
Lawyer

THE STATE BAR OF MONTANA

Arrested development

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*Loopholes
in Youth
Court Act
can wreck
the futures
of Montana's young people*



At the Legislature

Tracking the bills that affect
the justice system
and the practice of law



**A day
at a
Self Help
Law
Center**



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Joe Sullivan

PRESIDENT'S MESSAGE

When bench and bar get together

Lawyers really should chat with local judges

The obvious common ground where the paths of the court and counsel intersect is the courtroom. It is there that the important questions are asked and answered. However, some questions are best never asked:

By Attorney: She had three children, right?

By Witness: Yes.

Attorney: How many were boys?

Witness: None.

Attorney: Were there any girls?

By Attorney: Were you alone or by yourself?

By Attorney: I show you Exhibit 3 and ask you if you recognize that picture?

By Witness: That's me.

Attorney: Were you present when that picture was taken?

By Attorney: Were you present in court this morning when you were sworn in?

By Attorney: Now then – How was your first marriage terminated?

By Witness: By death.

Attorney: And by whose death was it terminated?

By Attorney: Was that the same nose you broke as a child?

By Attorney: So – You were gone until you returned?

By Attorney: You don't know what it was, and you didn't know what it looked like, but can you describe it?

By Attorney: Have you lived in this town all your life?

By Witness: Not yet.

By Attorney (having thought of an ill conceived question that he evidently decided not to ask): Your Honor – I'd like to strike the next question.

Having laughed a little at what can occur in the courtroom, I turn to what can be done to make it work better. I believe the bench and the bar can improve what goes on in the courtroom by working together.

In mid-November Mark Higgins, as president of the Cascade County Bar Association, put together a lunch with a panel discussion. The panel included the four Cascade County District Court judges and several local attorneys of diverse practices. The discussion that ensued was highly successful. The only negative was time. The panel discussion could have easily gone on for several more hours.

ONE OF THE BIGGEST take-aways from this event was the willingness of the judiciary to work with the members of the bar. To a person, the judges emphasized their open door policy. They encourage new attorneys to come in and introduce themselves. They welcomed attorneys who had questions about procedural matters (as opposed to substantive legal matters) to come and discuss problems or concerns. They invited suggestions from bar members as to how processes could be improved which would streamline their decision making. Finally, they expressed the problems they have meeting the need for timely decision-making.

In turn, bar members expressed problems and frustrations they have in moving their cases through litigation. The judges were receptive to these concerns and were willing to work to address them. The discussion was educational and enlightening to all. More importantly, it showed how the bench and bar can and should work together.

I RAISE THIS as an example. I am aware that some other local bars have had similar events. Further, I suspect the problems expressed and the willingness to work through these problems are not localized to Cascade County.

Based on that suspicion, I wish to encourage other local bars who have not held these types of events to work with their district court judges to put together similar sessions which allow comparable discussions. For those local Bars who have already done these types of events, I encourage them to continue to do so on a regular basis. It is a rather simple undertaking which has a dramatic impact on strengthening Bench/Bar relations.

The upside is better a judicial system which, in turn, creates substantial benefits to all our clients.

○

Bills the State Bar is monitoring closely

Although it is monitoring all the bills introduced into the 2011 Montana Legislature, the State Bar of Montana was most closely watching six bills at *The Montana Lawyer's* press time in late January.

A group consisting of the Bar's Executive Committee, executive director, Bar counsel, and two lobbyists for the Bar – attorneys Bruce Spencer and Ed Bartlett – are keeping in constant contact to discuss the bills during the 90-day session. They are looking for bills that benefit the judicial system and/or the practice of law as a whole, without creating a negative impact on any group or significant number of attorneys within the Bar. The Bar's Bill Watch List, updated daily, is provided on the home page at www.montanabar.org and will indicate when the Bar is actively supporting or opposing a bill.

Bills on the Watch List as of Jan. 25 are:

House Bill 2, sponsored by Rep. Walter McNutt (R), is the bill that funds state government, including the judicial branch (see the judiciary's budget wish-list below). The Bar's legislative group decided the Bar should support an adequately funded Public Defender System in HB2, but not specifically recommend what the funding figure should be.

HB 245, Rep. Derek Skees (R), would cut the number of Supreme Court justices from seven justices to five. The House Judiciary Committee tabled the bill after the State Bar and several attorneys from around Montana spoke against it in a Jan. 18 hearing. The prevailing argument was that the bill would increase the workload for the remaining justices and slow down the appeals process.

HB 281, Rep. Betsy Hands (D), would revise the statutes relating to guardians ad litem in child custody, parenting, and par-

enting contact cases – establishing training guidelines, a grievance process, and fees. A hearing on the bill was held in the House Judiciary Committee on Jan. 24. The Bar opposes the bill because it has a provision for a citizen advisory committee that would review attorney performance – an act that allows the Legislature to regulate the practice of law.

Senate Bill 45, sponsored by Sen. Dave Lewis (R) at the request of the Secretary of State's Office, would revise notary-public laws. It would allow electronic filing of the notary application, oath, and bond; removes the authority of the county clerk to certify the character of a notary; clarifies that the signer is required to appear in person; clarifies which notaries may make or notice a protest; clarifies where signatures are required for journal entries; specifies the notary journal is a private document; requires notary journals to be transferred to the secretary of state upon termination from office. Hearings on the bill have been cancelled at the sponsor's request.

SB 123, Sen. Bruce Tutvedt (R), requires that a justice of the Montana Supreme Court must be self-recused from a case when the justice knows that a party or the party's attorney has, within the previous eight years, made contributions to the justice's election campaign of more than \$250. Senate Judiciary Committee hearings were cancelled at the sponsor's request.

SB 175, Sen. Jim Peterson (R), would ask Montana voters to amend the State Constitution to change the selection of Supreme Court and district court judges to a merit-based appointment system, from the current election system. Appointments would be followed by judicial performance evaluations and retention elections. A hearing was set for Jan. 27 in the Senate Judiciary Committee. ○

The judicial branch's budgeting priorities

Montana Supreme Court Administrator Lois Menzies has updated *The Montana Lawyer* on the judicial branch budget and the Court's expectations of the 2011 Legislature. Out of its proposed budget for the next biennium, the judicial branch's top priorities will be:

■ **Full funding for the recently elected district court judges.** The 2009 Legislature approved creation of three

new judgeships, once each in Yellowstone County, Flathead County and the combined Lewis & Clark and Broadwater counties. The 2009 Legislature also approved creation of seven

support staff positions for those judges (a total of three judicial assistants, three law clerks, and one court reporter). Funding of \$991,811 is being requested to cover the cost of the new judges and staff for the next biennium.

■ **Funding for the Court's Help Program and pro bono coordinator.** The Supreme Court is asking the 2011

Legislature to appropriate \$591,445 from the state's general fund to keep the Court Help Program in operation for FY 2012 and FY 2013. The Court Help Program provides tools and information to assist Montanans who do not have an attorney navigate their way through the legal process in civil matters. The program also works to increase and support the pool of attorneys willing to provide free (pro bono) legal services to low-income Montanans.

The Court Help Program supports two full-time self-help law centers in Billings and Kalispell. As of November 2010, the full-time centers have served more than 12,000 people since opening in January

2008. The program also supports four part-time centers in Bozeman, Great Falls, Missoula, and Sidney. Six traveling AmeriCorps members provide services to 17 rural counties.

■ **Preventing a further 5 percent cut from the judicial budget.** Recent cuts have left the judicial branch budget lean. The 2009 Legislature cut \$2.2 million for FY 2010 and FY 2011. The Branch voluntarily cut \$594,523 in response to

the governor's request for further budget reductions.

Additional reductions to the judicial branch will have a devastating effect and could result in the loss of law clerk positions, judicial assistants, IT support, and more throughout the state.

The judicial branch's proposed 5 percent base budget reduction plan, required by law to be submitted to this Legislature, would impede the work of the courts if implemented because

judges will have fewer resources to manage caseloads, the Court said.

The Court worried that further reductions in funding for the Juvenile Delinquency Intervention Program will reduce community-based options forcing more youths to be placed in group homes, out-of-state residential treatment facilities, and youth correctional facilities. These placements are much more costly, more restrictive, and remove youths from their communities. ○



THE LAW'S FINER POINTS – About 100 Montana Legislators attended the State Bar's Law School for Legislators, above, on Jan. 4 in the House chambers. Seven speakers briefed the lawmakers on their relationship to the State Constitution and to other branches of government. The event was organized by the Bar's Law-Related Education Committee with help from Legislative Services and the UM School of Law.

We missed the 11th lawyer-legislator

The December/January *Montana Lawyer* told you that there were 10 Montana legislators who were attorneys in 2011 Session. We came up with that count by cross-checking the Legislature's roster with the State Bar membership list. That's why we missed Rep. Ellie Boldman Hill, a democrat from Missoula who is licensed to practice law in Idaho, not Montana.

Rep. Hill, a first-term legislator who serves on the House Judiciary and Health & Human Services committees, graduated from the University of Idaho College of Law in 2001. She practiced law as a deputy prosecutor in Boise. Rep. Hill recently named by *Time* magazine as one of the nation's "40 Under 40 Political Rising Stars." She also is the vice president of the Young Democrats of America.



Rep. Ellie Hill

Many ways to track Legislature

It is easy to track and communicate with the Legislature:

■ **By phone:** You can get word or questions to lawmakers with a simple phone call to the Session Information Desk at (406) 444-4800.

■ **On TV:** "Television Montana" provides live and recorded telecasts of floor sessions and many committee meetings, and most Montana cable systems have a channel devoted to TVMT. For a list of towns where TVMT is available and its channel number, visit leg.mt.gov/tvmt.

■ **On the Web:** For major law-practice and court-related bills, see the Bill Watch List at www.montanabar.org.

Virtually all legislative meetings are live streamed, some with and some without video.

Go directly to the session's homepage at <http://leg.mt.gov/>, which provides a calendar of the day's activities, and a page that details which meetings are available for watching or listening. You can sign up for alerts and bill-tracking services that let you find, read, search for, and track all legislation before the 2011 Legislature. You also can find biographical information about and make easy Web-based contact with any legislator.

The collateral consequences of juvenile publicity

An ABA project
by **Sarah Montana Hart**

What the Montana Legislature has overlooked in the Youth Court Act

The Montana Legislature dramatically changed the state's juvenile justice system in 2007. The overall effect of these changes was to reduce the possibility of collateral consequences for a juvenile offender in Montana.

There were two major renovations that accomplished this feat. First, the Legislature created a single statewide juvenile justice system, to replace the existing, county-run systems. Second, the Legislature created an extensive diversionary program, which made youth probation, rather than youth court, the main body responsible for dealing with juvenile offenses.

Montana now offers the nation an encouraging example of a state that takes collateral consequences seriously, and works hard to minimize the effects of a juvenile offense on adult life. Montana law now requires that a juvenile's probation record be physically destroyed, and that a youth's court record be sealed. Montana law also makes it a misdemeanor to distribute a juvenile's court records after that individual turns 18. These are wonderful, progressive steps that many states have yet to emulate.

However, there are still two major areas where the Youth Court Act needs improvement. First, a juvenile's arrest record is never sealed once that individual turns 18, although there is some indication in the law that it should be. Although access to some youth court records is restricted, the arrest record is not restricted at all. The publicity of these arrest records can come back to cause collateral consequences for a juvenile later in life. This is out of step with the spirit of Montana's juvenile justice system, and the work the Montana Legislature has already done to ensure the rehabilitation of Montana's youths.

There is, however, room for litigation to close this loophole, and much of the law still needs to be interpreted.

The second cause for concern is that all arrest and youth court records are public until age 18, so the media has full access to all youth court filings. In an age where Internet media can last forever, a juvenile infraction can come back to cause collateral consequences later in adult life, even after the youth's official records have been sealed or destroyed. The Legislature's failure to address the publicity of both youth arrest and court records the state's otherwise very protective system of juvenile justice.

Treatment of arrest records

Montana's standard practice is to make adult arrest information public. In most cases, however, (over 81 percent by one report) juveniles in Montana are not "arrested" but merely ticketed and sent directly to youth probation. Therefore, local police department databases rarely contain more than basic identification and charge information after a juvenile has contact with a police officer. Each local police department maintains its own database, usually under contract with a private software company.

For example, in Livingston, the local police use Sleuth, a software program developed especially for their department by a private contractor. The city police department in Bozeman uses another program, however, and the county police department uses yet another system. These town or city police databases are not linked to each other, nor are they linked to any other police departments (county, state, or federal) and can only be accessed by officers or administrators in that local police department. Therefore, once a juvenile's basic identification and charging information is entered into the local police database, it is not accessible by any law enforcement personnel outside the local police department. Interviews indicate, however, that the information on these databases is never sealed, destroyed, or sequestered, and can cause juveniles collateral consequences later in life.

In the smaller number of cases where a formal, custodial arrest is made of a juvenile (rather than a ticket and a referral to youth probation), regular adult arrest procedures take over.

ABOUT THE AUTHOR – Sarah Montana Hart, who lives in the summer with her family on a ranchette near Livingston, is a third-year student at the University of Colorado Law School and plans to take the Montana Bar Exam in July 2011. She has worked for the Sex Crimes Unit of the Manhattan District Attorney's Office in New York, has accepted a clerkship with Federal Magistrate Judge Carolyn Ostby in Billings after her graduation. This article grew out of research for the Collateral Consequences Project, which Ms. Hart helped manage at the request of the American Bar Association's Criminal Justice Section. The national findings of that study will be published by the ABA Press later this winter.



Unfortunately, there is no statewide policy directing when, or for which offenses, a juvenile should be placed under custodial arrest. In addition, there is no statewide procedure in place for juvenile custodial arrests. Instead, a wide variance exists, based on jurisdiction, for when, why, and how a juvenile can be taken into police custody.

A statewide procedure does exist, however, for adult custodial arrests. During an adult arrest, photographs, fingerprints, and DNA may be taken and shared with local police, state agencies, and the FBI. The information that is collected from an arrestee can also be reserved in the police department's database indefinitely. The photographs can be used for comparison in future photo arrays and the fingerprints and DNA can be compared to future and past crimes. If a juvenile is arrested under these adult procedures, it is therefore possible that the same information would be collected from a juvenile. Additionally, the fingerprints, DNA, and photographs, taken from the juvenile could then be retained indefinitely, shared with other law enforcement agencies, and used for various comparisons. Thus, if adult, custodial arrest procedures were used on a juvenile, the arrest record created could be extensive, and could cause substantial collateral consequences for the juvenile.

The lasting effects of public arrest records

The lack of formal, standardized controls on local police database information can cause devastating collateral consequences for juvenile offenders. For example, any military recruiter need only call a local police department in an applicant's hometown and ask a local officer to run the individual's name through the local database. The individual's name may come up in the database as having been arrested, but the database will rarely have an outcome listed. Therefore, a youth might – hypothetically – have been given a ticket for possession of alcohol, successfully completed her youth probation program, and had all her probation and court records shredded at the age of 18. If, however, the local police officer in the juvenile's hometown informs the military that the juvenile was arrested or ticketed for possession of alcohol, some branches of the military will deny that juvenile a place in the service. Many recruiters have become aware of this loophole in the records system and routinely use it to check an individual's background when, otherwise, no criminal record appears.

Exploitation of this loophole is not limited to the military. Any data-mining company, public record search engine, or press agency can use similar methods to obtain an individual's juvenile arrest record long after that individual turns 18. A juvenile's arrest record can, therefore, continue to cause collateral consequences long into adult life. It can prevent a youth not only from entering the military, but also from getting a good job, entering college or professional school, or obtaining a professional license.

One public defender related a story from a client who had successfully completed her youth probation program for a petty offense and had her records sealed when she turned 18. She then moved to New York City, only to find that she was barred from a career in professional child care because of her juvenile record. Her record had apparently been data-mined by

a private company prior to sealing, and then turned up on her employers' background checks.

Ambiguities in the law and arguments to be made

The Montana Constitution provides that “[n]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions. . . .” This general provision is applied to adult arrest records, which are therefore available for public inspection. Whether the “general public” provision applies to juveniles in Montana is less clear.

Montana statutes and police practices offer several argu-

The version of this article that's complete with footnotes and citations can be found under the 'Front Burner' at www.montanabar.org.

ments against a juvenile's arrest record becoming public. First, according to interviews by the author, some local police departments in Montana do not, as a matter of principle, make a juvenile arrest record public. For these officers, the same principle applies regardless of whether a custodial arrest occurred, or a juvenile ticket was issued. Such a principle should arguably be memorialized in a statute or regulation, to ensure that it is uniformly applied, without discretion, by all police departments in the state. Second, several Montana codes and regulations are ambiguous or contradictory on the subject of juvenile arrest records. Different statutory interpretations, therefore, allow for different arguments about a juvenile arrest record's publicity. Based on the different laws, a juvenile's arrest record (whether ticketed or custodial) should arguably be either sealed after three years, or never be made public.

If a youth is arrested using custodial procedures, some Montana Administrative Regulations indicate that the record should be sealed after three years. Montana Administrative Regulation Section 23.12.201 provides that “[j]uvenile records” means records maintained by youth court, Department of Corrections, or a criminal justice agency relating to a juvenile.” This regulation thus indicates that a juvenile record includes any arrest record entered into a local police database. Alternatively, Montana Administrative Regulation Section 23.12.204 indicates that “juvenile records” includes “(a) reports of preliminary inquiries; (b) petitions; (c) motions; (d) filed pleadings; (e) court findings; (f) verdicts; and (g) orders and decrees on file with the clerk of court,” and does not include arrest records. The regulation therefore indicates that the listed parts of a juvenile record (which do not include arrest records) are “available for public inspection.” On the other hand, the statute also requires that those listed records “be physically sealed three years after supervision for an offense ends” and “[o]nce sealed, the records are no longer available for public inspection.” If the definition of juvenile records in Section 23.12.201, which includes arrest records, is read into the requirements of Section 23.12.204, then arrest information relating to juveniles should be public for three years after the offense, but then should be permanently sealed.

Additionally, since juvenile arrest records are not listed in Section 23.12.204, one could also argue that they should therefore not be “available for public inspection” at all, and instead be kept sealed from their creation. If these two regulations are not read together, or one of these arguments does not prevail, Article II of the Montana Constitution would appear to require juvenile arrest records to be public. Montana has no caselaw available to illuminate this point.

Sections of the Youth Court Act are similarly complimentary and contradictory. Montana Code Section 41-5-216 refers to “law enforcement records” as well as “formal youth court records,” and requires that police department records “must be physically sealed on the youth’s 18th birthday.” Sealing under this statute is thus required whether the youth was arrested under custodial procedures or just ticketed. Ambiguity exists in this statute as well, though, because it directly contradicts the Administrative Regulations, quoted above. Even if Section 41-5-216 takes precedents over the Administrative Regulations, it specifically excludes “medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court’s judgment or disposition, records referred to in Section 42-3-203, reports referred to in section 45-5-624(7), or the information referred to in Section 46-23-508, in any instance in which the youth was required to register as a sexual offender...” Under this statute, then, a great deal of a juvenile’s arrest (and arrest-related) record could become public. Even if other parts of the same record were sealed, the listed items could remain public after a juvenile turns 18.

Finally, even if all of these various provisions are interpreted in favor of sealing, there is still the Montana Constitutional provision requiring publicity to contend with. If the Constitution’s publicity provision is interpreted to apply to juvenile arrest records, as it does to adult arrest records, statutory interpretation will do little to alleviate the problem. Juvenile arrest records will be forced to become and remain public and the corresponding collateral consequences for juveniles will continue to be severe.

Treatment of juvenile-court records

In Montana, there are two designations for youth court records – formal and informal. Formal youth court records include all those documents that are filed in a formal youth court proceeding. Informal youth court records include mainly documents produced by youth probation. Formal juvenile court records in Montana are sealed once a child turns 18, but are public until that time. Informal youth probation records are always very closely controlled, and are physically destroyed when a youth turns 18.

■ Probation and youth-court records – the general rule.

A youth court record begins after the arrest ends and when a child is referred to youth probation. A youth probation officer then enters the juvenile’s basic charge and identification information into the youth probation database – Juvenile Court Activity Tracking System (JCATS) – which is maintained by Montana State Youth Probation and used by all local youth probation offices. As a juvenile’s case progresses through the

youth probation system, the corresponding JCATS file can grow to include all information relating to that youth, including all identification information, case notes from probation officers, social information, family information, programs prescribed, progress notes, etc. While the information it contains is expansive, the JCATS database is electronically and physically segregated from all other court and police databases, giving it a heightened level of security. In addition, all of the information in JCATS is sealed after a youth turns 18. Sealing in the context of JCATS means that a youth’s name is permanently separated from all other information in her JCATS file, including charging, treatment, etc. (which is maintained only for statistical and budgeting purposes). In addition to electronically sealing a JCATS file, youth probation officers must physically destroy (usually by shredding) any hard copy notes or files that remain after a youth turns 18.

In the minority of cases, where a youth cannot be diverted to a community program, punished, or treated through the youth probation department, the probation officer may refer the youth to youth court or district court, through the county attorney. In these cases, the county attorney must then choose whether to file a petition in youth court or district court. If the petition is filed in either court, the records will automatically be public until the child turns 18. Once the juvenile turns 18, these youth court records will then be sealed, obtainable only through a court order. In district court, however, the record will remain public forever.

Montana Code Section 41-5-221 makes unlawfully distributing any informal youth court record a misdemeanor offense. That statute includes distribution of any informal youth court record, and a formal youth court record after the juvenile turns 18. Since the informal youth court records are destroyed, and the formal records are sealed, when a juvenile turns 18, this statute has the effect of making distribution of a juvenile’s record criminal after the youth turns 18. There is an exception to that statute, however, for cases that receive an extension of youth court jurisdiction for some special reason. For example, if the youth court’s jurisdiction is extended because the youth has not yet successfully completed probation, then the record will remain public until the end of the case. Since jurisdiction can be extended until a youth is 25 years old, a formal youth court record could remain public under this exception until the juvenile reaches age 25, with no penalty attached for distribution. As soon as the case has ended, however, the youth court record is sealed.

■ The lasting effects of public youth-court records.

Before the existence of the Internet, data-mining companies, and background check services, sealing a youth court record when a juvenile turned 18 meant that distribution and access to that record might actually be limited as the juvenile moved into adulthood. After age 18, the physical, paper record was kept in a sealed file, available only to those who got a court order. Even if a member of the public had viewed or made a copy of the record before it was sealed, that paper copy would only be seen by the few people who were physically able to

The Billings Self Help Law Center is funded by the Montana Supreme Court's Court Help program. The Court Help program is funded through a state general fund appropriation scheduled to sunset on June 30, 2011, unless the 2011 Legislature appropriates additional funding. Centers in Kalispell, Missoula, and Bozeman are also funded in addition to AmeriCorps led centers in Great Falls, Sidney and other locations throughout Montana.

By **Patt J. Leikam**, facilitator
Billings Self Help Law Center
and **John Malsbary**, Americorp volunteer
Justice for Montanans Project

Montana's Self Help Law Centers have become community resource in several cities, but confusion still remains about the role of the centers. Lots of lay people think we're lawyers providing legal advice. Nothing could be further from the truth.

Our employees and volunteers are acutely aware of their limitations. At the same time, we're constantly amazed by how much we can help individuals, and the court system, within the parameters of our mandate. We'd like to share some of the challenges and satisfactions we experience in the Billings Self Help Law Center (SHLC).

A day at the Billings Self-Help Law Center

We arrive early in morning and take the elevator to our office on the fourth floor of the Parmly Billings Library. It is fitting that the SHLC is in a library because we are a lot like a user-friendly law library. Our first half hour is usually devoted to housekeeping. We power up the public workstations, make copies of commonly requested packets, and heat up some coffee. By 9 a.m. visitors start to trickle in.

The typical "walk-in" is low-income, holds a minimum-wage job (or no job), and has an average of two children.

Needless to say, most customers have very limited knowledge of the law. Often what they think they know is gleaned from television and folklore. When people are operating with such limited understanding of the law, it's very risky to go into court pro se. We tell them that first thing. We let everyone know that seeking an attorney is always a better choice than self representation.

Most visitors want an attorney, but are not able to afford legal assistance. We make it clear that the SHLC cannot give legal advice. We let people know that we can't make decisions for them. We provide as much information about process and procedure as we can.

Most people know generally what they want, but they lack

More BILLINGS SELF-HELP, Page 23

Klaus Sitte steps down as MLSA's executive director

After more than eight years at the helm of the Montana Legal Services Association, Klaus Sitte is stepping down as the executive director. The MLSA board announced the appointment of Alison Paul, who was deputy director, to the executive director position, and Mr. Sitte becomes MLSA's litigation director.

Before his appointment as executive director, Mr. Sitte was the managing attorney of the MLSA Missoula office for more than 28 years, as well as deputy director for six years. He currently serves on the Montana Supreme Court's Equal Justice Task Force and the State Bar's Access to Justice Committee.

As litigation director, Mr. Sitte will remain in the Missoula office where he has trained and mentored hundreds of new lawyers, interns and volunteers, many of them through his involvement with the University of Montana Law School.

"As a bonus for MLSA and those we serve, we keep Klaus's skills and experience," said Board President Terry Youngworth.

OTHER TRANSITIONS

■ **U.S. District Judge Donald Molloy**, 64, of Missoula, announced that he will take senior status in August 2011. "Senior status" means retirement from active service. Senior judges continue to hear cases, usually with a reduced caseload. The announcement, however, said Judge Molloy intends to maintain a "substantial" caseload. (For an update on the committee searching for Judge Molloy's replacement, see Page 18).

■ **Missoula District Judge Douglas G. Harkin** retired on Dec. 31 after 30 years on the bench.

In his new position as litigation director, Mr. Sitte will mentor MLSA's advocates and casehandlers. He will provide supportive services and co-counseling assistance, especially to new advocates. "What I really missed as executive director was the direct advocacy opportunity with clients," Mr. Sitte said. "My new job is not a retirement position. I expect to be actively engaged with our staff and our clients for several more years." ○

Summary of the December Board meeting

By **Jill Diveley**

Bar membership coordinator

The following is a summary of the State Bar Board of Trustees meeting held on Dec. 3 in Helena:

BAR PRESIDENT'S REPORT – Joe Sullivan

The Nov. 5 New Lawyers' Workshop and Road Show programs were well attended.

The Executive Committee will use State Bar staff and professional lobbyists to help monitor bills for the 2011 Legislative Session. The Montana Supreme Court also is looking for the Bar to work with it on legislative issues. The Executive Committee recommended allowing the executive director to amend the 2011-2012 budget to re-allocate \$10,000 in funds to hire a lobbyist for the 2011 Legislature. The Board approved the recommendation.

Mr. Sullivan attended a dinner meeting of the ABOTA (American Board of Trial Advocates) organization, which is trying to create a civility and mentor program for new lawyers.

SECRETARY-TREASURER'S REPORT – Paul Stahl

Scott Knutson of Wells Fargo provided an update on the Bar's financial investments. As predicated, interest rates have gone down but the stock market has reacted positively. The Bar's portfolio is up about 5 percent since Jan. 1, 2010. The outlook is that interest rates will go back up and equity markets may have a positive year. Mr. Knutson recommended a review of the Bar's investment policy because it has been four years since the last revision.

Mr. Stahl said the State Bar's most recent audit is finalized and copies were made available to the Trustees. A downloadable version is also available from the login area of the Bar web page.

PAST PRESIDENT'S REPORT – Cindy Smith

Ms. Smith asked the trustees to consider making personal donations to the annual UM Law School scholarship sponsored by the Board.

BAR COUNSEL'S REPORT – Betsy Brandborg

Ms. Brandborg has been deeply involved in Ethics Committee and Executive Committee discussions on limited scope representation (LSR) and drafted an ethics opinion on the subject. She also attended LSR CLE in Billings. She also has participated in meetings with the Montana Supreme Court on rules amendments, discipline-rule Comments, and LSR issues.

Ms. Brandborg and Membership Coordinator Jill Diveley organized the November 2010 New Lawyer Workshop, including marketing and coordination with the New Lawyers'

Section. The program drew 76 new lawyers and 31 faculty.

Ms. Brandborg also coordinated the November 2010 Road Show and drafted scripts, including "instructor manuals." That program drew 206 attendees.

The Bar counsel assisted with two lawyer office closings; drafted and filed comments on discipline-rule revisions; and drafted a National Conference of Bar Examiners petition to the Supreme Court. She was to draft another petition in response to proposed changes to the Rules of Procedure of the Commission on Character & Fitness.

The Ethics Committee has drafted an opinion on limited scope representation. Public-information provisions of the Rules for Lawyer Disciplinary Enforcement would give the Office of Disciplinary Counsel (ODC) more jurisdiction to dismiss complaints the ODC feels are not valid – but if the complaint goes forward, all information regarding the complaint will be made public.

The Bench-Bar CLE will be held on Feb. 25 in Bozeman.

EQUAL JUSTICE COORDINATOR'S REPORT – Janice Doggett

The Montana Legal Services Association helped compile statistics of attorneys who worked 50 or more hours of pro bono service. Those attorneys will receive a certificate for free CLE.

A new Americorps/VISTA member was to come on board in January and will work on Service of Process Trail Guides and brochures.

ISSUES REQUIRING BOARD ACTION

■ **Approving guidelines and directives for a permanent Finance Committee.** The Board dissolved the ad hoc budget committee and authorized the creation of a permanent, standing Finance Committee of the State Bar consistent with, but not limited to, the guidelines and directives proposed at the meeting. Trustees Leslie Halligan and Jane Mersen volunteered as members of the Committee.

■ **State Bar bylaw amendments.** Shane Vannatta, chair of the Bylaws Review Committee, summarized the Committee's recommended changes to Articles II, III, IV, VII, and VIII of the State Bar of Montana bylaws. The Board voted to adopt the changes. The Committee hopes to have a vote on the final, fully-revised bylaws by the 2011 May Strategic Planning Meeting.

■ **Proposed Budget FY12 (2011-2012).** The Trustees reviewed the budget, and made one amendment (reducing the annual grant to the *Montana Law Review* from \$10,000 to \$8,000. The budget estimates that \$1,492,460 in

expenses, will be offset by \$1,491,275 in revenue.

■ **BETTR (Business, Estates, Trusts, Tax & Real Property) Law Section legislation.** Section Chair Professor Chuck Willey addressed the trustees on the BETTR Section's support of proposed legislation updating the Revised Uniform Limited Partnership Act. The Board then authorized the Section to propose legislation updating the Uniform Probate Code and to propose recommended amendments to the Legislature on the Revised Uniform Limited Partnership Act.

JUDICIAL RELATIONS COMMITTEE REPORT

The new chair of the Judicial Relations Committee is Eric Nord of Billings, who is taking over the chair from Alice Hinshaw.

The Committee held its annual bench-bar conference on Feb. 19, 2010, at the Hilton Garden Inn in Missoula. The CLE was well attended and well received, with 123 preregistrations and approximately 150 bar members attending. The next annual bench bar conference is scheduled in Bozeman at the Grandtree Hotel on Feb. 25, 2011.

FEE ARBITRATION COMMITTEE REPORT

There were 20 new fee-arbitration files opened in 2010. Eight agreed to "binding" arbitration; eight picked non-binding; and four were settled. Seven hearings were held.

PARALEGAL SECTION REPORT

Section officers were elected at the Section's annual meeting on Sept. 17. Guest speaker John McCrea, of the

Department of Public Health & Human Services' Legal Services Developer Program, spoke regarding "document clinics" and other pro bono work that is being developed.

The Paralegal Section co-sponsored the New Lawyers' Workshop reception. What began as a "social" between paralegals and new lawyers at a local lounge following the workshop on Nov. 5 in Missoula turned into a co-sponsored reception, also with the Western Montana Bar Association. There was very good attendance.

The Section's Executive Board held a meeting in Missoula on Nov. 5. The Section is going to attempt to reinstitute working committees for projects and get more membership involvement. The Section Board is preparing for its annual CLE to be held on March 25 in Missoula.

CONSTRUCTION LAW SECTION REPORT

The October 2010 Construction Law Institute, organized by the Section's Buzz Tarlow, had a slight drop in attendance, but number of attendees was nonetheless solid, as was the seminar's content.

The Section will attempt to organize a fundamental construction law CLE to be taught at the UM School of Law this spring. The target audience is different from the Construction Law Institute's audience because the fundamentals program will be directed at novice construction attorneys and at smaller construction industry companies.

THE NEXT MEETING of the Board of Trustees is set for April 8 at the UM School of Law School in Missoula.

STATE BAR CALENDAR

February 18

Annual Real Estate CLE, Fairmont Hot Springs

Professionalism Committee meeting, Worden Thane law offices, Missoula

February 21-23

Bar Exam, Great Northern Hotel, Helena

February 25

Bench-Bar Conference, GranTree Inn, Bozeman

March 1

Dues statements mailed to Bar members

March 4

Family Law Update CLE, Hampton Inn, Great Falls

State Bar Executive Committee meeting, 10 a.m., State Bar offices, Helena

March 11

Family Law Update CLE, Hilton Garden Inn, Billings

March 16

Commission on Self Represented Litigants meeting, 1 p.m., State Law Library, Helena

March 18

Medical Marijuana Update CLE, War Bonnet Hotel, Butte

March 18-19

Lawyers' Assistance Program Committee meeting, Fairmont Hot Springs

March 25

Attorney-Paralegal Practice Points CLE, DoubleTree Hotel, Missoula

April 1

Deadline for return of dues statements and dues to Bar

April 8

Natural Resources/ Permitting CLE, Holiday Inn Downtown, Helena

Send in nominations for Professionalism Award by May 10 deadline

The nomination form for the Bar's George L. Bousliman Professional

Award is being published, below, two months earlier this year. That will allow nominations to be considered by the Board of Trustees at its May 20-21 meeting.

The deadline for the Professional Award nominations is **May 10**; return

the form and accompanying material, including a resume of the nominee, to the Bar address at the bottom of the form.

Other Bar award nomination forms will appear in the April *Montana Lawyer*.



George L. Bousliman Professionalism Award

The award will recognize lawyers or law firms who have:

1. Established a reputation for and a tradition of professionalism as defined by Dean Roscoe Pound: pursuit of a learned art as a common calling in the spirit of public service; and

2. Within two years prior to the nomination, demonstrated extraordinary professionalism in a least one of the following ways:

- Contributing time and resources to public service, public education, charitable or pro bono activities.

- Encouraging respect for the law and our legal system, especially by making the legal system more accessible and responsive, resolving matters expeditiously and without unnecessary expense, and being courteous to the court, clients, opposing counsel, and other parties.

- Maintaining and developing, and encouraging other lawyers to maintain and develop, their knowledge of the law and proficiency in their practice.

- Subordinating business concerns to professional concerns.

Nominee/Individual or firm: _____

Address: _____

Please describe the nominee's activity in your community or in the state, which you believe brings great credit to the legal profession. Attach any supporting documents to this form.

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations and supporting documents will not be returned. Send them no later than **May 10** to:

Bousliman Professionalism Award
P.O. Box 577
Helena MT 59624
or e-mail to mailbox@montanabar.org

Upcoming CLE seminars for Montana lawyers

CLEs with Ethics & SAMI* credits

**Substance Abuse / Mental Impairment*

5.0 Ethics credits required every 3 years – 1.0 of them must be a SAMI credit. See www.montanabar.org for SAMI updates.

(NEW DATE!) February 9 Great Falls – Holy Spirit Parish Hall
Annual Red Mass Ethics CLE "Ethical Considerations: Candor Amongst the Court & Counsel;" presenter: Hon. John Warner, retired Supreme Court Justice. Voluntary luncheon at Parish Hall at noon; CLE at 1:30 p.m.; Red Mass at conclusion of CLE

February 9 Webcast

Lincoln on Professionalism 1.0 CLE credit, including 1.0 Ethics (no SAMI) credit. Periaktos Productions, (605) 787-7099

February 11 Kalispell – Red Lion Hotel

Examining & Resolving Title Issues 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

February 16 Webcast

Thurgood Marshall's Coming! 3.0 CLE credits, including 3.0 Ethics (no SAMI) credits. Periaktos Productions, (605) 787-7099

February 18 Missoula – DoubleTree Hotel

Helping Your Client Select the Best Entity Option 6.50 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

February 23 Webcast

Lincoln on Professionalism 1.0 CLE credits, including 1.0 Ethics (No SAMI) credit. Periaktos Productions, (605) 787-7099

February 24 Missoula – DoubleTree Hotel

Handling Divorce Cases From Start to Finish 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

February 25 Helena – Jorgenson's Restaurant

Evidence & Expert Testimony Best Practices 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

March 3 Missoula – DoubleTree Hotel

Estate Administration Procedures 6.50 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

March 4 Great Falls – Hampton Inn

Family Law 6.75 CLE credits, including 2.0 Ethics (no SAMI) credits. [CLE Institute of the State Bar of Montana](http://CLE.Institute.of.the.State.Bar.of.Montana.org), (406) 447-2206. Program and registration details mailed to Bar members, and can be found at www.montanabar.org.

Other web & phone CLEs for Montana credit are:

■ For the State Bar of Montana's approved online CLEs, go to www.montanabar.org and click CLE / Online CLE Courses

■ MTLA's SeminarWeb Live! Seminars at www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=showAppPage&pg=semwebCatalog&panel=browseLive

■ Lorman Education Services' teleconferences at www.lorman.com/teleconferences/

■ The National Business Institute's live teleconferences at www.nbi-sems.com/Default.aspx/?NavigationDataSource1=N:304

March 4 Great Falls – Heritage Inn

Estate Administration Procedures 6.50 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

March 8 Billings – Location to be announced

Labor & Employment Law: Best Practices 8.25 CLE credits, including 1.0 Ethics (no SAMI) credit. The Seminar Group, (800) 574-4852

March 11 Kalispell – Red Lion Hotel

Estate Administration Procedures 6.50 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

March 16 Billings – Crowne Plaza Hotel

Collection Law From Start to Finish 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

March 16 Webcast

Clarence Darrow: Crimes, Causes & Courtroom 3.0 CLE credits, including 3.0 Ethics (no SAMI) credits. Periaktos Productions, (605) 787-7099

March 17 Missoula – Hilton Garden Inn

Collection Law From Start to Finish 6.0 CLE credits, including 1.0 Ethics credit. National Business Institute, (800) 930-6182

March 18 Missoula – Grant Creek Inn

State Ethics Law 3.0 CLE credits, including 3.0 Ethics (no SAMI) credits. State Professional Development Center, (406) 444-8539

March 25 Bozeman – Holiday Inn
Land Use Law 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

All other CLEs

February 4 Teleconference
Nuts and Bolts of Legal Writing (Paralegal Seminar) 1.0 CLE credit. Montana Association of Legal Assistants, (406) 546-2150

February 4 Teleconference
Nuts and Bolts of Legal Writing (Paralegal Seminar) 1.0 CLE credit. Montana Association of Legal Assistants, (406) 546-2150

February 9 Billings – Crowne Plaza Hotel
The Complete Trust Course 7.0 CLE credits. PESI, (888) 263-5879

February 10 Helena – Metcalf Building, Capitol Complex
Privacy & the Right to Know 6.50 CLE credits. State Professional Development Center, (406) 444-8539

February 11 Missoula – Grant Creek Inn
The Complete Trust Course 7.0 CLE credits. PESI, (888) 263-5879

February 18 Fairmont Hot Springs Resort
Easement Law/Distressed Real Estate 7.0 CLE credits. CLE Institute of State Bar of Montana, (406) 447-2206. Program and registration details mailed to Bar members, and can be found at www.montanabar.org.

February 18 Kalispell – DNRC Northwest Land Office
Documenting Disciplinary Action 3.0 CLE credits. State Professional Development Center, (406) 444-8539

February 22 Teleconference
Change of Situs With & Without Document Provisions 1.50 CLE credits. Cannon, (800) 676-0734

February 25 Bozeman – GranTree Inn
Bench-Bar Conference 6.75 CLE credits. CLE Institute of the State Bar of Montana, (406) 447-2206. Program and registration details mailed to Bar members, and can be found at www.montanabar.org.

February 28 Billings – Crowne Plaza Hotel
Deeds, Descriptions & the Law 7.0 CLE credits. PESI, (888) 263-5879

March 1 Missoula – Grant Creek Inn
Deeds, Descriptions & the Law 7.0 CLE credits. PESI, (888) 263-5879

March 10 Helena – Metcalf Building, Capitol Complex
Writing Administrative Rules of Montana 10 CLE credits. State Professional Development Center, (406) 444-8539

March 11 Billings – Hilton Garden Inn
Family Law CLE CLE credits pending. CLE Institute of the State Bar of Montana, (406) 447-2206

March 11 Helena – Great Northern Hotel
Federal Practice CLE 6.75 CLE credits. Federal Bar, et al., (406) 721-1435

March 29 Webinar
Investigative Tools for Lawyers on the Internet CLE credits pending. CLE Institute of the State Bar of Montana, (406) 447-2206

Ethics CLE & Red Mass date changed to Feb. 9

The date for the 4th Annual Red Mass Ethics CLE in Great Falls has been changed to Feb. 9.

Originally set for Feb. 23, the CLE will begin at 1:30 p.m. on Feb. 9 at Holy Spirit Parish, featuring retired Supreme Court Justice John Warner.

The CLE will be open to both lawyers and paralegals. CLE credit is pending, but the CLE will qualify for at least 1.0 Ethics credit.

Following the CLE a traditional Red Mass will be hosted by the Parish at the Parish Hall with Great Falls-Billings Diocese Bishop Michael Warfel presiding. The custom of a special mass for the bench and bar arose in 13th Century Europe.

The CLE and associated events are sponsored by the Parish and a committee of Great Falls area attorneys – Mary Matelich, Glenn Tremper, Richard Martin, Dale Schwanke, Karen Reiff, Theresa Diekhans, George Darragh, and Anders Berry.

The mass, and a noon luncheon that will precede the CLE, are optional, but all CLE attendees and their spouses or guests are invited to attend both. There will be a charge of \$25 for the CLE session and the luncheon will cost \$10 a person.

Free CLE admission for pro bono work

State Bar members who provided 50 or more hours of pro bono direct-representation work through a qualified provider in the past year will receive a certificate from the CLE Institute giving them free admission to a State Bar CLE.

The Montana Legal Services Association helped compile a list of those attorneys.

State Bar of Montana Bookstore

These Montana legal manuals and videos are for sale or rent via this mail-order catalog. Other Montana Bar-produced video seminars, are available for download to your computer on the Online CLE catalog at www.montanabar.org.

LEGAL PUBLICATIONS

Montana Real Estate Transactions
2010, 360 pages, \$180

Montana Citizens' Guide to the Courts
2010, 20 pages, print copy \$10
Free download at www.montanabar.org

Montana Students' Guide to Turning 18
2008, 22 pages, CD \$10
Free download at www.montanabar.org

Montana Probate Forms
2006, 288 pages
Book plus CD \$150

Civil Jury Instructions
(MPI – MT Pattern Instructions)
1999 w/2003 Update, 400 pages
Book plus CD \$200

Criminal Jury Instructions
New 2010 edition
650 pages, on editable CD only
CD \$130

Handbook for Guardians & Conservators
2005, 60 pages incl. 5 forms
Book plus CD \$150

2011 Lawyers' Deskbook & Directory
Book, \$40
Mid-year update CD for 2010, \$20

MT Family Law Form Book
2005, 93 pages incl. 26 forms
Book and CD \$150

Public Discipline Under MT Rules of Professional Conduct
2009, 115 pages annotated
Book \$35

Public Information Flyers
tri-fold brochures, \$10/bundle of 100
Client Bill of Rights
Dispute Resolution
Divorce in Montana
How Lawyers Set Their Fees
Purchasing Your Home
Renting a House or Apartment
Small Claims Court
After an Auto Accident
When You Need a Lawyer
Wills & Probate

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Book \$25

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1.0 SAMI credit
\$35, plus \$25 deposit
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6 DVDs may be rented as a set (\$150 plus \$50 deposit) or separately (\$35 each plus \$25 deposit)

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3. In Praise of the Guilty Project – .75 Ethics credit
4. Loyalty Apocalypse – 1.25 Ethics credits.
5. Accountability for Prosecutorial & Defense Attorney Misconduct – .75 Ethics credits
6. Common Dilemmas in Criminal Ethics – 1.0 Ethics credit.

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2. Dancing in the Minefield: Ethics in the Electronic Era - 2.0 Ethics credits
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Supreme court Update, Ethics & Technology, Social Media in Employment, Probate & Civil Hearing Delays, Attorneys' Criticism of Judges, Uniform Laws, SAMI, Health Reform Act, Medical Marijuana, Federal Pleading Standards, Wind Development, Federal Tax Update, Ethics & Social Media

Attorney-Paralegal Practice Tips

Malpractice & Impaired Lawyers, Going Paperless, Estate Planning, Ethics & Social Networking, Federal Rules Change, Employment ADA, Access to Justice for Aged

Bankruptcy

Consumer Law, Mortgage Issues, Dept. of Revenue Update, Means Testing, Compliance Issues, Practice Issues, Foreclosure Issues, Chapter 7, Fraud, Judges' Update

Basic Office Practice

Mtn. States Transmission Intertie, 2nd Amendment Law, Pitfalls into Windfalls, Real Estate, Ethics Tips, Malpractice & Impaired Lawyers

Bench-Bar Conference

Attorney-Client Privilege, Limited Representation, Civility, Bankruptcy Bomb, Oral Argument Tips

CLE & SKI

Ethics Opinions & Notary Opinion, Changes in Rules of Civil Procedure, Litigating in Economic Red Zone, Liability While Serving on Boards, Property Law

Construction CLE

ADR, Federal Contracts, Supreme Court Cases, Construction Lawyers Speak, Contractor' Perspective, Contract Claims with DOT, Psychology in Construction Cases

Elder Law

Mental Impairment Among Lawyers, Powers of Attorney, Conservatorship & Guardianship, MontGuides, Medicare 101

Eminent Domain

Its Legal Foundation, Constitution & Representing Landowners, Negotiating with DOT, Land Use Interaction, Recent Game Farm Cases

Energy Update

Wind development, NW Energy's Role, Federal Energy Regulatory Commission, Surface Access Rights, Oil & Gas Drainage, NEPA

Foreclosure Update

Conflict Check, Title Policy, Choosing Type of Foreclosure, Bankruptcy, Summary Judgment

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Public Roads, Rights of Way, Substance Abuse & Mental Impairment, Ethics, Federal Lands Planning, Family Law, Wind Power & Cell Towers, Mental Competency

State and Federal Planning Rules

FOIA & Sunshine Laws; DNRC, Forest Service & BLM Planning; MEPA, State Lands & Trust Obligations

To request CLE materials from 2009 or earlier, contact Gino Dunfee at 447-2206

For online CLE seminars, go to www.montanabar.org under "CLE"

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Dues statements coming soon

The State Bar of Montana will mail annual dues statements to attorneys on March 1.

Payments for all fees are due April 1 and can be made by check or online with a credit card.

CLE affidavits will be mailed separately in April with a filing deadline of May 15.

Search panel formed for Molloy replacement

Senator Max Baucus has named a committee of five attorneys to search for a replacement for U.S. District Court Judge Donald Molloy, who announced recently that he will move to senior status on the Court in late summer.

The search committee members are: James Goetz, of Bozeman; Candace Fetscher, Missoula; Karla Gray, Helena; Milton Datsopoulos, Missoula; and Martha Sheehy, Billings. "As an advisory body engaged in preliminary screening, this committee's process is confidential and informal," Al Smith, executive director of the Montana Trial Lawyers Association, informed the State Bar. "While no timeline is in place, the committee has been working diligently with the intent of making recommendations quickly," he said.

The committee will make recommendations to the U.S. Senate, which must confirm any presidential nominee for the federal court.

Mr. Smith added in his January e-mail to the Bar that no written applications for the judgeship "are required or expected at this stage." But, he said, attorneys interested in seeking the position or in suggesting a candidate may contact search-committee member Martha Sheehy at sheehy@sheehylawfirm.com. She will forward the expression of interest to the committee as a whole.

Appointments to court commissions

The Montana Supreme Court in January appointed the following to Court commissions:

- **Uniform District Court Rules Commission:** Billings attorney Elizabeth Halverson and UM Law Professor Greg Munro were reappointed to new four-year terms.
- **Commission on Practice:** Sidney attorney Bob Savage was named to fill the remainder of the term of commissioner Jo Ridgeway, who resigned. The term ends April 28, 2013.
- **Commission on Courts of Limited Jurisdiction:** Great Falls Justice of the Peace Stephen Fagenstrom, City Judge Marie Anderson of Missoula, and county official Bernie Cassidy of Libby were appointed to replace Mary Jane Knisely, David Ortle, and Shaun Donovan whose terms ended as the result of the November elections.

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(Feb. 9 • Feb. 23 • June 8 • July 13 • December 21 • Approved for 1 Hour of CLE Ethics Credits in MT)

THURGOOD MARSHALL'S COMING!

Featuring T. Mychael Rambo as Justice Thurgood Marshall

Winner of the ABA 2005 Silver Gavel Honorable Mention Award in Theatre!.

He wanted JUSTICE and EQUALITY Under the Law. Was that too much to ask?

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Clarence Darrow: Crimes, Causes and the Courtroom

Featuring Graham Thatcher as Clarence Darrow

They called him "Attorney for the Damned" ... and he was!

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The Art of Advocacy - What Can Lawyers Learn from Actors?

Featuring Alan Blumenfeld and Katherine James • Produced by ACT of Communication ®

Attorneys and actors share a common goal ... to create a compelling drama that demands the listener's attention and convinces him or her of the credibility of the client's story!

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More turmoil for state's public defender system

By Allison Maier
Helena Independent Record

Missoula attorney James Park Taylor has resigned from his position on the Montana Public Defender Commission, citing various inadequacies within the institution and expressing little hope for change under its current leadership.

"I think the organization can be fixed," he said in an interview. "I just don't think people have the political will to do it."

The State Bar of Montana State Bar nominated Taylor to the commission shortly after it was created by the Public Defender Act passed by the Legislature in 2005. [The State Bar was asked nominate two people for a governor's appointment to the Commission; the other is Helena attorney Fritz Gillespie, who is Commission chair]. The law replaced the previous county-based system of indigent defense with a statewide arrangement aimed at equalizing opportunities for poor individuals accused of crimes. Taylor was the first to serve as chairman of the organization.

In a letter to Gov. Brian Schweitzer dated Jan. 6, Taylor said he has watched the commission "go from a forward thinking, dynamic group that helped to create a national model for a public defender system, to a passive institution that simply accepts whatever information it is presented with."

Taylor's letter goes on to say that the Office of the State Public Defender has failed to provide "accurate and verifiable" data about how the system is performing, like whether attorneys are meeting set standards for handling cases. In addition, he wrote, the commission has failed to provide reasonable hourly compensation to attorneys contracted in the system, making it difficult to retain quality lawyers. He stated that he

didn't believe the system would improve under Chief Public Defender Randi Hood, but that the commission "lacks the will to replace her."

"In my opinion, the commission has surrendered control of the system to the Chief Defender, and is operating only as an advisory board that the Chief can heed or ignore as she chooses," Taylor wrote.

He is not the first to question the organization's validity. Complaints from within the state's system of public defenders led to an American University study that concluded much of what Taylor has claimed: that deficiencies within the institution's management threatened its future, that money and other resources were short, and that employees were unhappy and apt to leave.

Retired Helena Justice of the Peace Wally Jewell had also weighed in on the organization, deeming it a "DAMN MESS!!" in one of a series of e-mails.

Though Taylor acknowledged that the commission and Office of the State Public Defender had worked on correcting some of the problems outlined in the American University study, he said in his letter that a number of "fundamental issues" still remain.

He did have some positive things to write, commending Administrative Director Harry Freebourn, Chairman Gillespie, and the staff attorneys, contract attorneys, investigators and administrative staff for their work. Regardless, he felt it was time to leave.

"If I thought that my continued involvement with the system would be productive, I would remain, but as I see no reasonable prospects for change I am resigning," he wrote.

Taylor's departure was not acknowledged when the com-

One month left on comments about privacy rule changes

The Montana Supreme Court, in a Dec. 8, order, made public proposed changes to the Rules for Privacy and Public Access to Court Records. The amendments were proposed in a petition by the State Law Library and the Montana Legal Services Association.

The Court set a 90-day comment period, beginning on Dec. 8, for the proposal.

Changes in the rules would affect not only attorneys, but also pro se litigants making filings in courts. The amendments would address such things as removing minor children's names, restricting access in family-law cases to final orders, temporarily suspending privacy rules, and deciding when a court needs private information to decide a case.

The Court's Dec. 8 order and the amendments can be found under the "Front Burner" at www.montanabar.org.

ORAL ARGUMENTS

The Montana Supreme Court will hear the following oral arguments:

February

■ Case No. DA 10-0169 – ROHNN LAMPI, Plaintiff and Appellant, v. ALLEN SPEED, Defendant and Appellee.

Oral argument is set for Feb. 16 at 9:30 a.m. in the courtroom of the Montana Supreme Court, Justice Building, Helena.

TO VIEW BRIEFS containing details on each case, go to <http://courts.mt.gov/library>, click on "Cases" in the top navigation bar, and search for the case by names or case number.

mission gathered for a meeting Monday morning. The group made its way through budget, contract and personnel reports, making frequent references to the university study's suggestions and falling into opinionated discussions about how the agency's operations should proceed.

The commissioners agreed to support a version of House Bill 97 that would transfer supervision of the Office of the Appellate Defender from the chief public defender to the com-

mission itself. At the group's previous meeting, in October, Taylor had moved to seek such legislative action, calling for complete removal of the appellate office from the Office of the Public Defender's control and requiring it to report directly to the commission. According to minutes from the meeting, his justification was that it would help clarify the role of the appellate office and provide the commission with independent perspectives across the state. ○

DISCIPLINE

Court disbars Helena attorney

The Montana Supreme Court has disbarred an attorney who used to work for the Montana Public Employees Retirement Administration for probation violations stemming from her 2008 conviction for writing \$8,000 in bad checks in Missoula, the *Helena Independent Record* reported.

Mary Ann Sutton, 56, was temporarily suspended from practicing law in Montana last June, based on her felony conviction in Missoula District Court.

According to court documents, Sutton had issued three bad checks totaling \$8,000 in October 2007 to the Montana 1st Credit Union. Sutton was given a six-year deferred sentence, subject to certain conditions, in December 2008.

Seven months later, the Missoula Deputy County Attorney's office filed a petition to revoke, saying Sutton had violated the terms of her probation. She was given a new six-year deferred sen-

tence on March 9, 2010, leading the state's Office of Disciplinary Council to file a petition on June 9, 2010, asking the Supreme Court to consider whether she should be disbarred. The court unanimously agreed on Jan. 11 that she should no longer be allowed to practice in Montana.

While the initial deferred sentence was in place, Sutton was hired by the state of Montana as legal counsel for state retirement organization, which manages state workers retirement pensions. She worked there for eight months, the *Independent Record* said.

Billings lawyer placed on probation

A Billings attorney has been placed on probation for two years and ordered to receive a public censure for his handling of a case related to the unsolved death of a Glendive woman, the *Billings Gazette* reported.

The Montana Supreme Court has ordered the disciplinary action against Roy W. Johnson. It is the second time that the Billings attorney has been ordered to receive a public censure, the *Gazette* said.

According to an order signed by the seven justices on Jan. 18, Johnson will be required to appear before the Supreme Court in Helena on Feb. 15 to receive the public censure. The order states that Johnson was found to have violated three rules governing lawyer conduct.

The case that led to Johnson's discipline involved the children of Susan Casey, a 34-year-old Glendive woman whose death in April 2008 remains unsolved. Casey's body was found in the Yellowstone River several weeks after she was reported missing.

According to a complaint filed against Johnson, the Billings attorney was hired by Casey's ex-husband, Walter Larson, when members of Casey's family filed to be appointed co-guardians of Casey and Larson's two children following her death.

Larson was initially identified as a possible suspect in Casey's death because Casey had been issued a restraining order against him. Investigators said Larson made repeated phone calls to the woman in the hours before her death. Larson was arrested and charged with violating the restraining order, but the charge was dismissed when it was determined he had not been served with the restraining order. Larson did not object to the family's request regarding the children, the complaint states, and in September 2008 Johnson filed a proposed parenting plan on behalf of Larson.

But Johnson failed to file the appropriate supporting documents, the complaint states, and did not respond to messages from the court or take steps to



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obtain visitation rights for Larson.

In a formal response to the complaint, Johnson said the supporting documents for the parenting plan were prepared, but Larson could not be reached for his signature. Also, Johnson said in the response, once Larson filed a complaint

with the state about his legal services he could no longer represent him. And Larson failed to tell him about the circumstances of his wife's death, "which made the matter involving the children a much more significant problem than he had led me to believe," Johnson said.

In May 2008, Johnson received a public censure for violating four rules governing attorney conduct. Johnson has also received four private admonitions from the Supreme Court for misconduct, including two in 2007, the complaint states.

BILLINGS SELF-HELP, from Page 10

the computer resources to find it without assistance. The SHLC relies on publicly available resources from Montana's State Law Library website or MLSA's www.montanalawhelp.org. Different groups around the state produce documents for pro se litigants. The Supreme Court's Commission on Self Represented Litigants regularly develops and approves new forms for pro se litigants. They have made quite a bit available for landlords and tenants. They also create most of the pro se family law pleadings. The Department of Justice creates great documents for protective orders and for pleadings in small-claims court. DPHHS and the MSU Extension Office have created a lot of information for end-of-life planning. Finally, the Montana Legal Services Association has a plethora of FAQ's that we distribute to help people figure out how to proceed with a legal matter. The Self Help Law Center adds value because we compile hard copies of everything at one convenient location.

About 15 people a day visit the Billings Self Help Law Center. The majority of customers are looking for family law information. For example, after years of physical abuse a woman with three beautiful children files for divorce and moves forward; a couple married for 30 years faces huge medical liabilities and need a divorce to qualify for medical assistance; a man frightened by a summons saying he could lose parenting time needs to know how to get in front of the court. All cases would benefit from full representation, but most cannot afford it.

Customers petitioning the court for a parenting plan or a divorce are told how they can go online to get the necessary documents on their own. If they want to use the SHLC's public workstations they first need to attend a Yellowstone Area Bar Family Law Clinic. At the Family Law Clinic they watch an informational video about divorce and parenting plans. After the video they have an opportunity to ask informational questions of a volunteer attorney. Billings is very lucky to

have the Family Law Project to provide support for litigants. Attorneys involved in the Project offer fantastic support. After attending the clinic, litigants gather the information they'll need to file. When they come back to the Self Help Law Center they put all that information into "Law Help Interactive's" online form generator which creates the court documents necessary to take an uncontested divorce from petition to final decree. The SHLC provides a printer and copier for all their documents.

Often, people only need one little document to get the ball rolling, like a generic certificate of service, a blank proposed order for a judge to sign, or a quit-claim deed to tie up that last part of the divorce. When somebody has a problem we can't help with, we always let them know. If there's a better service available people are referred in that direction.

Since what we do is purely self-help, people usually don't arrive with a sense of entitlement. We strive to treat people with the same respect we'd treat someone who was paying for services. Respecting people's stories and life situations goes a long way. And even when we have to tell people "I don't know," they seem grateful that someone at least listened to them talk. But "I don't know" isn't all that common a refrain. We're usually able to help people accomplish something independently, and it's always an incredibly satisfying moment.

In one situation a 94-year-old woman of Cuban descent was preparing to die. She wanted to have her former maiden name reinstated to honor her family. She came to the United States when she was a young girl in a pre-arranged marriage. Later in life she was abandoned. Culturally, divorce was never an option. Throughout her many years, she felt shame in having his name. At the SHLC, we know where to find forms to assist with an adult name change, but for her it was a daunting mountain. We were able to provide her with the necessary documents and assisted in the process. Although we had a language barrier, her visible gratitude was heartfelt.

It is now the end of day and both staff and volunteers have met today's challenges, tomorrow we will begin a new day.

○

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Alexander Hamilton comes out against 'merit' selection of judges

Here's a counterpoint to the article in the December issue of *The Montana Lawyer* wherein Justice Gray (ret.) and others promote "merit" selection of judges. It was written on Nov. 10 by Dan Pero on *AmericanCourthouse.com*, a blog that focuses on legal reform issues. Dan is president of the American Justice Partnership, a nationwide coalition that advocates for legal reform at the state level. Many of your readers will find this piece compelling.

Dan opines:

"The Federalist Papers are rightly regarded not just as the most compelling argument in favor of the U.S. Constitution, but as one of the greatest discussions of political philosophy in human history. Alexander Hamilton ... outlined in the most clear, coherent terms the

inherent in vesting the power of appointment to high public offices (such as judgeships) in a committee (such as a 'merit' board). According to Hamilton:

The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will have FEWER personal attachments to gratify, than a body of men who may each be supposed to have an equal number; and will be so much less liable to be misled by the sentiments of friendship and of affection. [emphasis Hamilton's]

"Hamilton also rebutted the notion that a committee of experts would do a

case against "merit" selection of judges in (Federalist 76).

"Over 220 years ago, Hamilton and other Framers of our Constitution understood the problems

better job appointing judges. He went so far as to 'lay it down as a rule' that 'one man of discernment is better fitted to analyze and estimate' the qualifications for office 'than a body of men of equal, or perhaps even of superior discernment.'

"Hamilton knew that when a committee retreats behind closed doors, as 'merit' panels typically do, that the ideological leanings and personal proclivities of each board member will determine who is nominated. [ie: make sure the governor's choice is on the list..]. He explicitly pointed out that 'the intrinsic merit of the candidate' has little to do with the final selection.

... in every exercise of the power of appointing to offices, by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those

More HAMILTON, Page 31

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- Oft-cited author and frequent speaker on the topic of arbitration and ADR
- Former lead defense and plaintiff's counsel, and former special counsel to a F100 Company responsible for the litigation, management, and settlement of over \$3 billion in contract-related claims
- Former Director, International Dispute Resolution Program, CEPMLP, University of Dundee, Scotland
- Fellow, Chartered Institute of Arbitrators (2002-2009)
- Task Force Member, National Summit on Business to Business Arbitration, Washington DC 2009



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access it through the copy's owner. The limitations on these physical, paper copies would give a young adult a fresh start. It would allow her to put her youthful mistakes behind her and become a productive member of society as an adult. This was, presumably, the purpose behind the Legislature's limit on the availability of youth court records: give juveniles a second chance, a chance to start over with lessons learned. Since the advent of the Internet, however, distribution and access can never be truly controlled as well as it was before. Now, when a youth court record is made public, even for an instant, it is made available forever more.

In general, anyone may conduct a background check with an individual's name and date of birth. State criminal records are available through the Montana Department of Justice online. A general public record search will yield all public criminal justice information relating to arrests, misdemeanor charges, and felony charges. Such "public information" includes any information made public by law, including court records and proceedings, convictions, deferred sentences, deferred prosecutions, initial offense reports, initial arrest records, and bail records. Since a youth is rarely formally arrested in such a way as to produce this manner of public information, and there is no statewide arrest database tracking juveniles, a background search of this kind will not usually reveal any juvenile arrest information. Additionally, if the youth is over 18 at the time of the search, no information on adjudications should be revealed, because all court records should be sealed.

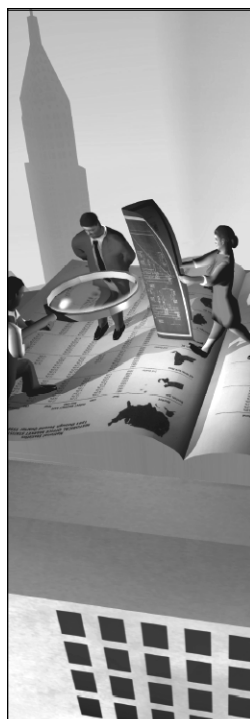
One exception to this general truth is the local arrest record, discussed earlier, the production of which only requires a call to the local police department. Another exception is the information stored by large, national data-collection agencies, press agencies, or other organizations that have a financial interest in collecting, cataloging, and preserving public information beyond its sealing date. These agencies often provide public (or once-public) information to employers for profit, usually around \$20 per background check. In order to expand their database, and thus their profits, these companies will copy information from a public case file while a juvenile is under 18, and then keep the information and sell it to interested buyers long after that case file has been sealed. These companies thus have a financial interest in preserving juvenile justice information for their clients, who are interested in employees' juvenile records, even after the records should no longer be available. Even in the absence of a large data mining firm, a Google search of a potential employee might reveal a newspaper article written about that person's juvenile offense. Articles of this nature, published while the news was fresh and the court file was public, can remain on the Internet, memorializing a juvenile's conduct forever. Both of these practices render the sealing of records effectively moot. For this reason, sealing a record when a youth turns 18 is a wonderful gesture of closure, but it actually provides no protection for the young adult going forward. If these practices continue, employment, professional licensing, housing, education, and other benefits and opportunities will be limited for Montana's former juvenile

offenders, despite the Legislature's efforts to limit such collateral consequences.

■ Ambiguities in the law and arguments to be made.

The best way to avoid juvenile publicity into perpetuity is to enact new legislation. The Montana Legislature could limit access to juvenile records only to those involved in the case, or those who obtain a court order. New legislation could also make it a crime to maintain any youth court data beyond a child's 18th birthday, effectively criminalizing any data-mining of youth court information. This would effectively limit the distribution and availability of youth court records on a large scale. In order to achieve this, however, the penalty would have to be severe enough to dissuade a large company and shift the balance of the cost and the benefit for the company. In addition to new legislation, however, there are also arguments available to advocates of privacy under the current statutory scheme.

As discussed above, under the current law, anyone who retains or publishes a youth court record beyond a juvenile's 18th birthday is committing a misdemeanor. Montana Code Section 41-5-221 states that "A person who discloses or accesses a formal youth court record, an informal youth court record, or a department record in violation of Section 41-5-215 or section 41-5-216 is guilty of a misdemeanor and shall be fined \$500." Section 41-5-215 provides that "[f]ormal youth court records . . . are public records and are open to public inspection" only "until the records are sealed." And, according to Montana Code Section 41-5-216, those youth court records



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“must be physically sealed on the youth’s 18th birthday.”

Therefore, anyone who retains or distributes juvenile records after the youth court file has been sealed, is arguably in violation of Section 41-5-221, because they disclosed those records in violation of Section 41-5-216 and Section 41-5-215. Thus, distributors or publishers of a juvenile’s records are guilty of a misdemeanor and punishable by a fine.

Unfortunately, there are several problems with a misdemeanor prosecution under these statutes. First, the legislative intent and the general purpose of the law do not clearly apply to data-mining companies or the press. Second, prosecuting a newspaper for retaining a story, written from the public records at the time, on its public database, would be nearly impossible. First Amendment concerns, in addition to meeting the requisite intentionality, would discourage any county attorney from indicting such a case. Finally, and most importantly, the small fine that the statute provides would not likely hinder a large data-mining corporation or background check service from continuing their current practices.

Conclusion

The Montana Legislature needs to take only a few simple steps in order to solve the problems created by public access to juvenile arrest and court records. The first, and most obvious step, is new legislation to restrict access to juvenile records so that only those parties involved or affected by a case have access to both juvenile arrest and court information. The legislation could thus ensure that data-mining companies and background-check services were not able to access, or maintain databases with information on Montana’s juveniles. Restricting public access to arrest and court records would not prevent the press from publishing articles based on ethical, investigative journalism, but would prevent publication of sensitive information from the court file, or pieces of the file itself. Such a solution would, therefore, not limit first amendment rights, but would protect juveniles from unwanted publicity later in life.

The second, simple step for the Montana Legislature applies to arrest records. Local police departments in Montana should be required to use a system similar to JCATS, the youth probation database, for juvenile arrests or tickets. The police database would then be capable of electronically severing a juvenile’s name from her arrest information. Severance of this sort could happen immediately upon referral to youth probation, after three years (as suggested Montana Administrative Regulation Section 23.12.204), or when the juvenile turns 18 (as suggested by Montana Code Section 41-5-216). Separating a juvenile’s name and arrest information in this way would ensure that a juvenile’s arrest record remained sealed once the juvenile became an adult. At the same time, however, the police department, like probation, would still be able to track its necessary statistics.

Alternatively, if, for public-safety and crime-tracking purposes, the police felt they needed to keep the juvenile’s arrest record in perpetuity, the record should not be public, and a significant penalty should be imposed for anyone who distributes it. Police should also be required to keep juvenile information in a separate, secured database, or in a locked file room, much like prosecution offices must do for grand jury or medical

records. The bottom line is that either the Montana Legislature, or police departments themselves, must take better care to prevent the collateral consequences that can arise from an unsealed juvenile arrest record.

It is true that juveniles sometimes commit terrible crimes. Those horrifying cases, however, should be (and usually are) prosecuted in adult court, with the specific understanding that the juvenile has gone beyond the rehabilitative ideal of youth court. Those cases are rightly dealt with in a place where the juvenile is treated as an adult, records are public, and consequences are severe. Fortunately, however, such serious cases are not the norm in Montana. In the majority of juvenile offenses, the perpetrator is young and has just done something stupid. Juvenile crimes are, therefore, generally minor offenses, which everyone agrees can be dealt with by a court that holds rehabilitation as its main ideal. Montana has created “a system that does not seek retribution but that provides . . . immediate, consistent, enforceable, and avoidable consequences of youths’ actions . . . a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders . . .” Montana has, therefore, declared its intention to try and rehabilitate a juvenile offender while she is still young, and then allow her a chance to become a productive adult.

If, however, minors’ mistakes forever follow them into adulthood, we reduce their chances to start over. How do we expect our young adults to succeed if their juvenile adjudications prevent them from getting good jobs, health care benefits, housing, financial assistance, entering secondary school, joining the military, or becoming licensed professionals? By allowing public access to juvenile arrest and court records, we are allowing for-profit companies, press agencies, and websites to catalogue, publish, and preserve the data that we would otherwise seal away. By overlooking this situation, Montana is undermining the otherwise very protective and rehabilitative system that the legislature has worked so hard to develop. ○

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NEWS ABOUT MEMBERS

Upon Jim Reynolds' election to the 1st Judicial District Court in November, the Helena law firm of Reynolds, Motl & Sherwood has merged with Morrison Law Firm to create **Morrison, Motl & Sherwood**. The firm is located at 401 North Last Chance Gulch, Helena MT and its web address is www.mmslawgroup.com.



■ **John Morrison** received his BA from Whitman College and his JD from the University of Denver. He was admitted to the State Bar of Montana in 1987 and practiced with the Morrison Law Firm and Meloy & Morrison until being elected state auditor and commissioner of insurance and securities in 2000. In 2009, Mr.

Morrison returned to the private law practice. His civil litigation practice is focused on insurance coverage/bad faith, ERISA, securities fraud, complex torts, class actions, and general personal injury. He is a past president of the Montana Trial Lawyers Association.

■ **Brian Miller** received his BA from Emory University and his JD from the University of Montana. He was admitted to the State Bar of Montana in 2007, and clerked for three years for Justice Patricia Cotter of the Montana Supreme Court. Mr. Miller joined the law firm of Morrison, Motl, & Sherwood in 2010. He practices in both civil and criminal law. His civil practice covers a wide range of general civil matters, with a focus in the areas of consumer law, constitutional law, family law, land use and access, and landlord-tenant issues.



Bar member **Vincent Pavlish** has joined a Missoula law firm, the Judnich Law Office, as an associate attorney. Mr. Pavlish graduated from the University of Montana with honors in 2006 and received his JD from the UM School of Law in 2009. He received several honors and scholarships while at UM and was the editor of the *Montana Law Review* from 2008-2009. Mr. Pavlish will be vacating a position as law clerk to District Court Judge Ray Dayton, and will join the Judnich Law Office focusing on personal injury and criminal defense law.

Glendive attorney **Olivia Norlin-Rieger** is now the new Dawson County attorney and has a new address: 115 W. Valentine Ave., Glendive MT 59330. Her phone is (406) 377-2532; fax is (406) 377-2531; and her e-mail address is countyattorney@dawsoncountymail.com

Billings attorney **Andrew T. Billstein** is now the sole attorney in the new **Billstein Law Firm**. His contact information is: 3860 Avenue B, Suite C West, Billings MT 59102; phone (406) 656-6551; fax (406) 292-5702.

The Montana Legal Services Association has hired **Anna Saverud** to work in the Butte office as an attorney with MLSA's Domestic Violence Unit. Born and raised in Kalispell, Ms. Saverud earned a BA degree in Sociology and her JD from the University of Montana. She has worked in Glacier Park for the last seven summer seasons, and has spent most of her life exploring the trails, peaks, rivers and lakes of northwest Montana. She is a former intern with the Bozeman City Attorney's Office.



James R. Halverson and William M. Gilbert announced that **Thomas L. Mahlen Jr.** has become a shareholder and officer in their Billings law firm. The new name of the firm is **Halverson, Gilbert & Mahlen**. The firm also announced that **Jaclyn S. Laferriere** has associated with the firm.

■ Mr. Mahlen was raised in Danbury, Wis., and is a member of the State Bar of Montana. He received his BA degree from the University of Wisconsin-Superior in 2004 and his law degree from the University of North Dakota School of Law in 2007. He has been involved in construction defect cases, insurance coverage disputes and coverage analysis, declaratory judgment actions, complex contractual actions, auto and truck collision cases, and employment disputes. Mr. Mahlen has assisted in defending several local and regional businesses against allegations of age, gender, race, and disability discrimination under state and federal law, and has experience practicing before the Montana Human Rights Bureau, the Montana Human Rights Commission, and the Department of Labor's Hearings Bureau.



■ Ms. Laferriere was raised in Bozeman and is a member of State Bar of Montana. She received her BS degree from Montana State University in 2007 and her law degree from Vermont Law School in 2010. In private practice she will concentrate on litigation in the areas of personal injury and commercial law.



Judge Ralph B. Kirscher, U.S. bankruptcy judge for Montana, will be inducted as a fellow in the American College of Bankruptcy at a ceremony at the U.S. Supreme Court building on March 18. Membership in the College is only by invitation of its Board of Regents. More than 700 fellows have been inducted into the College, which was formed in 1989. Judge Kirscher obtained his BA degree from the University of Montana in 1974, his MPA from the American University in

Washington, D.C., in 1975, and from the UM School of Law in 1979. Judge Kirscher was appointed to the bench in 1999. In 2010, he was appointed by the 9th Circuit Court to serve as

one of six permanent judges on the Circuit's Bankruptcy Appellate Panel for a term of seven years, which is a court that reviews the decisions made by other bankruptcy courts.

DEATHS

Frank M. Davis, retired district judge

Retired District Judge Frank M. Davis of Dillon died at his home on Jan. 1.

Judge Davis was a long-time Dillon attorney who served as 5th Judicial District judge in Dillon from 1982 until his retirement from the bench in 2000. During his tenure, Judge Davis presided over several high-profile cases including the Mountain Man trial of 1984 and later the trial of the killers of the parents of TV star Patrick Duffy. Judge Davis also made a noted ruling in the disposition of the will of renowned media personality Charles Kuralt.

Upon his arrival in Dillon in 1953, he joined established Dillon attorney Theodore McFadden as a junior law partner. From the beginning of his Dillon life, Judge Davis was a community activist. As president of the Dillon Jaycees the young attorney spearheaded a project to construct a city park at its present site on Center Street. He was the first chair of the Dillon Jaycee Rodeo which later became known as "Montana's Biggest Little Weekend." The young Davis had a love for acting and theater. He was involved in numerous productions for the Dillon Ski Club and later went on to form the popular Wapiti Players, with annual productions at the Dillon BPOE lodge. Before becoming judge, Mr. Davis was well known as "Voice of the Beavers" and "Voice of the Bulldogs," calling play-by-play games for both the high school and college squads for local radio station KDBM.

Frank Merle Davis was born in Tennessee. He enlisted in the U.S. Army Air Corps, and as a member of the 8th Air Force, served in Europe during World War II until his honorable discharge in 1945. Staff Sgt. Davis won the Bronze Star. It was during the war in London that Judge Davis met his future wife, WAC Corporal Joan M. Faller of Dillon. They were married by the mayor of Luxembourg on VE Day, 1945.

Following the war, he attended the University of Tennessee Law School. His legal career included a tenure as a law professor at Dickenson Law School in Pennsylvania, and 30 years as a practicing attorney in Dillon. He received the Distinguished Faculty Award from the University of Montana for his work as a visiting faculty member of the Advanced Trial Advocacy Program.

Judge Davis is preceded in death by his wife, who died in 2000. He is survived by three son and two daughters.

Ben E. Berg, Bozeman attorney

Attorney Ben E. Berg, 94, died Jan. 16 in Bozeman where he had been city attorney for 17 years. He also was a president of the Montana Bar Association.

Mr. Berg was born in Columbus, Mont., and later moved with his family to Livingston, where he graduated from Park County High School. He earned a degree in business at

Montana State University in Missoula, and graduated from the Montana School of Law in 1941.

Mr. Berg began his legal practice in Billings with the law firm Brown & Davis. When his first client opened the door to young Ben's office, his obituary said, she took one look, threw up her purse and exclaimed, "Lausy, lausy ... he's just a boy!"

Mr. Berg joined the Army in 1942 and despite his legal background was trained as a medic in Denver. Eventually he served in the Philippines doing investigative work. He returned to Livingston in February 1946 and settled in to practice law. He married Joan Blair in 1947. Mr. Berg practiced law in Livingston for 11 years, serving as Livingston's city attorney for eight of those years. He was elected as Livingston's representative to the Montana Legislature in 1956.

In 1957 he had the opportunity to join a Bozeman law firm which became Lovelace, Horkan & Berg. Over the years the firm had several name changes, among them was Berg, O'Connell, Angel & Andriola. Today, the firm continues as the Berg law firm.

Mr. Berg served as Bozeman's city attorney for 17 years. During 1961 he served as president of the Montana Bar Association. He took many appeals to the Montana Supreme Court. In 1973 he was elected as a delegate to the 1972 Montana Constitutional Convention, serving on the Convention's judiciary committee.

The Bergs traveled twice to Europe and England and enjoyed many tours of the U.S., several framed around Mr. Berg's interest in the Civil war period. For seven years they were "snowbirds" in Lake Havasu, Ariz.

This Christmas, Mr. Berg was visited by all of his surviving family: his wife, Joan; three daughters – one of whom, Babs, is married to recently retired Montana Supreme Court Justice Bill Leaphart – and one son.

Perry Tschida, Missoula attorney

Missoula attorney Perry Eraine Tschida died in an accidental fall at his home on Dec. 28 at age 53.

Mr. Tschida was born and raised in Minneapolis. He earned bachelor's degrees in engineering, math, and economics, shared between Carroll College and Montana State University. After working several years in his degree field, he earned a law degree from Gonzaga University. No further details were available.

John Frankovich, Arizona attorney

Retired Tucson, Ariz., attorney John Albert Frankovich, 85, died on Oct. 24 of diabetes and heart failure at the U.S. Veterans Hospital in Tucson. He was a member of the State Bar of Montana at the time of his death.

Mr. Frankovich was born in Butte and graduated from Butte High School. He joined the Army and served as a tail gunner in Europe during World War II. He attended the Montana School of Mines (Montana Tech) in Butte and graduated from the University of Montana School of Business and School of Law. His professional career began with State Farm Insurance in Great Falls.

Mr. Frankovich joined the legal department of the Anaconda Mining Company in Butte. In 1968 he transferred to the legal staff in Tucson during Anaconda's expansion in the southwestern United States. He later was lead counsel for the Twin Buttes Copper mine in Green Valley, Ariz. The open pit mine became a joint venture, Anamax, where he worked until his retirement.

Mr. Frankovich spent his retirement in Tucson and at his home on Flathead Lake. Survivors include his wife Tecky and two daughters.

Tom Darland, Plentywood attorney

Plentywood attorney Sherman Thomas Darland, 86, died on Dec. 10 at Sheridan Memorial Hospital in Plentywood.

Mr. Darland grew up in Froid. He enlisted in the Army to serve in World War II as a 17-year-old and was sent to Europe. His last assignment was in Vienna, Austria, where he met and fell in love with Sylvia Frech. Mr. Darland was honorably discharged and returned home in 1946. Ms. Frech was the second Austrian allowed to immigrate to the United States immediately after the war. She and Mr. Darland were married in November 1946.

Mr. Darland completed his BA and graduated from the University of Montana School of Law in Missoula. He established his practice in Plentywood and practiced law for 55 years, 24 of them as Sheridan County attorney.

"Tom was a principled, decent, generous, caring man," his obituary said. "Many times, Tom saw a person or family in need, opened up his heart and wallet and made sure that they received everything and sometimes even more than was necessary."

One highlight of his law career was taking a landowner's confiscated mineral rights case to the Montana Supreme Court and winning, something several large law firms had failed to do. "It has been stated by police officers and lawyers that they just hated to have to go to trial against Mr. Darland as he was very prepared, relentless, feisty and determined to win . . .," his obituary said. He practiced law well into his mid-80s.

Mr. Darland was a member of the Masons, Shriners, Scottish Rite, Toastmasters and

Plentywood Lutheran Church; and a "driving force" in the Democratic Party.

Mr. Darland is survived by a son and a daughter.

Other deaths

● **Peggy Goff**, a legal assistant for 30 years in the Church, Harris, Johnson & Williams law firm in Great Falls, died at her Great Falls home on Dec. 27 at age 80.

● **Jane Barker Allen**, wife of the late District Judge Nat Allen of Roundup, died in Escondido, Calif., at age 90.

● **Mary Lou Kojancik**, a Wibaux native and member of the Montana Bar Association who became one of North Dakota's first female attorneys, died at age 93 in Wibaux. A graduate of North Dakota University Law School, Ms. Kojancik taught high school in eastern Montana for 30 years after her law career in North Dakota and Washington.

● **Anne Gornick Mihelish**, a long-time legal secretary for law firms in Butte and Portland, Ore., who won Legal Secretary of the Year award in 1980, died on Dec. 3 in McMinnville, Ore. at age 88.

● **John Sitte**, the father of Klaus Sitte, the former executive director and now litigation director of the Montana Legal Services Association, died in Missoula on Dec. 29 at age 93. John Sitte was a German soldier who escaped from an Italian prisoner of war camp in World War II and came with his family to America in 1952. His second son, Klaus, was born in Germany in 1947.



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HAMILTON, from Page 24

who compose the assembly.

*The choice which may at any time
happen to be made under such cir-
cumstances, will of course be the
result either of a victory gained by one
party over the other, or of a compro-
mise between the parties. In either
case, the intrinsic merit of the candi-
date will be too often out of sight
...And it will rarely happen that the
advancement of the public service will
be the primary object either of party
victories or of party negotiations.*

"Hamilton's paper opposing merit
selection expounded on James Madison's
Federalist 39, which called it 'essential'
that our government 'be derived from the
great body of society, not from an incon-
siderable proportion, or a favored class of
it.' Even judges, Madison wrote, 'be the
choice, though a remote choice, of the
people themselves.'

"The brilliance and insight of Framers
like Hamilton and Madison shines down
on us through the ages. Two of the most
important architects and proponents of
our Constitution clearly anticipated and
warned against the dangers of anti-demo-
cratic systems of choosing our public
servants on the bench, such as 'merit'
selection."

Think about it.

— *Jim Sewell, Helena attorney*

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