Capitalizing on his experience as an



Henke

in-house counsel for two publicly traded companies, one a Fortune 500 manufacturing conglomerate, he has guided businesses through multiple types of commercial transactions and litigated disputes in the U.S., Europe, South America and the Asia Pacific region. He regularly advises boards of directors on SEC issues, has managed SEC and DOJ investigations, and performed multiple internal employee misconduct investigations and Foreign Corrupt Practices Act inquiries.

Henke also represents individuals with business litigation matters, commercial disputes, HOA litigation and property disputes. His experience with construction clients and manufacturing entities extends over the universe of real property litigation, including residential construction, commercial projects and individual matters arising out of contract disputes, performance issues, HOA regulation enforcement and interpretation and nearly every facet of construction law.

US Attorney's Office announces 5 new attorney hires at Montana offices

U.S. Attorney Kurt Alme has announced the recent hiring of five new assistant U.S. attorneys for the District of Montana.

"I am pleased that these five new attorneys, with excellent education and experience, have agreed to join our office," Alme said. "They received high praise from past employers and other references as to their abilities, and importantly, their character and ethics. Their addition will help our office keep the people of Montana safe from meth-driven violent crime, address violent and drug crime on our reservations and fight prescription pill diversion."

Joining the Billings office's criminal division are:

Karla Painter, from Huntley. Painter received her undergraduate degree from Montana State University – Billings in 2008 and her law degree from the University of Montana in 2011. Painter served as a law clerk for Montana Supreme Court Justice Beth Baker for one year then joined the Missoula County Attorney's Office, where she advanced to senior deputy county attorney prosecuting violent felony and financial crimes.

Julie Patten, from the White Sulphur Springs area. Patten received her undergraduate degree from the University of Montana in 2007 and her law degree from UM in 2011. Patten joined the Yellowstone County Attorney's Office in 2011 and advanced to senior deputy county attorney. She prosecuted violent crimes and served on the felony drug court team. Patten also represented the Yellowstone County Attorney's Office on the Project Safe Neighborhoods task force, which is a federal Department of

Justice initiative to bring together multiple law enforcement agencies to fight meth-driven violent crime.

Joining the Great Falls office's criminal division are:


Kalah A. Paisley, from Salem, Oregon, received her undergraduate degree from Western Oregon University in 2004 and her law degree from Georgetown University in 2007. She was deputy legal counsel for the Crow Nation from 2008 to 2012. She has been a prosecuting attorney for Clark County, Washington, since 2013. Paisley also serves as a judge advocate for the Army National Guard, serving a deployment in the Middle East from June 2017 to March 2018.

Cassady A. Adams, from Mobile, Alabama, received her undergraduate degree from Tulane University, LA, in 2012, and her law degree from the University of Colorado in 2015. After graduation, Adams worked as a deputy district attorney for the 11th Judicial District Attorney's Office in Colorado.

Joining the Helena office's affirmative civil enforcement unit is **Michael A. Kakuk**, from Helena. He received his undergraduate degree from St. Cloud State University in 2003, and his law degree from Willamette University in 2007. Kakuk began as an honors attorney then worked as an assistant attorney general with the Oregon Department of Justice. In 2013, he became an attorney with the Office of the Montana State Auditor where he prosecuted both civil and criminal violations of Montana law. He also was an adjunct professor, teaching business law at Helena College, with the University of Montana.

STATE BAR OF MONTANA

LAWYER ASSISTANCE PROGRAM

A silhouette of two people on a mountain peak. One person is standing and leaning forward, reaching out to help another person who is sitting or crouching. The background shows a vast mountain range under a blue sky with some clouds.

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Henke handles all types of litigation matters, including international disputes, class action defense, securities fraud actions, mass tort and environmental litigation, products liability, insurance coverage litigation, contract disputes, HOA litigation, employment law, and corporate and business law matters.

Larry brings trial experience coupled with the background and insight of an in-house counsel which uniquely positions him to provide value added legal advice and services to his clients. He combines this experience with his Montana up-bringing and common-sense approach to dispute resolution and client representation. It sounds simple, but his approach to client representation is to attack the problem and achieve the client's goals.

HONORS

Rogers selected to join National Academy of Distinguished Neutrals



Rogers

Guy Rogers has been selected to the Montana Chapter of the National Academy of Distinguished Neutrals (NADN).

NADN is an invitation-only professional association whose membership consists of mediators and arbitrators distinguished by their hands-on experience in the field of civil and commercial conflict resolution, and by their commitment to the practice of alternative dispute

resolution. All academy members have been found to meet stringent practice criteria and are among the most in-demand neutrals in their respective states, as nominated by both peers and litigation firms.

Rogers is a senior partner in the Billings office of the Brown Law Firm.

Fagg selected to join American Arbitration Association



Fagg

Billings attorney Russ Fagg was recently selected to join the American Arbitration Association Roster of Arbitrators. The very selective process allows Fagg, a former District Court Judge, to arbitrate cases throughout the United States.

Fagg's law firm, Russ Fagg and Associates PLLC, 1004 Division St. in Billings, specializes in mediation and arbitration. Fagg may be reached at 406-855-0224.

HONORS

Weber appointed to oil and gas board

Fairfield attorney Mike Weber has been appointed to the Montana Board of Oil and Gas Conservation. Weber, retired Richland County Attorney, was appointed by Gov. Steve Bullock in March.

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Knaack, Carpenter take reins at Innocence Project

The Montana Innocence Project recently announced changes in leadership at the organization.

MTIP has hired Frank Knaack as its new executive director, replacing Lisa Mecklenberg Jackson, and Caiti Carpenter as its legal director, replacing Larry Mansch.

Knaack brings more than a decade of experience in designing and leading human rights advocacy campaigns to advance systemic reforms.

"Frank's prior experiences in developing institutional improvements in the criminal justice system and fundraising means that the Montana Innocence Project will be posed to reach out further to assure that the promise of Justice for All is realized for the marginalized communities in Montana as well as those wrongfully convicted," said Ron Waterman, Board President of the Montana Innocence Project.

Knaack previously was the executive director of the Alabama Appleseed Center for Law and Justice in Montgomery, Alabama. There, he campaigned for police and court system reforms to ensure equal access to the courts and create a public health-centered approach to drug policy.

"I am thrilled for the opportunity to lead the Montana Innocence Project and build on its history, in the courts and at the legislature, of exonerating the innocent and preventing wrongful convictions," Knaack said.

Knaack previously spent eight years with the American Civil Liberties Union and its Texas and Virginia affiliates. He received his Master of Arts in international human rights law from The American University in Cairo and Bachelor of Arts from the University of Vermont. He lives in Missoula with his wife and two children.

Carpenter will direct the organization's

post-conviction investigations and litigation and the organization's Innocence Clinic.

Waterman said Carpenter brings enthusiasm to the position and is motivated to build on the successes of previous Legal Director Larry Mansch.

Previously, Carpenter was a Whitefish-based criminal defense attorney, trying both felonies and misdemeanors. She is also co-counsel on a post-conviction relief case with Montana's Office of the State Public Defender.

"I could not be more overjoyed to dig into this work of exonerating the innocent", Carpenter said. "As legal director for the Montana Innocence Project, I am honored to use my reason, morality and passion to fight to preserve humanity by freeing innocent people from prison. In pursuing this righteous goal, how can I not want to jump out of bed and get to the office every morning?"



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Bills the bar is watching in the 2019 Montana Legislature

Following is a list of bills State Bar of Montana took a position for or against in the first half of the 2019 Montana Legislature and the bills' status as of the March transmittal break. (* indicates bill is "probably dead.") Also included is a separate list of bills being advocated by voluntary sections of the bar.

Bills the bar supports

- HB 182* – Establish the Civil Justice Improvements Act. Status: Tabled in Committee (H) Judiciary
- HB 217 – Remove suspension of driver's license as punishment for certain crimes. Status: Hearing (H) Judiciary Feb. 8
- HB 274 – Provide for the restoration of either party's name when a marriage is dissolved. Status: Hearing (S) Judiciary, March 14
- HB 310 – Require application in judicial elections for judges and justices. Status: Hearing (S) State Administration March 20.
- SB 203 – Add a District Court Judge to the 18th Judicial District. Status: Hearing (S) Judiciary Feb. 21.
- SR 10 – Confirm Governor's appointee to 12th judicial district judge (the Honorable Kaydee Snipes Ruiz). Filed with Secretary of State's Office, Feb. 15.

- SR 11 – Confirm Governor's appointee to 21st Judicial District (the Honorable Jennifer B. Lint). Filed with Secretary of State, Feb. 25.
- SR 20 – Confirm Governor's appointee Water Court judge (the Honorable Steven Brown). Status: Filed with Secretary of State, Feb. 15.
- SR 29 – Confirm Governor's appointee to 4th Judicial District judge (the Honorable Shane Vannatta). Filed with Secretary of State, Feb. 15.

Bills the bar opposes

- HB 157* – Generally revise laws related to disqualification of judges. Status: Missed Deadline for General Bill Transmittal
- HB 246* – Revise laws for out-of-state subpoenas. Status: Missed Deadline for General Bill Transmittal
- HB 370 – Generally revise notary laws. Status: Hearing – (S) Business, Labor, and Economic Affairs, March 12. (This bill was supported as amended.)
- HB 442* – Generally revise evidence laws. Status: Tabled in Committee (H) Judiciary
- HB 484* – Revise laws related to the voter information pamphlet

and judicial candidates. Status: Missed Deadline for General Bill Transmittal

- HB 485* – Revise judicial standards commission appointment process. Status: Missed Deadline for General Bill Transmittal
- HB 486* – Revise judicial standards commission complaint process. Status: Missed Deadline for General Bill Transmittal

Bills supported by state bar sections

- HB 256 – (BETTR) Allow time of death transfer of vehicles and vessels
- HB 268 – (Family Law) Revise conciliation rules in cases of divorce
- HB 336 – (Family Law) Generally revising laws on temporary orders for maintenance or support
- HB 347 – (Family Law) Revise laws related to grandparents' rights
- HB 461 – (BETTR) Generally revise the uniform powers of appointment act
- SB 225 – (BETTR) Generally revise probate laws
- LC0025 – (BETTR) Create the Montana Business Corporation Act
- LC2805 – (Family Law) Revise uniform child custody jurisdiction and enforcement act

CLE credits can be earned and reported through May 15

The current CLE reporting year ends March 31, 2019. However, you may EARN AND REPORT CLE activities, without penalty, until May 15, 2019.

The Montana Supreme Court

Commission of Continuing Legal Education website at www.mtcle.org provides information on annual CLE requirements, rules, forms, FAQs, and a list of programs approved for

CLE credit in Montana. Attorneys and paralegals can track their compliance by accessing individual CLE records online using the MyMTCLE function.

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Participants and exhibitors are shown at the Alexander Blewett III School of Law's Pro Bono Fair in October. (Photos by Sara Kryder/Blewett School of Law)

Law school expands student pro bono program

By Karlene Kuhn

In January of 2018, Alexander Blewett III School of Law at the University of Montana implemented a schoolwide Pro Bono Program to bridge the gap between the classroom and real-world experience. Students are encouraged to provide law-related services for organizations that increase access to justice for low-income Montanans. Students have answered the call by serving as Hearing Officers for Missoula Housing Authority, volunteering at the Self-Help Law Center, and volunteering at the law school's monthly Free Family Law Clinic, among others.

The Pro Bono Program began as a classroom requirement in the law school's required Professional Responsibility course, which every student must take in the second semester



of their second year. Dean Paul Kirgis and faculty supervisor Professor Jordan Gross were fundamental in expanding

this classroom requirement into the school-wide program it is today. Now, with institutional support, the program

has grown to include a first-year student introduction, clinics across the state, and various professional development opportunities for students.

“Supporting pro bono service is an institutional priority and reflects a shared community value,” Kirgis said. “By pairing students with local community agencies we are able to engage our students in real world service while meeting some of the community’s greatest needs.”

To kick off the Program’s first full year, the Student Bar Association and the Pro Bono Program co-hosted a Pro Bono Fair in October. The fair featured 12 community partners: the American Civil Liberties Union, Associated Students of the University of Montana, Community Dispute Resolution Center, the Court Appointed Special Advocates program, Crowley Fleck, the in-house Indian Law and Veterans Advocacy Clinics, the Missoula Housing Authority, Montana Innocence Project, Montana Legal Services Association, the State Bar of Montana, and the Missoula Self-Help Law Center. More than fifty students signed up for information about specific pro bono opportunities at the Pro Bono Fair. Since the fair, 65 students have attended pro bono trainings hosted by law school partners.

In addition to connecting students to community-based organizations, the law school has collaborated with MLSA to provide a monthly Free Family Law Clinic on campus. Students who participate in the clinic meet face to face with clients, conducting initial client intake, observing legal advice appointments, and debriefing with volunteer attorneys. This high-impact opportunity is a favorite among students, with all available opportunities for the fall term being booked within 20 minutes of the

initial call for volunteers. And it’s no wonder the free Family Law Clinic is so popular – the clinic has received incredible feedback from students and clients alike. One student said, “Participating reminded me why I came to law school. It was incredibly moving to remember that the law is about helping people in need.” Clients have been equally impressed by the services provided, leaving glowing reviews. One client wrote of her experience, “Thank you so much. You have given me hope. I truly appreciate this experience.” During the two Free Family Law Clinics hosted by the law school during the fall term, 12 students and seven attorneys (including four UM graduates and three faculty members) served 21 clients.

The law school’s partnership with MLSA has continued to grow with the overwhelming student interest. Now, students can volunteer at both the on-campus clinics and at a monthly Free Family Law Clinic hosted at MLSA offices. In addition to these short-term pro bono assignments, MLSA has also created three new internships to support student pro bono activities. Students applied and interviewed for these positions in December 2018 and began their internships in January 2019.

The Pro Bono Program encourages each student to complete a benchmark number of hours. Each student who reaches the annual benchmark receives a Dean’s Pro Bono Recognition Certificate; students who complete a minimum of 150 hours of pro bono work receive a Pro Bono Honors designation. Two students have already reached honors designation: Jaclyn Van Natta and Lucas Wagner, both third-year law students. Since the program’s inception, more than 80 students have participated in the Pro Bono Program.

WANT TO HELP?

If you would like to learn more about the Pro Bono Program, discussing potential pro bono projects, or volunteering at one of the upcoming Free Family Law Clinics, please contact Karlene Kuhn, Pro Bono Coordinator, at 406-243-4266 or ProBonoCoordinator@mso.umt.edu.

Among those, 62 have tracked their pro bono service, logging over 1,600 hours working on 19 different projects.

The law school is always looking for new partnerships, and we are particularly interested in growing our relationship with the private bar. If you or your firm have pro bono projects that you think may be a good fit for law student support, please reach out. In addition to firm-sponsored projects, attorneys in private practice are welcome to volunteer at the clinics to advise clients and mentor Montana’s newest generation of lawyers. It is a great way to stay involved with the law school while serving your community through pro bono.


If you are interested in learning more about the Pro Bono Program, discussing potential pro bono projects, or volunteering at one of the upcoming Free Family Law Clinics, please contact Karlene Kuhn, Pro Bono Coordinator, at 406-243-4266 or ProBonoCoordinator@mso.umt.edu.

Karlene Kuhn is the Pro Bono Coordinator at the Alexander Blewett III School of Law and a Justice for Montanans AmeriCorps member.

“By pairing students with local community agencies we are able to engage our students in real world service while meeting some of the community’s greatest needs.”

Dean Paul Kirgis, Alexander Blewett III School of Law at the University of Montana

MONTANA RULES OF



**The State Bar of Montana,
in its first comprehensive review
of the MRPC since 2002-2004,
proposes revisions to 18 rules
and modification of a portion
of the preamble.**

**Interested members of the bar
and the general public may submit
comments on the proposal, in writing,
to the Clerk of the Montana
Supreme Court by June 5.**

PROFESSIONAL CONDUCT

ETHICS RULES TO GUIDE A 21ST CENTURY PRACTICE



“There is nothing wrong with change, if it is in the right direction.”

Winston Churchill

By Betsy Brandborg

The State Bar of Montana on March 1 petitioned the Montana Supreme Court to revise 18 rules and a portion of the Preamble of the Montana Rules of Professional Conduct. Most significant within the 18 are proposed amendments to the confidentiality rule and to the rule addressing an organization as the client. Also notable is the proposed modification of the Preamble creating a discipline safe harbor for attorneys who advise cannabis industry businesses.

Twenty-nine of Montana's Rules of Professional Conduct are not identical to the ABA's Model Rules. If the Court accepts the proposed amendments, 10 unique Montana rules will remain as currently adopted, 11 will be amended to directly (or with minimal adjustment) correspond to the ABA Model Rules, seven will be amended slightly and one ABA rule will be rejected entirely. [See sidebar on facing page].

Montana's last comprehensive rules review was 2002-2004. While certain rules have been amended since, 21st century developments in technology, business and law mandate change in the regulation of our profession.

The State Bar's Ethics Committee¹ began work on Montana's rules in April 2017, using the ABA's Ethics 20/20 Commission recommendations as their basis. Rather than duplicate ABA efforts, the Ethics Committee reviewed the departures between the two sets of rules. The resulting proposed

amendments are distinctly Montanan, while absorbing vetted recommendations of the ABA.

Confidentiality

The Ethics Committee and the Bar's Board of Trustees unanimously agreed to adopt the ABA's additional exceptions to the client confidentiality rule. The exceptions permit (not require) disclosure of information where necessary to "prevent, mitigate, or rectify substantial injury to the financial interests or property of another" reasonably certain to result from client crimes or fraud "in furtherance of which the client has used the lawyer's services....". Bluntly, the proposed additional exceptions allow lawyers to protect Montana's citizens from unlawful client behavior.

Currently, Montana's rule is more restrictive than those of most states, a source of confusion for the nearly one-quarter of bar members admitted here but practicing from out-of-state. While a majority of states have not adopted the ABA's Model Rule verbatim, it is because many allow more disclosures and qualify the disclosures differently than provided in the Model Rule².

When the State Bar and the Court considered the confidentiality rule in the 2002-2004 review, the ABA Model Rule included the disclosure exceptions for crime or fraud. At that time, many on the Ethics Committee wanted to include the additional exceptions, but a majority (by the narrowest of margins) recommended that Montana continue with its more restrictive rule.

Times have changed, and the

State Bar now endorses the need to permit the additional disclosures. Developments on the national stage, particularly the corporate malfeasance leading to the recession of 2008, showcase the damage that might have been prevented or mitigated had the Rules afforded lawyers an applicable exception to the duty of confidentiality. Fidelity to the legal system must trump fidelity to a client intent on violating the law.

An additional exception in (7) simply recognizes that lawyers change jobs regularly and provides structure for identifying and resolving conflicts that arise from that practical reality.

The proposed rule, with new language underlined, reads:

Rule 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify

The State Bar believes that the amended rules will adapt regulation of our profession to our rapidly changing technological, social, legal, and business context. While the State Bar Trustees and Ethics Committee believe the proposed amendments ensure the guidance offered is germane to actual circumstances encountered by practicing lawyers, others may disagree. Comments about the proposed amendments may be sent to the Clerk of the Montana Supreme Court by June 5.

substantial injury to the financial interests or property of another that is reasonably certain to result, or has resulted, from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Organization as a Client, Rule 1.13

The Committee and Board also unanimously recommend adopting the ABA's Model Rule 1.13. The new language eliminates the Hobson's choice³ of Montana's current rule requiring resignation in the face of inappropriate client or organization behavior.

The rationale for corporate confidentiality is that it induces more consultation with lawyers, and assumes that the lawyer can lead the client to compliance with the law. If socially desirable client behavior is the goal, then it is time to abandon the assumption that lawyers can simultaneously serve their client and the public's interest when the client is exploiting the lawyer's duty of confidentiality.

Further, given current regional and national practice demands on Montana attorneys, alignment with national resources and jurisprudence is appropriate and necessary.

The proposed rule, with proposed new language underlined, reads:

What the State Bar of Montana proposes

Montana currently has 29 Rules of Professional Conduct that are not identical to the American Bar Association's Model Rules. The 29 rules are listed below, along with how the State Bar proposes to address the differences.

Recommend Adopting ABA Model Rule

Rule 1.2 Scope and Allocation of Authority

Rule 1.6, Confidentiality, with two additional commas;

Rule 1.13, Organization as a Client

Rule 1.20, Duties to Prospective Clients

Rule 4.2 Communication with Person Represented by Counsel

Rule 4.3 Dealing with Unrepresented Person

Rule 3.8, Special Responsibilities of a Prosecutor

Rule 5.5, Unauthorized Practice of Law; Multi-jurisdictional Practice of Law

Rule 5.7, Responsibilities Regarding Law-Related Services

Rule 7.2, Advertising, with slight modification

Rule 7.4, Communication of Fields of Practice and Specialization --eliminated, per ABA

Retain Montana Rule with Amendment

Rule 1.0, Terminology

Rule 1.5, Fees

Rule 1.8, Conflicts: Specific Rules

Rule 1.10, Imputation of Conflicts

Rule 1.15, Safekeeping Property

Rule 1.18 Montana's Interest on Lawyer Trust Accounts (IOLTA) Program

Rule 8.5, Jurisdiction and Certification

Retain Montana Rule with No Amendment

Rule 1.16, Declining or Terminating Representation

Rule 1.17, Government Employment

Rule 1.19, Sale of Practice (the ABA's Rule is 1.17)

Rule 3.1, Meritorious Claims and Contentions ,

Rule 3.5, Impartiality and Decorum of Tribunal

Rule 5.1 Responsibilities of Partners, Managers

Rule 6.1, Voluntary Pro Bono

Rule 7.1, Communications Concerning a Lawyer's Services

Rule 7.3, Direct Contact with Prospective Clients

Rule 7.5, Firm Names and Letterheads

Rejected ABA Rule

Rule 7.6, Political Contributions

Unique Montana Proposal

Preamble, paragraph 6 in lieu of requested amendment to Rule 1.2(d), addressing Cannabis

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall

not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Preamble and Cannabis

A bar member, aware of the Committee's comprehensive review of the Rules of Professional Conduct,

submitted a request that Rule 1.2(d)⁴

be amended to allow representation of clients engaged in Montana's emerging cannabis industry, explaining:

"Most Montana attorneys are reluctant to assist or engage individuals and businesses involved in the Cannabis Industry not only because of possible exposure to federal criminal laws, but also because they could face prosecution from Montana's Office of Disciplinary Counsel."

Montana's current Rule 1.2(d) appears to disallow Montana attorneys from representing clients engaged in the emerging cannabis industry because of the uncertainty resulting from the conflict between state and federal law.

The State Bar unanimously agreed to recommend creation of a safe harbor, but chose to put the language in the Preamble rather than within Rule 1.2 until the state and federal law disparities are more aligned. To that end, paragraph 6 of the Preamble could be amended to read:

(6) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the lawyer's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process. For example, a lawyer may counsel and assist a client regarding Montana's cannabis-related laws. In the event Montana law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy."

The underlined language parallels Oregon's Rule 1.2(d). The State Bar

chose not to follow Illinois 1.2(d)(3) broad language, providing "...may... counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences."

The goal is to help lawyers representing cannabis clients, not create a whole ring of exceptions for other state/federal law disparities.

Unclaimed Property in Trust Accounts

Lawyers occasionally discover unclaimed client money in their trust accounts. The current structure requires lawyers to convey unclaimed property to the State of Montana's unclaimed property division. In order to maintain the confidential nature of the attorney/client relationship, the Bar proposes the property be conveyed to Montana's Justice Foundation within a system enabling reimbursement of clients should they reappear.

The State Bar recommends the following addition to Rule 1.15:

(f) Unclaimed or unidentifiable Trust Account Funds.

(1) When a lawyer, law firm, or estate of a deceased lawyer cannot, using reasonable efforts, identify or locate the owner of funds in its Montana IOLTA or non-IOLTA trust account for a period of at least two (2) years, it may pay the funds to the Montana Justice Foundation (MJF). At the time such funds are remitted, the lawyer may submit to MJF the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, if known; a description of the efforts undertaken to identify or locate the owner; and the amount of any unclaimed or unidentified funds.

(2) If, within two (2) years of making a payment of unclaimed or unidentified funds to MJF, the lawyer, law firm, or deceased lawyer's estate identifies and locates the owner of funds paid, MJF shall refund the funds it

received to the lawyer, law firm, or deceased lawyer's estate. The lawyer, law firm, or deceased lawyer's estate shall submit to MJF a verification attesting that the funds have been returned to the owner. MJF shall maintain sufficient reserves to pay all claims for such funds.

The proposed language precludes payment of interest upon return of unclaimed funds, hence "shall refund the funds it received" in (2). Rule 1.18, the IOLTA Rule, also requires amendment to absorb the design.

Special Responsibilities of Prosecutors, Rule 3.8

Likely controversial with some prosecutors is the State Bar recommendation to adopt the ABA's 2008 amendments "to identify prosecutors' obligations when they know of new evidence establishing a reasonable likelihood that a convicted defendant did not commit the offense of which he was convicted."

Some prosecutors contend that the language is "cloudy and problematic" and precludes the finality of a conviction.

The State Bar believes the ABA considered the issues raised by the prosecutors, that the Model Rule sets responsibility on the prosecutor to act in a manner intended to complement criminal and civil law, and that the proposed rule prescribes a standard of conduct to which all good prosecutors already subscribe.

The language proposed to be added reads:

Rule 3.8 Special Responsibilities of a Prosecutor

.....

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained

in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Limited Scope Representation: Rule 1.2, 4.2 and 4.3

Montana's Supreme Court was ahead of the curve in encouraging access to justice with its unique modification of the limited scope rules in 2011, (Rule 1.2 Scope of Representation, Rule 4.2 Communication with Person Represented by Counsel and Rule 4.3 Dealing with Unrepresented Person). Fast forward to 2019, where standard practice requirements absorb the additional specifics of Montana's current limited scope rules.

The proposed amendments eliminate the extra Montana writing and consent requirements tacked to Model Rules 1.2, 4.2 and 4.3. Why the change? Montana's current rules potentially create disciplinary traps, the ABA rules are simpler (and most states have adopted them), and the specific, structured parameters of Montana's rules can be removed without harm to Montana's clients. (For example, while Rule 1.5 on fees already requires a writing for most fee agreements, proposed new language⁵ addresses limitations to the scope of representation). The eliminated language is in the endnote⁶, leaving the proposed rules to read:

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by

a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 4.2 Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is

not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Rule 5.5 Unauthorized Practice of Law; Rule 8.5 Multijurisdictional Practice of Law

Rules 5.5 and 8.5 were referred to a special subcommittee that included Ethics Committee chair Peter Habein, committee member and former Disciplinary Counsel Tim Strauch, Deputy Disciplinary Counsel Jon Moog, Board of Bar Examiners Chair Gary Bjelland, and Office of Consumer Protection counsel Anne Yates. This special subcommittee agreed that the ABA's Model Rule 5.5 was an improvement from Montana's current rule. The Ethics Committee and Board of Trustees unanimously voted to confirm the subcommittee's recommendations.

Model Rule 5.5 addresses many of the "where's the line?" on unauthorized practice of law issues, including pro hac vice, administrative law, arbitration, mediation, contract work and other services. It also addresses the foreign lawyer boundaries.

The proposed Rule 5.5 reads:

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction

shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the

equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this rule by, in the exercise of its discretion, the Montana Supreme Court.

As to Rule 8.5, Jurisdiction, the State Bar recommends retaining Montana's rule while folding in key components of the ABA rule. The net effect is that Montana's disciplinary structure applies to out-of-state attorneys and Montana attorneys providing representation in other jurisdictions, regardless of where the lawyer's conduct occurs. It includes attorneys not admitted here who advertise here.⁷

Advertising, Rules 7.2, 7.3, 7.4 and 7.5

There are substantial changes to the structure of the advertising rules, but Montana's unique requirements in Rule 7.1 detailing false or misleading communications about a lawyer or the lawyer's services, and Rule 7.3 addressing direct contact with prospective clients (solicitation), remain⁸. Proposed for elimination are Rule 7.4, addressing specialization, and 7.5, detailing firm name requirements, but components of those two rules are included in the proposed revisions to Rule 7.2. Notable is that the State Bar rejected the ABA's language about solicitation. Although couched in "shall not" terms, the ABA permits more solicitation than currently allowed in Montana's rule. Montana's rule prohibits solicitation if the lawyer reasonably should know that the person is already represented by another lawyer. Rejected is the ABA's amendment permitting that contact.

The proposed Rule 7.2, with new language underlined, reads:

Rule 7.2 Advertising Communications Concerning a Lawyer's Services: Specific Rules

(a) A lawyer may communicate information regarding the lawyer's services through any media.

(b) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit ~~or qualified~~ lawyer referral service.

(3) pay for a law practice in accordance with Rule 1.19 [ABA Rule 1.17];

(4) refer clients to another lawyer or a nonlawyer

professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

i. the reciprocal referral agreement is not exclusive; and

ii. the client is informed of the existence and nature of the agreement; and

(5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(c) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate authority of the state or the District of Columbia or a U.S. Territory or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(d) Any communication made under this Rule must include the name and contact information of at least one lawyer or law firm responsible for its content.

Other Notable Recommendations

The State Bar unanimously agreed to adopt the ABA's language adding as "signed" writings, "the electronic equivalent of a signature" in Terminology Rule 1.0(p).

Another proposal addresses duties to prospective clients, Rule 1.20, adding useful detail protecting lawyers from conflicts if they've taken reasonable measures to avoid exposure to disqualifying information.

Ancillary law-related services for real estate, probate and transactional lawyers could be permitted if the Court adopts ABA Rule 5.7, a rule that Montana does not have. The ABA adopted its Model

Rule on ancillary businesses in February 1994, amending it to this form in 2002:

Rule 5.7 Responsibilities
Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

The specific rules on conflicts, Rule 1.8, is proposed to additionally include permissive gifting from individuals "with whom the lawyer or the client maintains a close, familial relationship."

Montana's Rule 1.10 includes new language creating safe harbors and screening provisions, permitting representation in light of Montana's small-town potential for conflict of interest.

The proposed rule, with new language underlined and unique Montana language in italics, reads:

Rule 1.10 – Imputation of
Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone

would be prohibited from doing so by Rules 1.7 or 1.9 unless

(1) the prohibition is based on a personal interest of the ~~prohibited~~ disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; ~~or~~

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or

substantially related to that in which the formerly associated lawyer represented the client; and
(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.1.

Finally, given Montana's statutory and judicial conduct rules, the State Bar rejected as unnecessary the ABA's Model Rule 7.6 on political contributions.

"Faced with the choice between changing one's mind and proving that there is no need to do so, almost everyone gets busy on the proof." – John Kenneth Galbraith

The State Bar believes that the amended rules will adapt regulation of our profession to our rapidly changing technological, social, legal, and business context. While the State Bar Trustees and Ethics Committee believe the proposed amendments ensure the guidance offered is germane to actual circumstances encountered by practicing lawyers, others may disagree. Comments about the proposed amendments may be sent to the Clerk of the Montana Supreme Court.

Endnotes

1 The all-volunteer Ethics Committee is chaired by Peter Habein, and includes members Bob Phillips, Chris Tweeten, Marilee Duncan, Dave Hawkins, Mark Fowler, Kent Kasting, John Morrison, Deb Reichman, Tim Strauch, Susan Wordal and Monte Jewell, with Trustee liaisons Beth Brennan and Chris Gray.

2 https://www.americanbar.org/groups/professional_responsibility/policy/rule_charts/

3 In other words, one may “take it or leave it”. The phrase is said to have originated with Thomas Hobson (1544–1631), a livery stable owner in Cambridge, England, who offered customers the choice of either taking the horse in his stall nearest to the door or taking none at all.

4 Rule 1.2(d) “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”

5 Unanimously recommended new language to Montana’s 1.5(b) includes: “any changes in the scope.” As a result, the proposed Rule would read: “(b) The scope of representation, any changes in the scope, and the basis or rate of the fee and expenses for which the client will be responsible...”

6 Language removed from Rule 1.2:

(1) The client’s informed consent must be confirmed in writing unless:
(i) the representation of the client consists solely of telephone consultation;
(ii) the representation is provided by a lawyer employed by a nonprofit legal services program or participating in a nonprofit court-annexed legal services program and the lawyer’s representation consists solely of providing information and advice or the preparation of court-approved legal forms;
or
(iii) the court appoints the attorney for a limited purpose that is set forth in the appointment order.
(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:
(i) the representation is limited to the attorney and the services described in writing; and.

(ii) the attorney does not represent the client generally or in matters other than those identified in the writing.

Language removed from Rule 4.2:

(b) An otherwise unrepresented person to whom limited

representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

Language removed from Rule 4.3

(b) An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer has been provided with a written notice of appearance under which, or a written notice of time period during which, he or she is to communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation.

7 Rule 8.5 – Jurisdiction and Certification

(a) Disciplinary Authority. A lawyer admitted to practice in this State is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs.

A lawyer not admitted to practice in this State is subject to the disciplinary authority of this State for conduct that constitutes a violation of these Rules and that: (1) involves the practice of law in this State by that lawyer; (2) involves that lawyer holding himself or herself out as practicing law in this State; (3) advertises, solicits, or offers legal services in this State; or (4) involves the practice of law in this State by another lawyer over whom that lawyer has the obligation of supervision or control.

[This is the Montana Rule’s 2nd paragraph.]

(b) Certification. A lawyer who is not an active member in good standing of the State Bar of Montana and who seeks to practice in any state or federal court located in this

State pro hac vice, by motion, or before being otherwise admitted to the practice of law in this State, shall, prior to engaging in the practice of law in this State, certify in writing and under oath to this Court that, except as to Rules 6.1 through 6.4, he or she will be bound by these Rules of Professional Conduct in his or her practice of law in this State and will be subject to the disciplinary authority of this State. A copy of said certification shall be mailed, contemporaneously, to the business offices of the State Bar of Montana in Helena, Montana.

[This is the Montana Rule’s 1st paragraph.]

(c) Choice of Law. In any exercise of the disciplinary authority of this state and jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the state and jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the state and jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in a different state and jurisdiction, the rules of that state and jurisdiction shall be applied to the conduct.

A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.

[This paragraph is the existing language in both the ABA and Montana Rules.]

8 Montana’s unique Rule 7.1 stems from a 2008-2009 effort to clarify Montana disciplinary jurisdiction over attorney advertising, identify types of misleading lawyer communications, and recognize that Montana does not have a procedure to “qualify” a lawyer referral service. The Supreme Court adopted the State Bar’s recommendations on Rules 7.1, 7.2 and 8.5 in 2010. (Supreme Court Order No. 09-0688, July 20, 2010.)

Stock compensation can add zing to employee benefits packages — but be aware of compliance headaches

By Beth Nedrow and Amy Bowler

Recently the headlines are full of statistics and anecdotes about the difficulty employers face finding and retaining employees. In this competitive market, employers want to be sure they are offering the most competitive benefits package they can. Aside from the traditional retirement plan and medical benefit offerings, some employers may find value in offering creative stock bonus and compensation programs like stock options, restricted stock, and other equity-type arrangements. Stock compensation can often provide both short-term and long-term incentives to employees. But, just like every other compensation and benefits program, stock programs trigger a multitude of legal rules and restrictions. This article addresses three sources of federal law that must be kept in mind when designing and implementing a stock compensation program – the Internal Revenue Code, ERISA,

and securities laws.

Income and payroll tax considerations

Employers offering stock compensation will want to make sure they understand when and how the benefits will be taxable to their employees. Income and payroll taxes are usually due when awards vest. Sometimes this can have surprising results. For example, restricted stock units are often structured to vest at retirement age, which means payroll tax obligations might be triggered even before the awards are due to be paid. Stock options, on the other hand, are not included in an employee's income unless and until they are exercised. And if shares of restricted stock are granted, they are not included in income until vesting, *unless* the employee follows the requirements of Internal Revenue Code Section 83(b) (including submitting a written election to the IRS within 30 days of the grant) to have them taxed at the time of grant.

Deferred compensation minefields

In addition to income and payroll tax issues, the Internal Revenue Code also includes a formidable provision affecting all “deferred compensation” – Section 409A. Because of the broad definition of this term, Section 409A is a force to be reckoned with when structuring stock compensation. Stock options and stock appreciation rights are usually structured to be exempt from 409A, but the exemption doesn't come easily – there are strict rules regarding how the base value of the awards must be set and other conditions that must be monitored. Other stock compensation like restricted stock units and phantom stock are often subject to Section 409A. To avoid hefty penalties, they must comply with 409A's detailed rules on payment triggers (only certain events and dates will suffice), and bans (with very limited exceptions) on subsequent deferrals or accelerations.



Stock compensation programs can trigger ERISA

The counterpart to the Internal Revenue Code for many benefit programs is ERISA, and this is true for stock compensation, as well. Employers may be surprised to learn that stock compensation programs can fall within the reach of ERISA. If a stock compensation program operates like a bonus plan, where benefits are payable at various times and events, it will most likely not be subject to ERISA. For example, restricted stock units that settle after a short vesting period are clearly just a bonus program. But if, for example, a phantom stock program is intended to or has the effect of deferring benefits until retirement age or termination of employment, it could very well be viewed as a “pension plan” by the Department of Labor. This is usually a death-knell for a stock or bonus program, since ERISA’s myriad of rules (starting with eligibility, vesting, trust, fiduciary, etc.) are essentially incompatible with stock programs. Luckily, many of those ERISA rules can be avoided by making the program a “top hat” plan, where eligibility is limited to executive and management employees. But even if a stock compensation program is limited to executives, the employer should make sure that the necessary one-time filing with the DOL is made, and that the plan complies with the provisions of ERISA for which there is no exemption (such as, for example, the ERISA claims procedures).

Does SEC registration exemption apply?

Securities laws are a third source of federal law that applies to stock compensation programs. The Securities Act of 1933 requires that every “offer and sale” of a “security” must be registered

or exempt from registration requirements. While these terms are, of course, subject to nuanced interpretation and application, they generally apply to employer equity compensation plans. Rule 701 provides an exemption from such registration requirements for companies not subject to reporting requirements under the Securities Exchange Act of 1934 (non-reporting companies) to issue securities (including securities issuable under stock options and restricted stock units) for compensatory purposes to employees, directors and certain service providers of the company.

Rule 701 covers securities issued under a written compensatory benefit plan or written agreement relating to compensation. Among the many requirements of the exemption are the following:

- **Eligible Service Providers.** It’s no surprise that under this exemption, securities can be issued to employees, officers and directors. It is also possible to use it for programs that benefit consultants and advisors, provided that they are natural persons, they provide *bona fide* services to the issuer or its affiliates and the services are not in connection with the offer or sale of securities in a capital-raising transaction.
- **Offering Limits.** Under the Rule 701 exemption, the aggregate sales price or amount of securities sold during any 12-month period cannot exceed the greater of three benchmarks: \$1 million; 15% of the issuer’s total assets; and 15% of the outstanding securities of the class being offered.
- **Disclosure Requirements.** Although Rule 701 does not require any notices, reports or filings with the SEC, issuers relying on the exemption do have to provide

employees in the program with a copy of the program documents. And if the program will exceed \$10 million in any 12-month period there are additional disclosure requirements, including risk factors and financial statements. This threshold for enhanced disclosure was much lower (\$5 million) until a rule change on July 24, 2018. If an employer was deterred from offering a stock compensation program due to the burden of disclosure, it may be worth revisiting the issue now that the burden has been lightened. Keep in mind, too, that regardless of whether the enhanced disclosure rules apply or not, there is always a duty to comply with securities law antifraud requirements.

This article has only touched on some of the basic principles of tax, ERISA, and securities laws that might apply to an employer’s stock compensation program. For a more thorough analysis of how these and other laws (including corporate governance and state securities laws) might apply to your business’s stock compensation program, consult with a benefits professional.

Beth Nedrow is a partner in the tax and employee benefits practices at Holland & Hart’s Billings office. She provides strategic counsel to companies on tax and ERISA aspects of their benefits programs.



Amy Bowler is a partner in the corporate and securities and capital markets practices at Holland & Hart’s Denver office.



Tax considerations, Deferred compensation minefields, SEC registration exemption, and triggering ERISA are a few things for employers to consider when implementing a stock compensation program.

Is writer's block your personal horror story? let Stephen King ease your mind



Abbie
Nordhagen
Cziok

Your first draft should always be written without judgment on the quality. This is the advice I've adopted. If just forcing yourself to write something — anything — means your first two paragraphs are stream-of-consciousness, so what?

Writer's block. It's the worst. I started writing this article twice and gave up. Why and when it happens is different for everyone. I get scared to write documents that are high stakes, like motions for summary judgment. The weight is too much, so I never start. I know some people who feel like they can't start writing until research is complete, yet the research is never complete. Whatever the reason, this phenomenon affects all kinds of writers: poets, brief writers, authors, and scholars.

Likewise, advice to overcome writer's block comes from many corners of the writing map. Whenever I'm feeling a bit stuck in my writing, I return to Stephen King's "On Writing: A Memoir of the Craft." Some of the book is a bit dated, and it's tailored to those writing long-form fiction, which isn't entirely relevant (but maybe closer to home than most lawyers would like to admit). I figure I have something to learn from one of the highest grossing authors of all time.

King has opinions about the root causes for writer's block, one of which struck me as profound because it addressed some of my insecurities. King says to put your desk in the corner of a room, and remind yourself why it isn't in the middle: "Life isn't a support system for art. It's the other way around." Insert "career" for art. The idea is the same. Yes, writing a great MSJ for a client is important, but my life has not existed in order to create this motion and only this motion. Take a breath, take a walk. You want to do well, but keep things in perspective.

King also has practical tips for getting past writer's block. First, start with what you like. Law school teachers will lecture that we must start on such and such a part of a brief. That's nice and all,

but what if starting on a certain section means not starting at all? I always start with the argument because I put the most ink on a page in the shortest amount of time.

Next, he talks about the value of writing even when you're struggling. "[S]topping a piece of work because it's hard, either emotionally or imaginatively, is a bad idea." Your first draft should always be written without judgment on the quality. This is the advice I've adopted. If just forcing yourself to write something — anything — means your first two paragraphs are stream-of-consciousness, so what?

If you are skeptical of taking the advice of a guy whose book about a psychotic nurse came from a dream, I get it. So what suggestions do other lawyers have? After my unscientific canvass of some friends, methods are as varied as personalities. Some outline and slowly expand the outline. Some write an entire draft without looking at research. Some speak the argument section into a translation program and use that as the starting point. I have another friend who sets a 15-minute timer. She must write for those 15 minutes, but can give up at the alarm if it's not working.

If you're the type who would prefer some science to back up strategies, I've been told "10 Days to Overcome Writer's Block. Period.," by Karen E. Peterson, Ph. D. is excellent. Also check out "Writing Down the Bones" by Natalie Goldberg and "Bird by Bird" by Anne Lamott. I'd love to know: what helps you overcome writer's block?

Abbie Nordhagen Cziok is an associate with Browning, Kalczyk, Berry & Hoven in the Helena office. She likes rock climbing, skiing, and one space after a period.

Past representations can be a problem in the present

Malpractice claims alleging a conflict of interest have been a serious concern for insurers for years. One of the reasons is this. Conflict claims can get expensive fast, if for no other reason than they almost always boil down to a greedy attorney putting his or her financial interests above someone else's. So not good, particularly if a jury has any say in the matter.

As a risk guy working in the malpractice insurance arena, I've taken a number of calls over the years from attorneys wanting help in working through a potential conflict situation. These are the calls that both challenge and fascinate me the most. Suffice it to say, before becoming a risk manager, I had no idea how complicated and crazy some of the conflict fact patterns could get.

Given the frequency of conflict questions that come my way, I wanted to share a little advice concerning one particular conflict resolution misstep lawyers sometimes make with Rule 1.9 of the Rules of Professional Conduct, commonly known as the past client rule. Let's start with a fact pattern. Nine years ago, Attorney Smith defended a prosecutor in an ethics probe. Six years ago, Attorney Smith made a lateral move and joined the firm of Jones, White and Parker. Attorney Parker, one of Smith's current partners, has been asked by the city, a long-term client of the firm, to defend the city in a gender discrimination suit. The employee suing the city happens to be the prosecutor that Smith represented nine years ago. The question is, can Attorney Parker accept the new matter?

At the outset, let's assume that Attorney Smith properly closed her file nine years ago by sending a closure letter to the prosecutor once the ethics probe was resolved; because, if that never happened, there could be an argument that the prosecutor remains an inactive current client and we'd need to review Rule 1.7, the current client rule. With documentation that the prosecutor

is a past client in place, however, we're clearly now dealing with Rule 1.9.

Thinking about Rule 1.9 part (a), which most of us readily recall, it's tempting to look at the above fact pattern and conclude that even though the situation involves the same person, the same employee, and the same position there's no conflict because a gender discrimination suit and an ethics probe are not the same matter nor are they substantially related matters. The conflict resolution misstep that sometimes occurs is in stopping here because this is all the attorney remembers Rule 1.9 saying. Unfortunately, the decision to stop here ignores the fact that it's a potential misstep because Rule 1.9 part (c), which prevents Attorney Smith from using information relating to or gained in the course of her prior representation to the disadvantage of her former client, has been overlooked.

Prior to the firm agreeing to represent the city, Attorney Smith would need to review her file to see if any information was learned that could be used to her past client's disadvantage. If the answer is yes, then the firm cannot represent the city. Yes, it's Smith's partner, Attorney Parker, who would be defending the city but the information Smith has will be imputed to her partner under Rule 1.10, the imputation of conflicts rule.

Conflict of interest situations are something every lawyer should take very seriously. Perhaps it comes as no surprise that I chose to discuss this fact pattern because it's real. Learn from the missteps of others. The above referenced firm ended up being disqualified by the judge. One must always remember that there's more to Rule 1.9 than the question of whether the past and current matters are the same or substantially related. Rule 1.9 also requires you to think about what you know, to include any information that is in your files that you may have forgotten about. Forget that and you could find yourself facing a similar outcome.



Mark
Bassingthwaighte

Rule 1.9 is about more than whether past and current matters are the same or substantially related – you also must think about what you know, and to include any information that is in your files that you may have forgotten about.



ALPS Risk Manager Mark Bassingthwaighte, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology.

Court: Car liability insurance policies can't be 'stacked'

The Montana Supreme Court has upheld a district court decision denying a claim for increased coverage on an automobile insurance policy.

Taylor Warren was at fault for an automobile accident that injured three of the plaintiffs. Warren's insurance provider, Progressive, paid the \$100,000 per person policy limit in liability coverage -- \$300,000 total.

However, Warren's family had purchased liability insurance on three other vehicles, and the plaintiffs claimed the coverages on all the vehicles must be combined or "stacked," to provide coverage limits of \$400,000 per person, or \$1.2 million total. The District Court denied the plaintiffs' claim for this increased coverage limit, and the plaintiffs sued.

In a 5-2 decision, the Supreme Court affirmed the District Court's denial of increased coverage limits, holding that state statute defers to vehicle insurance policies that specifically determine the limits of coverage, including whether coverage limits can be "stacked," before applying the statute's rate-filing process for stacking determinations. Here, the Progressive policy contained multiple provisions explaining that the liability coverages under the policy could not be stacked together to increase the coverage limits.

The plaintiffs argued that, despite the provisions of the policy, stacking of

third-party liability coverages should be required just like cases of first-party insurance coverages, such as uninsured motorist, underinsured motorist, or medical payments. However, the court reasoned that liability coverage operated differently than those coverages, because it was not personal and portable in nature, but was tied to the use or involvement of a particular vehicle. The court further ruled that the policy's coverage was not illusory because it was paid out in accordance with the \$100,000 limits purchased by the Warrens and would be so paid for other accidents involving additional vehicles insured under the policy.

Justice Laurie McKinnon, in a concurring opinion, said stacking of coverages is also impermissible because the plaintiffs did not purchase the policy, are not insureds under the policy, and can have no expectation of increased coverage limits by stacking the coverages.

Justice Dirk Sandefur dissented, joined by Justice Ingrid Gustafson, reasoning that the statute does not defer to the policy and that an insurance company can avoid stacking of coverages only by satisfying the statute's rate-filing process. Further, third-party liability coverages operate similarly to other coverages and should be considered personal and portable for purposes of stacking the coverage limits for plaintiffs' claims.

APPOINTMENTS

Bolstad, Mantooth tapped for Commission on Courts of Limited Jurisdiction

The Montana Supreme Court has appointed the Honorable Steve Bolstad and the Honorable Kelly Mantooth to two open seats on the Commission on Courts of Limited Jurisdiction.

Bolstad, Great Falls Municipal Court judge, replaces retired Helena Municipal Court Judge Robert Wood for a term to end Dec. 31, 2020. Mantooth, Fergus County/Lewistown justice of the peace/city judge, replaces retired Judith Basin County Justice of the Peace Larry Carver for a term ending June 30, 2020.

The court also reappointed Liberty County Justice of the Peace Holly Frederickson to a term ending Feb. 28, 2023.

Brodehl added to District Court Council

The Montana Supreme Court appointed Flathead County Commissioner Randy Brodehl to the District Court Council.

The Montana Association of Counties nominated Brodehl to serve the remainder of Gary Krueger's term expiring June 30, 2020.

Parents appeal to US Supreme Court over scholarship tax credit

A group of Montana parents has petitioned the U.S. Supreme Court to review a Montana Supreme Court decision invalidating a tax-credit program for donations for scholarships to religious schools.

The 2015 Montana Legislature approved the program allowing a \$150 tax credit for donations to scholarships for students who want to attend a private school. The Montana Department of Revenue implemented rules preventing schools with religious ties from qualifying for those scholarships, determining

that would violate the Montana Constitution's provisions prohibiting appropriation or payment of public funds to religious schools.

A group of parents with children who attended a private religious school challenged the department's rule and was granted summary judgment in Flathead County District Court. The department appealed the ruling to the Montana Supreme Court, which reversed in a 5-2 decision.

According to the Institute of Justice, which is representing the parents, nearly

70 percent of Montana's private schools are religiously affiliated. The organization argues that excluding religious schools from the program violates First Amendment protections against religious discrimination.

"It is time for the U.S. Supreme Court to step in and settle this issue once and for all," said Institute for Justice Attorney Erica Smith.

The Institute for Justice filed the petition for certiorari with the U.S. Supreme Court on March 12.

Christopher Petaja

Bozeman lawyer Christopher "Chris" Petaja died when he slid off a cliff while hiking on a nature trail overlooking the ocean in Santa Barbara, Calif., on March 3. He was 43.

Chris was born in Helena to Charles Petaja, also a lawyer, and Pat Petaja Seiler on Dec. 24, 1975.

He graduated from Helena High School and earned a liberal arts degree from the University of Montana, followed by a law degree from Golden Gate University School of Law in San Francisco.



Petaja

Chris married Sumana Kaplowitz and during their 10 years together, they traveled internationally, moved to Bozeman, and started a family with two beautiful children, Analie and Levi.

Chris loved nature and the out-of-doors. As a young boy, he and step-brother Chris DeVerniero were inseparable. The two spent countless hours in his little cabin at the ranch in Clancy. He loved hunting with his father, fishing with his grandparents and hiking with friends.

Chris was adored by his family and treasured their time together. From intimate weekly calls with his best friend and brother Mike, to bonding vacations with his sister, Jennifer, to Sunday barbecues, attempts at golf, and stories on the deck at his fathers' home, family came first for Chris. He shared reunions with his mother's Polish family of hundreds. He cherished the opportunities for international travel and long talks with his mother. His siblings, Mike

and Jennifer, were his best friends. They were in communication often. They problem solved together, counseled each other, and their bonds were unwavering.

Chris had many unwavering friendships and his friends share they could always count on him and he never let them down. He was fun-loving with an infectious laugh loved by all. Law judges and fellow lawyers speak of a passion for his clients and a keen legal mind.

In lieu of flowers, the family requests donations be made to the Montana Innocence Project (www.mtinnoceproject.org/donate).

Arlene Ward Braun

Arlene Ward Braun of Missoula died Feb. 22 at age 83.

She was born on Nov. 3, 1935, to Frances and Lorena Buck Ward and raised in Long Beach, California.



Braun

Arlene moved to Missoula at age 17 to attend the University of Montana, where she received a bachelor's degree in botany, then earned a master's degree in botany while raising two daughters, Pam and

Karen, with her first husband, Rob Dale.

Arlene earned a second master's degree in public administration, and during the 1970s she was the executive director of the YWCA in Missoula. During her tenure at the YWCA, she was instrumental in establishing the YWCA Secret Seconds Thrift Store and women's shelter programs.

In 1977, she married Hal Braun and added three more children to her

love and life, Paula, Julia (Rick), and Dan (Joan). She graduated from the University of Montana School of Law in 1983. She practiced family law until her retirement.

Upon retirement, Arlene and Hal enjoyed traveling in Europe and South America. Arlene enjoyed gardening, volunteer work at the food bank, and was a member of the League of Women Voters for 50 years. Arlene was also an accomplished and recognized watercolorist. She and Hal enjoyed many years working on their property in the Swan Valley, earning Tree Farmer of the Year for their forest management practices.

Donations in lieu of flowers are suggested to University Congregational Church Endowment Fund, 405 University Ave., Missoula 59801; or Missoula Food Bank, 1720 Wyoming St., Missoula 59801.

Howe Edward Baker

Howe Edward Baker, 69, of Hagerhill, Kentucky, died at his home on Feb. 26.



Baker

Howe was a graduate of Northern Kentucky University and received his Doctorate from Chase Law School. He was a member of Kentucky Bar Association, a lifetime member of the NRA and a Kentucky Colonel. Howe loved shooting, hunting and the outdoors.

Memorials are suggested to the NRA or to the Chase College of Law. Online condolences can be given at alexandriafh.com.

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.

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ATTORNEYS

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LITIGATION ASSOCIATE

ATTORNEY: Work and live in the last, best place and be part of a team where you are expected to play hard and work hard. Silverman Law Office PLLC in Bozeman is looking for a person with passion, a law degree and preferably a LL.M. Five years (preferred, but not required) of litigation experience in the following areas: Probate, business law, transactions, and real estate. Must be a team player and client oriented. Submit cover letter, resume, references and a writing sample to trever@mttaxlaw.com.

LITIGATION ATTORNEY: Montana Department of Transportation (MDT) seeks a Litigation Attorney to represent the Department in areas of transportation law including: eminent domain, real estate, contracts, construction claims, civil rights, motor fuels tax, labor and employment law, environmental law, and property and liability. This position serves MDT by representing MDT in state and federal district and appellate courts and before administrative forums, and providing legal advice and guidance to the Director and agency managers. The annual salary for this position is \$94,701. Apply online at on line at: www.mdt.mt.gov/jobs/

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INTERNS

LEGAL INTERN: Dynamic intellectual property law practice in Billings, Montana, seeks highly intelligent, quick learner with an interest in the law for a one-year legal intern position. Small office, great downtown location. Undergraduate degree with a GPA of 3.8 or higher preferred. Full-time position commencing August 2019 (could start sooner on a part-time basis this summer). \$25-\$45/hr. DOE. Benefits include two week of PTO. Submit cover letter and resume to toni@teaselaw.com.

PARALEGALS

PARALEGAL: The Montana Association of Counties (MACo) Defense Services is seeking a Paralegal. The primary focus of this position is to provide paralegal and litigation support to the attorneys in Defense Services. This position has extensive contacts with MACo members, outside counsel, court officials, claims adjusters, medical providers, and legal vendors. Successful applicants should have five years of civil litigation experience. Apply by email to mmccarthy@mtcounties.org

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