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Joe Sullivan

PRESIDENT'S MESSAGE

Where do we go from here?

Examining the profession 10 years from now

Take on the role of futurist for a moment. Consider where we will be in 10 years. What will your office look like? What will your practice look like? What will the profession as a whole look like? What impact will our rapidly changing technology have on all these areas?

Day-to-day business operations

In 10 years will our practices all be paperless? Staff-less? Office-less?

Think about one instrument of technology – the cell phone. This has become a misnomer. Years ago a cell phone was toted around with an external battery pack the size of purse and its sole purpose was sending and receiving calls. Today, they are no longer phones. They are hand held computers with capability of e-mailing, texting, searching the net, creating and reviewing documents, taking and transmitting pictures, and an infinite number of other applications including sending and receiving calls.

In 10 years, our hand-held computers will have power greater than a modern server. With improved voice recognition software and document creation software, I could describe a document in general terms, add in some online legal research, and my motion and brief would be created. I would then file electronically. The same hand-held computer answers all calls I cannot or do not want to take. Further, it has a document management system, billing system, and accounting system to take care of my filing, cash flow, and expenditures. Why would I need a staff?

If I do not need a staff, why would I need an office? Months ago I thought I had a great business plan. Create upscale office space people could rent by the hour for client meetings and conferences. Make it adaptable to each person with changeable name plates in the lobby area and on the office doors. Allow the user to bring in family photos and other personal items to give the office a homey touch. To my dismay, I was not the first to think of this. Last week on a national radio channel I heard an advertisement for just such office space. Besides, with teleconferencing you can do the same thing from home. With the proper cropping of your face, you may only have to put on a shirt and tie while never otherwise getting out of your pajamas.

Trial/evidence/discovery

Think about how the hand-held computer would impact trial. The prosecutor starts her opening statement, "Ladies and gentlemen of the jury, the state will prove ..." As soon as the attorney provides the first element of proof, the audience, opposing counsel, the judge, and even the jury all Google the issue and begin judging the validity of her statement. You think that could never happen because all the jurors would be told to turn off their phones? Remember, we are talking about 10 years from now.

Currently, contact lenses are being developed that act as computer screens with drop-down menus and data much like a scene in a "Terminator" movie. In 10 years the hand-held computer may no longer be held in your hand. The interface could be a contact lens and a hearing-aid-sized transmitter/receiver in your ear canal, and no one can see.

As to technology in general, what about evidentiary and discovery issues? In a defamation suit, counsel attempts to offer a printed copy of a web page with the offensive language. How is that page authenticated? In the discovery of that case how do you initially obtain the actual material posted if the website changes daily or weekly? What if it is not archived? What if you seek a hard drive to find anything that previously existed, but was deleted (knowing hitting the "delete" button does not actually delete the material)? If the hard drive contains more than what is at issue, how is the person's privacy protected?

Competency

How competent are you on Facebook? If your reaction is "I am not interested" you may want to rethink that. In 10 years you will not be deemed competent counsel if prior to jury selection you have not fully vetted each juror using available social network sites and publicly accessible databases. The same would hold true as to witnesses.

As an aside, from an advertising perspective, social networking may also be of interest. While many would consider Facebook to be mostly used by ages 15 to 25, one of the largest groups using social networking are those 60

More THE FUTURE, Page 23

The State Bar of Montana's second membership survey was administered online beginning in December 2010 and ending on Jan. 7, 2011. Of the 3,458 active members, 601 completed the survey, yielding a respectable 17 percent response rate.

The Bar staff, Executive Committee, and Board of Trustees are studying the following survey responses to determine what changes are needed in the State Bar to fulfill member needs.

The survey was designed jointly by the State Bar of Montana and the ABA Division for Bar Services. The data collection and analysis were handled by the ABA.

The State Bar of Montana previously conducted a membership survey in 2004. Some of the same questions were asked for comparison in the 2011 survey. Where noteworthy, the differences in responses are noted in the summary of the 2011 survey below:

I. DEMOGRAPHICS

- Thirty-one percent of respondents have been members of the bar for less than five years.
- Ninety percent of respondents have offices in Montana.
- Fifty-five percent of respondents are male; 45% are female. In the 2004 survey, 71% of respondents were male and 29% were female.
- Thirty-four percent of respondents are under 40 years of age; 46% are over 50.

FURTHER BREAKDOWN

1. How long have you been a member of the State Bar of Montana?

Less than one year	7%
1-5 years	24
6-10 years	16
11-15 years	10
16-20 years	9
20-30 years	20
31-plus years	15

2. The size of the city where your office is located:

Under 1,000	4%
1,000-5,000	8
5,000-10,000	6
10,000-30,000	12
30,000-60,000	31
above 60,000	39

3. What is your current age?

Under 30	11%
31-40	23
41-50	19

Bar members express needs & demographics in 2011 online survey

51-60	20
61-70	15
Over 70	2

4. What is your race?

White	97%
Hispanic or Latino	0
American Indian or Alaska Native	2

Asian	1
Two or more races	1
Black or African American	0
Native Hawaiian or Pacific Islander	0

II. CURRENT POSITION & PRACTICE SETTING

- Fifty-one percent of respondents are in a private practice setting.
- Thirty-nine percent of respondents are solo practitioners; 11% are in firms of 20-plus attorneys.

FURTHER BREAKDOWN

1. Which of the following BEST describes your current employment setting?

Private practice of law	51%
Government	26
Non-profit organization	6

On the State Bar website: www.montanabar.org

Full survey found on home page



Judiciary	4
Paralegal	4
Other	3
For-profit corporation or business (in-house counsel)	2
Law school	1
Retired	1
Currently unemployed	1
For-profit corporation or business (non-legal)	0

2. Which of the following BEST describes your current position in private practice?

Partner or shareholder in firm	32%
Sole practitioner alone	29
Associate in firm	24
Sole practitioner sharing office space with other lawyers	11
Other salaried employee in law firm	2
Other	2

3. What is the size of your firm?

Solo practice	39%
2-5 attorneys	25
6-10 attorneys	14
11-20 attorneys	11
20-plus attorneys	11

III. ECONOMICS OF LAW

● Nineteen percent of respondents devote more than 50 hours a week to the practice of law.

● Forty-three percent of respondents indicate their primary source of income is an hourly rate; 43% receive their primary income from a salary paid by a government agency, business or other institution.

● Thirty-five percent of respondents charge an hourly rate between \$151-\$200. In 2004, 21% of respondents indicated an hourly rate between \$151-\$200.

● Fifty-four percent of respondents indicated the economic circumstances of their practice were unchanged compared to last year (36% in 2004). Twenty percent indicated they were better (29% in 2004) and 19% indicated they were worse (11% in 2004).

● The top five substantive areas respondents indicated devoting 20% or more of their time to were:

Litigation	39%
Criminal law	23
Family law, divorce, adoptions, mental health & juvenile matters	22
Administrative law & govt. agency matters	21
Estate planning, probate & trusts	17

FURTHER BREAKDOWN

1. Identify from the list below those substantive fields to which you devote 20% or more of your time. Please check all that apply.

Litigation	39%
Criminal law	23
Family law, divorce, adoptions, mental health, & juvenile	22
Administrative law & governmental agency	21
Estate planning, probate and trusts	17
Torts	16
Business law & corporate law	15
Labor & employment law	12
Real estate: residential & residential landlord-tenant	12
Real estate: commercial and development	11
Environmental and natural resources law	10
Constitutional law	8
Construction law	7
Bankruptcy	7
Commercial law	6
Commercial law & contracts for corporate transactions	6
Civil rights & liberties	6
Alternative dispute resolution	5
Land use planning & zoning law	5
Taxation	5

Elder law	4
Health law	4
Public contracts law: procurement	4
Workers' compensation	3
Banking	2
Education law	2
Ethics	2
Intellectual property	2
Public transportation law	2
Public utilities & other regulated industries	2
Immigration law	1
Pensions & employee benefits	1
Public finance law	1
Securities	1
Antitrust	0
International property	0
Other	18

2. How many hours per week do you devote to the practice of law?

Less than 30	12%
30-40	22
41-50	48
51-60	15
61-70	3
More than 70	1

3. What is the primary source of your legal income?

Hourly rate	43%
Salary paid by government agency, business or other institution	43
Fixed rate for services	5
Contingency	6
Other	3

4. If you charge an hourly rate, what is the typical rate?

Less than \$80	6%
\$80-\$100	4
\$101-\$150	31
\$151-\$200	35
\$201-\$250	15
More than \$250	7

5. What was your approximate gross salary in 2009 from the practice of law?

Less than \$30,000	13%
\$30,001-\$50,000	18
\$50,001-\$70,000	25
\$70,001-\$100,000	19
\$100,001-\$150,000	12
\$150,001-\$250,000	8
More than \$250,000	4

6. Compared to last year, on the whole, is the economic circumstances of your law practice:

Much better	3%
Better	20
No change	54

Worse 19
Much worse 3

7. Are you covered by professional liability insurance?
Yes 69%
No 31

IV. BENEFITS AND SERVICES

Respondents were asked to rate on a scale of 1-5 the importance and their satisfaction with several State Bar activities.

The activities rated highest in **importance** (top five) include:

1. Fosters a positive reputation for the profession. (4.15)
2. Provides support for pro bono and legal services to the poor. (3.81)
3. Connects me to the values and ideals of being a lawyer such as service, professionalism and integrity. (3.80)
4. Provides me with information on my area of practice – keeping me current. (3.77)
5. Makes me a better lawyer. (3.75)

The activities rated highest in **satisfaction** of bar providing include:

1. Fosters a positive reputation for the profession. (3.48)
2. Provides support for pro bono and legal services to the poor. (3.43)
3. Connects me to the values and ideals of being a lawyer, such as service, professionalism and integrity. (3.42)
4. Develops positive relationships between the bench and bar. (3.33)
5. Allows me to give back to my profession. (3.27)

Respondents were asked to rate their satisfaction with State Bar benefits and services. The highest rated programs were:

1. Lawyer Directory & Deskbook (4.22)
2. CLE (3.91)
3. *The Montana Lawyer* magazine (3.83)
4. Bar website (3.74)
5. New Lawyers' Workshop (3.53)

The lowest rated programs were:

1. Lawyer Referral & information Service (3.15)
2. Law Day activities (3.13)
3. Networking opportunities (3.09)
4. Section services/activities (3.05)
5. Discounts on products and services (2.81)

FURTHER BREAKDOWN

To help us understand your awareness of and satisfaction with State Bar benefits and services, if you have used or participated in the following services or programs, please rate your satisfaction (5 is the highest level, 1 is the lowest). If you have not used or participated, please indicate whether you are aware of the service or benefit.

<u>Satisfaction</u>	<u>Awareness</u>
Lawyer Directory & Deskbook (4.22)	97%
CLE (3.91)	97

The Montana Lawyer magazine (3.83)	85
Bar website (3.74)	98
New Lawyers' Workshop (3.53)	86
Lawyer Assistance Program (3.44)	94
www.montanalawhelp.org (3.44)	55
Ethics hotline (3.39)	75
Fee arbitration (3.26)	72
Access to pro bono and public service activities (3.24)	79
Lawyer Referral & Information Service (3.15)	88
Law Day activities (3.13)	73
Networking opportunities (3.09)	72
Section services/activities (3.05)	82
Discounts on products, services (2.81)	70

V. LAWYER REFERRAL SERVICE

● Seventy-eight percent of respondents have never participated in the State Bar's lawyer referral service.

● The most frequently cited reason for not participating was "It's not applicable to my work" (44%)

● The level of satisfaction with the lawyer referral service was 3.25 (On a scale of 1-5 with 5 being the highest).

FURTHER BREAKDOWN

1. Have you participated in the State Bar's Lawyer Referral Service?

Yes	7%
No, have never participated	78
No, not currently, but participated in the past	15

2. If you do not participate in the Lawyer Referral Service, why not?

It's not applicable to my work	44%
Concern that the referrals are primarily pro bono	4
I have philosophical differences with the program	1
Application cost	2
Too busy – don't need the additional business	18
Retired or semi-retired	3
Located out of state	7
Don't carry liability insurance	4
Other	16

Other reasons:

Unaware of lawyer referral service (16 responses)

Not the decision maker in firm (5)

Bad referrals – Referrals are not in field or very few referrals received. (6)

Fee is not sufficient.

Member of service, but not receiving referrals. (2)

VI. ANNUAL MEETING

● Fifty-four percent of respondents have attended an Annual Meeting.

● Most frequently cited reasons for not attending included "not relevant to practice," "time constraints," "costs," and "conflicts with work schedule."

FURTHER BREAKDOWN

Reasons for not attending Annual Meeting:

Not relevant to practice	18%
Time constraints	16
New member	16
Cost	10
Conflicts with work schedule	10
Practice out of state	9
Location	7
Retired or semi-retired	2

VII. CLE

- Seventy-four percent of respondents have attended a State Bar-sponsored live CLE program within the past year.
- Twenty-three percent have participated in a State Bar-sponsored online, telephone, webinar, or videoconference CLE in the past year.
- Eighty-five percent prefer live, in-person seminars over web, phone, or other seminars.

FURTHER BREAKDOWN

1. How many live state-bar sponsored CLE programs did you attend in person in the past year?

None	26%
1-3	69
4-7	4
More than 7	1

2. How many online, telephone, webinar or videoconference state-bar sponsored CLE programs did you participate in last year?

None	77%
1-3	22
4-7	1
More than 7	0

3. If you did not participate in a State Bar CLE program (either in person or online) in the past year, what primary factors prevented your participation?

Obtained all CLE credits from other sources	53%
Practice out of state	16
Scheduling conflicts	5
Program topic	5
Fees	4
Location	3
Quality of faculty	1
Time away from office to attend	1

VIII. PRO BONO OPPORTUNITIES

● Respondents were asked to indicate which pro bono opportunities available through the State Bar they would be most inclined to participate in. The top three opportunities cited were:

1. Presenting at a school or senior center on a variety of areas.
2. Pro bono clinics.

3. Family law training.

Other areas cited included estate planning, wills and probate and elder law.

● The biggest restriction noted to doing pro bono work included "time allocation" (63%) and "financial restraints" (27%).

FURTHER BREAKDOWN

1. Which, if any, of the following issues pose special constraints to your practice in pro bono work:

Restrictions imposed by government agency	
employment rule	25%
Professional liability	21
Training needs	26
Time allocation	63
Financial restraints	27
Conflicts of interest	17
Other:	14

Other restrictions:

- Few opportunities in area of practice (9 responses)
- Currently providing pro bono services – Already do pro bono – do not want to be forced to do so through State Bar. (4)
- Don't believe in pro bono (3)
- Employer restrictions – Employer limits or prohibits pro bono work. (3)
- Client issues.
- Stress of communicating with a pro-bono client.
- Past experiences with clients were negative.

IX. ROAD SHOW

- Eighty-eight percent of respondents would attend a Road Show if it came to their community.
- Seventy-three percent would attend if there were a nominal fee (\$25) assessed.

X. VALUE FOR DUES DOLLAR

- Fifty-four percent of respondents pay their own dues; 42% have their dues paid by employer
- Respondents rated the value they received for their dues dollar at 3.73 on a scale of 1-5 (5 being the highest).

FURTHER BREAKDOWN

1. What else do you feel the State Bar should do with your dues dollar?

- Unaware of how dues dollars are spent
- Access to justice support
- There should be more accountability for the dues we pay.
I have seldom/never seen a detailed breakdown of bar expenses or a discussion of how to control expenses.
- Make annual meeting free.
- Stick to basics
- Spend more time focusing on professional responsibility

More MEMBER SURVEY, Page 25

The Hendershott ruling

When mediation runs into domestic violence

By Eduardo R.C. Capulong & Karen Alley

Family law cases with a history of domestic violence cannot be mediated, the Montana Supreme Court has held.

In a case of first impression, a unanimous Montana Supreme Court held in April that MCA §40-4-301(2) bars district courts in family law proceedings “from authorizing or continuing mediation of any kind where there is a reason to suspect emotional, physical, or sexual abuse.”¹

The ruling shows great sensitivity to a problem that has reached crisis proportions in Montana and the rest of the country, and it very well may be the broadest exception to court-mandated family mediations to date.² The challenge now is to ensure that the decision is implemented

statewide. The courts, bar, mediators, and domestic-violence advocates

must collaborate to create a protocol

and mechanism by which to screen such cases. This means outreach and training.

Since mediation is meant to empower parents to freely design arrangements best suited to their family’s specific needs – an aim compromised by many, but not all, instances of domestic abuse – Montana ought to consider a way by which parties can opt into an alternative dispute-resolution process.

Hendershott v. Westphal involved a Flathead County District Court’s approval of a parenting plan that included a mandatory mediation provision. Heidi Hendershott appealed, citing MCA §40-4-301(2), which states that:

The Court may not authorize ... mediated negotiations if the court has reason to suspect that one of the parties ... has been physically, sexually, or emotionally abused by the other party.³

Hendershott argued that the District Court had reason to suspect physical and emotional abuse. She submitted an affidavit stating that she and her children had suffered escalating incidents of emotional and physical abuse from Jesse Westphal.⁴ At trial, two psychologists also testified that Hendershott exhibited traits of an abused woman.⁵

The Montana Supreme Court agreed, holding that the District Court erred as a matter of law for failing to apply MCA §40-4-301(2).⁶ The evidence before the District Court showed enough reason to suspect emotional abuse, the Supreme Court found. And as an absolute bar to mediation

given this minimal “reason to suspect” standard – a standard akin to that which obligates teachers and doctors to investigate abuse – a district court had no discretion, as here, to specially tailor a process by which to mitigate such issues.⁷

The Court also noted a discrepancy between §40-4-301(2) and MCA §40-4-219, which applies to mediation of parenting plan amendments, and provides an exception only in cases of physical abuse; §40-4-301(2) includes emotional as well as physical abuse.⁸ Finally, the Court observed that §40-4-301(2) prohibits the use of alternative dispute resolution generally,

arguably expanding the statute to cover not only mediation but settlement conferences as well⁹ – “the hot-button issue,” Monte Jewell, who represented Heidi Hendershott, tells us, as many practitioners insist that settlement conferences are not mediations. That may be so. But the decision referred not only to mediation but to “alternative dispute resolution,”¹⁰ which may include settlement

conferences. This broader import of Hendershott may impose a greater task on district courts.

The decision strikes a welcome balance between the promise of mediation and the realities of domestic violence. The court is, more often than not, an inappropriate venue for familial dispute – hence the routine referral of parenting cases to mediation. At the same time, domestic violence often robs victims of meaningful choice – a fundamental requirement of mediated agreement. By recognizing that mediation must be consensual, that is, free from any physical or emotional coercion attending domestic abuse, the court protects domestic violence victims and the mediation process.¹¹

BUT THIS IS JUST the first step. There very well may be instances in which mediation can empower domestic violence victims. Experts distinguish among four general types of domestic abuse:

- Battering situations characterized by coercive control through violent behavior and other abuse.
- Situations characterized more by a batterer’s weak impulse control, influenced perhaps by concurrent alcohol or chemical abuse.
- Situations involving self-defense by the victim.
- Isolated acts of violence that do not allow one party to coercively control the other.

Chronic battering situations are clearly inappropriate for mediation – and these situations are likely what the Legislature and Supreme Court had in mind in carving out the exception.

The Montana Supreme Court’s decision may well be the broadest exception to court-mandated family mediations to date.

But what about the other situations? Can't mediation actually provide an empowering forum for victims under these circumstances?

The answer is, of course: it depends. As a threshold matter, courts and mediators must be able to distinguish among these four situations. Cases involving chronic battering are never appropriate for mediation. As for cases involving poor impulse control, self-defense, and more isolated acts of violence, district courts may need to decide their propriety for mediation ad hoc. This means training – for judges, court personnel, mediators, attorneys and survivors. In such instances, appreciating the complexities of domestic violence and advantages of mediation may call for an opt-in process.

IT IS NOT CLEAR from *Hendershott* or the legislative history of §40-4-301(2) if a survivor can opt-in to mediation. Under an opt-in provision, a survivor would be able to decide whether or not to mediate after orientation on the nature of domestic violence, mediation, and litigation. Because survivors are most familiar with their own situations, they ought to be given the opportunity to choose the forum in which to assert their claims.¹²

Several states allow victims to opt in to mediation under certain circumstances. Those circumstances include cases in which:

- The survivor voluntarily chooses or proposes mediation.
- There is an available mediator trained in the way domestic violence affects a survivor.
- The survivor has a support person (either an attorney or a victim's advocate).
- The mediation is specially structured to ensure the survivor's safety.¹³

Some states also require courts or mediation centers to adopt a screening protocol.¹⁴ Such a protocol is meant to help courts and mediators evaluate whether domestic violence has occurred and, if so, of what nature. Screening protocols also could help assess whether a survivor is able to mediate or falls into the category of "battered," rendering mediation inappropriate. Under these statutes, the screening process is multi-tiered, requiring both the courts' staff and the mediator to screen parties. In such processes, both parties should be carefully questioned about whether there is a history of domestic violence, the extent of the violence, and whether the survivor, in particular, feels able to communicate with her former partner. Where the mediator is involved in screening parties, the mediator can determine how to structure the mediation to best meet the needs of the survivor, if the survivor chooses to mediate.

All states that allow for a survivor to opt-in to mediation require that the mediator be specially trained to understand the subtle dynamics at play in domestic violence cases. The mediator must be able to understand the psychological impact of domestic violence on a survivor, as well as be able to recognize nonverbal cues that the abuser may use to control the victim. Further, the mediator needs sufficient training to understand how to balance the power between the parties.

IF NOTHING ELSE, *Hendershott* presents us with the opportunity to educate each other about domestic violence.

How are such cases different from "high-conflict" situations – so often the paradigm through which courts and mediators analyze and resolve family disputes? Which cases should courts decide and, if so, how? Beyond the assumption that courts are better equipped to handle cases of domestic violence, how are survivors actually treated? (Here, we need to assess empirically the oft-idealized nature of litigation.) Which cases, if any, can mediators handle and, if so, how?

Courts and mediators cannot do this alone. Advocates not only need to get involved in screening for domestic violence cases and training judges, court personnel, attorneys and mediators; they also need to help survivors through any mediation process through their perspective, resources and support.

Hendershott reaffirms that domestic violence is a matter of public concern. As critics have long contended, mediation can re-privatize this important social problem by its private, informal, confidential nature. To adequately address domestic violence and at the same time remain true to the promise of self-determination through mediation and alternative dispute resolution, we must design and implement systems equal to the letter and spirit of this important ruling.

EDUARDO CAPULONG is a member of the Bar, associate professor of Law, and director of the Mediation Clinic at the University of Montana School of Law. **KAREN ALLEY** is a graduating law student and intern at the school's Mediation Clinic.

NOTES

1. *Hendershott v. Westphal*, 2011 MT 73 ¶ 31 [hereinafter *Hendershott*].

2. Colin Miller, *FeministLawProfessors.com*, "Exception(al) Opinion: Supreme Court of Montana Opinion Might Mean Montana Has Broadest Abuse Exception to Court-Ordered Mediation," www.feministlawprofessors.com/2011/05/exceptional-opinion-supreme-court-of-montana-opinion-might-mean-montana-has-broadest-abuse-exception-to-court-ordered-mediation/ (last visited May 18, 2011). The Montana Attorney General's office notes that the "rate of domestic abuse in Montana has remained unacceptably high. The rate of domestic violence offenses reported to law enforcement in ... 2007 was 462 reported domestic violence offenses for every 100,000 people. Each year, approximately five out of every 1,000 Montanans are victims of reported cases of domestic violence - and that doesn't include those who don't seek help and suffer in silence." www.doj.mt.gov/victims/domesticviolence.asp (last visited May 19, 2011).

3. Emphasis is ours.

4. *Hendershott*, supra note 1 at ¶ 3.

5. *Hendershott*, supra note 1 at ¶ 11.

6. *Hendershott*, supra note 1 at ¶ 32.

7. *Hendershott*, supra note 1 at ¶ 31.

8. *Hendershott*, supra note 1 at ¶ 33.

9. *Hendershott*, supra note 1 at ¶ 32.

10. *Hendershott*, supra note 1 at ¶ 32.

11. We do note with dismay, however, the Court's rejection of *Hendershott*'s argument that mediation can only be authorized "only where both parties consent." *Hendershott*, supra note 1 at ¶ 21.

12. Aimee Davis, "Mediating Cases Involving Domestic Violence: Solution or Setback?," 8 *Cardozo J. Conflict Res.* 253, 272 (2006).

13. See, e.g., Alabama Code § 6-6-20; Alaska Stat. § 25.24.060; Hawaii Rev. Stat. § 580-41.5; Kentucky Rev. Stat. Ann. § 403.036; New Mexico Stat. An. § 40-4-8; 12 Oklahoma Stat. Ann. §§ 1801-1813; Tennessee Code Ann. § 36-4-131. This list is not exhaustive but is representative of states with an opt-in provision.

14. See Alabama Code § 6-6-20; Alaska Stat. ¶ 25.20,808; Oregon

Lawyers share their practice tips

The *Montana Lawyer* continues a series of law-practice tips, many of them excerpted from “How to. . .” articles presented in the July/August 2010 edition of the ABA’s *GPSOLO* magazine. Other tips, like the ones below, will be provided by members of the State Bar of Montana. You can find the entire *GPSOLO* “How-to” issue with the full-length articles at www.americanbar.org/publications/gp_solo_magazine_home.html, click on “Browse Past Issues” and find the July/August 2010 edition. More article excerpts will appear in the August *Montana Lawyer*.

10 mistakes to avoid over independent contractors

By Robert W. Wood

As a full-time tax lawyer for over 30 years, I sometimes forget what it is like to be a client and to face the complexity of the law from a business person’s viewpoint. Yet certain areas have enormous tax and legal implications.

I can’t think of a better example of this phenomenon than the decision whether to hire someone as an employee or an independent contractor. This is not only a tax decision, but involves elements of labor and employment law, ERISA and employee benefit laws, worker’s compensation, and unemployment insurance law. And the list goes on.

In fact, it is hard to think of a more consequential business decision. Yet paradoxically, the question whether to hire someone in one capacity or the other often gets virtually no attention from advisers.

Here are the top ten mistakes I see committed by companies – and even by advisers – in using workers you believe are safely “independent contractors” but who may actually turn out to be reclassified as employees.

1. Not Having a Written Contract. This one is inexcusable yet I see it frequently – simply failing to have any kind of written agreement for independent contractors. It is a recipe for disaster. Sure, if you hire a plumber for a one-time toilet fix one afternoon and pay him \$200, I would not worry that he is an employee. But you would be surprised at how many businesses have regular and long-term workers – on their premises or off – paid month after month and year after year as independent contractors without a written contract. Don’t do it! You are almost doomed to fail in any dispute over the status of that worker, no matter how strong your independent contractor facts.

The taxing, labor and employment and insurance authorities expect you to have a written contract that states that the worker is an independent contractor and will be paid as such with no tax withholding, no benefits, etc.

2. Treating Similar Workers Differently. It is perfectly OK for a business to have some employees and some inde-



pendent contractors. But it is not OK to have one worker selling shoes on an independent contractor basis and another similarly situated worker doing the same thing as an employee. The risk of treating people differently is that the people you are trying to treat as independent contractors may be reclassified as employees. In effect, you set yourself up for that by having the two differently classified workers for ready comparison by the IRS, state tax authorities, labor or employment agency, or other authority. They all look for this tell-tale sign.

3. Providing Tools and Supplies. One of the hallmarks of independent contractors is that they are required to supply their own tools, equipment and supplies. After all, independent contractors are classically independent business people or professionals. It makes sense that they would bring their own ladder, shovel or paint brush. If you purport to have independent contractors but supply a desk, chair, computer, software and telephone – everything they need – how convincing is it? As this example suggests, this problem may be biggest with office work.

4. Reimbursing Expenses. Another red flag is the extent to which you reimburse workers for their business expenses. If they work late, do you pay for their dinner or a taxi? If they need special paper for the report they are producing, do you provide it or reimburse them? There is no bright line saying you can’t cover the expenses of an independent contractor, but doing so can suggest the worker is an employee. Classically, all such items are supposed to be factored into the price you are paying the independent contractor for a finished product.

5. Paying By the Hour. How you pay someone can be one of the most fundamental indicators of whether a worker is an employee or an independent contractor. Classically, you pay a contractor for a job, like repairing your computer system. In contrast, you classically pay employees by the hour or by the week. There is no rule saying that you can’t pay an independent contractor by the hour. After all, that is how most lawyers bill time to their numerous clients. But when you have alternatives, paying by the hour can be unwise. Consider whether you can come up with a payment regimen that fairly covers all

the elements going into the work and yet that is independent contractor-like in scope. Ideally, a project fee or success fee is more consistent with independent contractor status than an hourly rate. Furthermore, you may be able to address any tool, equipment, and supply issues, and even expense reimbursements, as part of the payment formula you devise. The answer may be to charge back the worker for the item provided, the charge subtracted from his invoice at the end of the week.

6. Failing to Have Consistent Forms and Documents.

The fact that you call someone an independent contractor does not make it so. An “employee lounge” sign in your office does not mean only employees can go there. The fact that you pay a worker based on a time card and then issue a check and paystub does not make him an employee. But all these things add up. So consider if you should have an “Employee File” for each employee and use a different name for independent contractors. Consider if independent contractors should turn in an “invoice” not a time card. Consider whether independent contractor discipline should be handled in exactly the same way as employee discipline. Usually changes in terminology or substance can be made that may not impact your business but that may help bolster independent contractor treatment.

7. Over Supervising. With an independent contractor you are paying for a product or result. With an employee you are paying for him to do what you ask, whatever that might be. With employees you control not only the nature of the work, but the method, manner, and means by which they do it. This control factor is the most over-arching way in which you can end up in trouble. How much do you check in with workers, monitor what they are doing, or make suggestions? How frequently must they check in with you and report how and what they are doing?

Be very careful with supervision and control. The mere fact that an independent contractor must provide a weekly progress report on how the installation of the new laundry room in your house is going does not mean the builder is an employee. But if the report involves constant tweaking and redirecting of the effort, it might be otherwise. Be careful what your contract and other documents say about reports, supervision, and the like.

8. Requiring Set Hours. One of the classic signs of

employee status is a time clock or 9-to-5 office hours. In contrast, with independent contractors you should normally pay for the result, not exactly when or how they do it. That does not mean you can't have some control over the hours an independent contractor works. For example, the fact that you tell your building contractor he can't work on your kitchen remodel past 7 p.m. does not make him an employee. Consider whether you can allow workers to complete work on their own schedule as long as they meet applicable deadlines. That can help show they are independent contractors.

9. Prohibiting Competition. Many businesses using independent contractors require full-time work, prohibit competition, or do both. Both of these points are inconsistent with independent contractor treatment. For that reason, it pays to consider whether you need such rules and why. Optimally, if you are paying for a particular result – such as selling a minimum dollar volume of goods each month – you should stick to that target. Don't focus on how long the worker may take to do it or where else they may work during the same period. Those details are arguably irrelevant. Always bear in mind the paradigm case: an independent contractor like a lawyer or plumber serving many customers. If you are worried about the worker giving away your business methods or intellectual property to a competitor, make those concerns explicit.

10. Attempting the Impossible. If you cannot possibly keep your influence and direction over workers to a minimum, cannot possibly let them come and go as they please, can't allow them to work part time and for other companies and can't abide the thought that they may make some of their own decisions, is it realistic to even try to treat them as independent contractors? Probably not. That may mean simply treating the workers as employees. Sometimes cutting corners ends up costing you way more money in the long run than if you had done it right in the first place. I have seen that occur over and over with independent contractor issues.

ROBERT W. WOOD, a member of the State Bar of Montana, practices law with Wood & Porter in San Francisco, and is the author of *Taxation of Damage Awards and Settlement Payments* (4th Ed. 2009), *Qualified Settlement Funds and Section 468B* (2009), and *Legal Guide to Independent Contractor Status* (5th Ed. 2010), all available at www.taxinstitute.com.

Workshop & Road show in Helena June 17

Both the 2011 New Lawyers' Workshop and the State Bar Road Show will be held at the Great Northern Hotel in Helena on Friday, June 17.

The annual Workshop, designed to convey practical law-practice advice from experienced attorneys and judges to newly admitted lawyers, begins at 8

a.m. At noon is a working lunch with a keynote address by Montana Supreme Court Chief Justice Mike McGrath.

The State Bar Road Show, held once or twice each year in different towns, will begin at 1:30 p.m. and end at 4:30 p.m. The Road Show is an opportunity for Bar members to meet with Bar offi-

cers, trustees and staff to discuss Bar issues.

At 5-6:30 p.m. a reception will be held for both Workshop participants and any attorney who wishes to attend.

The New Lawyers' Workshop qualifies for 5.0 CLE credits. The Road Show qualifies for 3.0 Ethics credits, including 1.0 SAMI credit. There is no charge for either event.

Bar website enters June with major new design

The State Bar of Montana's decade-old website has been thoroughly overhauled and will debut with a new look by mid-June.

The new design is a collaboration between the State Bar staff and the Austin, Texas, based Affiniscap company, which provides Internet services to nonprofit associations nationwide.

The new website, still to be located at www.montanabar.org, will contain all the links and information in the old site, but with a lot more artistry. The look should be more appealing and the navigation through the site should be easier.

The home page, a partial draft of which is shown above, now places the important Bar news, once listed under the "Front Burner," in a rotating area that contains frequently updated photos or other graphics. Below it is a listing



of upcoming Bar events. The "Today's Legal News" with law-related stories from Montana and U.S. newspapers, will still be present on the home page and updated early each morning.

Most important for members will be an all-new "members' toolkit," with a special calendar, upcoming CLE listings, an entryway into all the Bar groups, the Bar store, and a library of legal-profession and court rules. A link to State Bar member profiles is included in the tools.

The public also will get its own link to inside pages that are relevant to them.

The home page will have a cool bookmark "app" that allows you to save a bookmark to the site on your smart phone, such as iPhones or Androids.

Jill Diveley, the State Bar membership coordinator, is now also the State Bar's webmaster and will be responsible for maintaining the new website. June 9 is the target date for the new site to go live, barring any last-minute glitches. When the new site is live, feel free to comment on it to Ms. Diveley at jdiveley@montanabar.org. ○

Presidency sees rare contested election

Not since 1986 has there been more than one candidate for president-elect in the State Bar of Montana's annual election. But this year, Board Trustee Pamela J. Bailey and Bar Secretary-Treasurer K. Paul Stahl will face off in the August voting. There could be more candidates; the filing deadline is July 9.

Ms. Bailey, of Billings, is a State Bar trustee and a member of the Bar's Professionalism Committee. She grew up in Pennsylvania and graduated from Duquesne University School of Law in Pittsburgh. In 1982 she moved to Montana to be staff attorney for the Office of Disability Adjudication & Review of Social Security. In 1987, she

opened her own law practice, now limiting it to clients involved in Social Security disability appeals. She is a past president of the Yellowstone Area Bar Association, current president of the Billings Studio Theatre board, and board member for Job Connections Inc.

Mr. Stahl is the chief deputy county attorney for Lewis & Clark County, has been a trustee of the State Bar and served as chair of a Supreme Court commission. He grew up near Dillon and graduated from Western Montana College with BS in education and from UM with an MA in English. He taught and coached high school in Glasgow and at Carroll College in Helena, then



Bailey



Stahl

returned to UM to complete an MA in Public Administration. He graduated from UM Law School and joined the Gough Shanahan law firm in Helena. He was chair of the Helena School Board and St. Peter's Hospital Foundation, and vice president of the Helena Chamber of Commerce. He refereed college football, was director of Montana Boys State, and chair of Cultural Advocacy. ○

Comments sought on uniform bar exam

The Montana Supreme Court is seeking comments on a proposal to adopt a nationwide uniform bar examination as a testing component of the Montana Bar admissions process.

The Montana Board of Bar Examiners, in a petition to the Court, is asking to permit test scores to be transferred between jurisdictions for limited periods of time. The Board requests that the Montana law component of the exam be revised by elimination of the Montana Essay Examination and adoption of an on-line, open-book test specific to Montana law.

Finally, the petition requests that the passing score for the examination be raised to a level more consistent with that of

states. In addition, applicants must take and achieve a minimum passing score (80 points) on the Multistate Professional Responsibility Examination (MPRE), administered separately from the four components described above.

The UBE will consist of the MBE, six one-half hour MEE questions, and two 90-minute MPT questions – the same exam as presently given less the four locally-prepared MTEE questions. Thus, applicants will not find themselves facing a different preparation regimen for the UBE than at present.

Transition to the MBE should be seamless and is not expected to involve higher costs to the applicants, the petition said.

On the State Bar website: www.montanabar.org

See Court order & full petition on home page



other states.

The Board would intend to implement the UBE for the February 2012 examination, or at the latest, the July 2012 examination.

The Court said in a May order that it will accept written public comments on the petition. Each person submitting comments must file an original and seven copies of his comments with the clerk of the Court on or before 5 p.m. on July 15, 2011.

The Board of Bar Examiners is granted until Aug. 15, 2011, to respond to any comment, if it elects to do so. Thereafter, the Court will schedule this matter for a public meeting.

The UBE was developed by the National Conference of Bar Examiners (NCBE) and, after a lengthy process of study and development, has been adopted for use in five states so far – Washington, North Dakota, Idaho, Alabama, and Missouri, said the Montana Board of Bar Examiners in its petition to the Court. Several other states are presently considering adoption of the UBE, the Board said.

THE MONTANA Bar Examination as presently administered is comprised of the following components: (1) The Multistate Bar Examination (MBE) (200 questions); (2) the Multistate Essay Examination (MEE) (six questions); (3) the Multistate Performance Test (MPT); and (4) four Montana-created, hour-long, essay questions (MTEE). The scores on these four test components are scaled to the MBE, and a final composite score for the examination is obtained. The minimum passing score in Montana is 130, although the Board recommends the passing score be increased to 135 to be more in line with the majority of jurisdictions and of our neighboring

THE CONFERENCE of Chief Justices and the ABA Council of the Section of Legal Education & Admissions to the Bar have adopted resolutions endorsing consideration of the UBE.

At the invitation of the NCBE, Montana Supreme Court Justice Jim Rice attended a conference in June 2009 in Madison, Wisc., devoted to consideration of the UBE. Justice William Leahart attended a conference in April 2010 in Austin, Texas, that addressed adoption of the UBE. Finally, Justice Patricia Cotter attended a conference in Salt Lake City in late 2010 that addressed the UBE and how various states were handling consideration and implementation.

BY AGREEING to adopt the UBE, Montana will provide an important advantage to persons taking the examination, the petition said. One of the requirements for adopting the UBE is agreement that UBE scores from other jurisdictions are transferable, though for limited periods of time. For example, a University of Montana graduate taking the Montana bar examination will be able to transfer his score to any other state using the UBE. “MBE scores now are transferable, and there is no reason that a properly scaled and equated UBE score should not be transferable as well,” the petition said.

AMONG THE ELEMENTS that will remain in the control of the Montana Board of Bar Examiners and Supreme Court are:

- Control over who may sit for the test and who will be admitted.

- The Montana Board will continue to grade MEE and MPT questions through its own efforts and limited use of Montana attorney graders.

- Montana will determine its own passing standards and, in particular, its minimum passing score, though that score should be in line with passing scores of neighboring states, the petition said. ○

By **Beth Brennan**
& **Kristen Juras**
UM Law School faculty

Bar exam petition raises questions

On May 11, 2011, the Montana Board of Bar Examiners filed a Petition to Adopt the Uniform Bar Exam (UBE) with the Montana Supreme Court. The UBE will eliminate Montana essay questions, increase the weight of multiple-choice questions, and increase the passing score from 130/200 to 135 (from 65 percent to 67.5 percent). The Bar Examiners acknowledge there is no problem they are trying to solve. Because we believe this petition raises a number of questions that have not been addressed, we are asking the Court to appoint a commission and investigate these issues prior to making a decision.

The current Montana bar exam consists of three components prepared by the National Conference of Bar Examiners (NCBE):

- **Multistate Bar Exam** (200 multiple choice questions, 35 percent of the score; apply general legal principles, not Montana law).

- **Multistate Essay Exam** (six 30-minute essay questions; 25 percent of the score; apply Montana law).

- **Multistate Performance Test** (skills test; 15 percent of the score;

assesses legal analysis, problem solving, and communication).

The fourth component of the bar exam is the **Montana essay exam**, which is prepared by the Montana Board of Bar Examiners, and consists of four 60-minute essay questions. It represents 25 percent of the score; applicants apply Montana law.

THE UBE MANDATES several changes. First, it eliminates the Montana essay questions. The bar examiners will create an outline of Montana law, and require applicants to take an open-book, online exam at some point. Second, the national essay questions will ask for the application of general legal principles rather than Montana law. Third, Montana will no longer have the discretion to determine the weight of bar-exam components. The weight of multiple-choice questions will increase from 35 to 50 percent; the written portion of the bar will decrease from 65 to 50 percent.

The UBE promises some benefits – primarily, portability of scores for the

first three years after law school, and more consistent essay questions from the national testing service. Nonetheless, we don't have enough information to conclude that the UBE is in the best interest of the Montana bar or Montana citizens.

Historically, each state determines how to assess new lawyers' competence, including how much weight to give different portions of the bar exam. Legal education nationwide is discovering the importance of practical skills – a discovery the University of Montana School of Law made more than 30 years ago. As teachers of practice-based legal education, we question the wisdom of moving away from practice-based assessment and toward standardized multiple-choice testing. We have seen no evidence that multiple-choice testing is a better way to assess new lawyers' competence than written essay exams. The addition of the performance test to the bar exam shows that it is possible to assess practical skills.

Second, the UBE eliminates formal testing of Montana law. Reviewing Montana law for the bar helps prepare lawyers to practice law in Montana –

More EXAM CONCERNS, Page 23

Petition seeks handoff of character & fitness probes

The Montana Supreme Court is seeking comments on a petition from the Court's Commission on Character & Fitness asking that the Court revise the Rules for Admission and Rules of Procedure of the Character & Fitness Commission. The revision would permit use of the National Conference of Bar Examiners (NCBE) on-line application and character investigation.

The proposed rule change, if adopted, would require each Montana Bar applicant to submit his or her application materials and pay fees to NCBE, instead of to the State Bar of Montana. The

NCBE would then conduct a preliminary examination of the applicant. Also included is a provision allowing students to initiate the NCBE process in their second year of law school.

The Court will accept written public comments on the petition. Each person submitting comments must file an original and seven copies of his or her comments with the clerk of the Court on or before 5 p.m. on July 15, 2011. The Commission is granted until Aug. 15, 2011, to respond to any comment, if it elects to do so. Thereafter, the Court will schedule this matter for a public meeting. ○

On the State Bar website: www.montanabar.org

See order & full petition on home page



The State Bar's legislative-lobbying scorecard

The State Bar of Montana had a good batting average when it came to lobbying for or against bills in the 2011 Legislature. As the list below shows, three out of four bills the Bar actively supported became law (the fourth was passed by the Legislature but vetoed by the governor). Of the 13 bills the Bar actively opposed, only one was passed into law.

Bills supported by State Bar

- **HB 306** eliminating the requirement for a notary public to keep and maintain a journal. BILL VETOED BY GOVERNOR AND DIED.
- **SB 21**, authorizing a district court to dismiss a civil action for lack of prosecution after a period of time. BECAME LAW.
- **SB 41**, allowing a city to establish a city court of record; providing that appeals from a city court of record are on the record and not de novo. BECAME LAW.
- **SB 238** would increase the jurisdictional limit for justice, city, and small-claims courts. BECAME LAW.

Bills opposed by State Bar

- **HB 245** would have cut the number of Supreme Court justices from seven justices to five. BILL DIED.
- **HB 281** would have revised the statutes relating to guardians ad litem. BILL DIED.
- **HB 332** would have restored the right of a "fully informed jury," allowing a jury to judge both the facts of a civil or criminal case and the applicable law. BILL DIED.
- **HB 371** would have revised statutes on the practice of law. BILL DIED.
- **HB 455** would have amended the Montana Administrative

Lobbying reimbursement for members

The U.S. Supreme Court ruled that unified bar associations, in which membership and dues are mandatory, must refund a portion of those dues when the association lobbies on a legislative bill in a stance with which a member doesn't agree. The State Bar of Montana had \$10,685 in lobbying expenses this year. Divided by 3,524 active members, the refund amount for each of the bills listed in the accompanying article is 20 cents. To receive a refund, list the bill on which you disagreed with the State Bar's position and send the list to: **Lobbying Refund, State Bar of Montana, PO Box 577, Helena MT 59624.**

Procedure Act to allow non-attorney representation before agencies. BILL DIED.

- **HB 521** to set up a referendum to provide for partisan election of Supreme Court justices and district court judges. Missed deadline for transmittal to Senate. BILL DIED.
- **HB 557** would have allowed political parties to support and oppose judicial candidates. BILL DIED.
- **SB 268** would set up a referendum to require election of Supreme Court justices from districts. BECAME LAW.
- **SB 322** would have set up a referendum to establish the venue for lawsuits against the Legislature that challenge the constitutionality of a statute. BILL DIED.
- **SB 323** would set up a referendum to allow two-thirds of the Legislature to override court decisions that invalidate a statute. BILL DIED.
- **SB 378** required mail notice before filing a instrument affecting title to or possession of real property. BILL DIED.

Court budget gets some line-items back

The Judicial Branch received funding in several key areas from the Legislature, said a report from the Court Administrator's Office:

- Major proposals that were funded:
- New judges and support staff: \$955,253.
 - Court Help Program: \$591,445
 - Associate water court judge & support staff (3.5 FTE): \$424,286

Before the legislative session, the Judicial Branch was statutorily required

to submit a plan to reduce its base budget by 5 percent (i.e., \$1.7 million each year). This plan was adopted by the Branch's budget subcommittee. The Branch later succeeded in getting some of these reductions restored, including:

- Drug court funding: \$495,898.
- Family evaluator programs in Judicial Districts 11 and 13: \$177,256.
- 6.6 FTE (currently filled): \$690,854

Remaining 5 percent plan reductions

that were not restored include:

- 6.0 FTE eliminated (currently vacant): \$454,464
 - 2 percent vacancy savings: \$806,102
 - Operating expenses: \$583,112
- Other reductions to the Judicial Branch budget included:
- Selected IT and other contracts: \$141,338
 - Other (rent, workers' compensation, out-of-state travel): \$107,030
- Total reductions for next biennium are approximately \$2 million, the Court report said.

Upcoming CLE seminars for Montana lawyers

CLEs with Ethics & SAMI* credits are noted with “**Ethics**” in boldface below

*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.

June 14 Fairmont Hot Springs

Domestic Violence & Firearms Laws 8.0 CLE credits.
Montana Law Enforcement Academy, (406) 444-5620

June 15 Webcast

Thurgood Marshall's Coming! 3.0 CLE credits, including 3.0 **Ethics** (no SAMI) credits. Periaktos Productions, (605) 787-7099; <http://periaktos.bizvision.com/>

June 17 Billings – Crowne Plaza Hotel

Water Rights Sales & Transfers in Montana 6.0 CLE credits.
Lorman Education Services, (866) 352-9539

June 20 Webcast

Paralegal Guide to Career Growth in the New Economy 1.0 CLE credit. Institute for Paralegal Education, (800) 777-8707

June 21 Teleconference

Planning for Professionals, incl. Doctors, Lawyers, Accountants, & Teachers 1.50 CLE credits. Cannon, (800) 775-7654

June 22 Webcast

The Art of Advocacy 3.35 CLE credits. Periaktos Productions, (605) 787-7099; <http://periaktos.bizvision.com/>

June 22 Missoula – DoubleTree Hotel

Landlord-Tenant Law 6.75 CLE credits, including 1.0 **Ethics** (no SAMI) credit.
Sterling Education Services, (715) 855-0495

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

June 22 Billings – Elks Club

Management of Residential Real Property in Montana 3.75 CLE credits. KR Educational Services, (406) 254-2500

June 29 Webcast

Clarence Darrow: Crimes, Causes & Courtroom 3.0 CLE credits. Periaktos Productions, (605) 787-7099; <http://periaktos.bizvision.com/>

July 13 Webcast

Lincoln on Professionalism 1.0 CLE credits, including 1.0 **Ethics** (no SAMI) credits. Periaktos Productions, (605) 787-7099; <http://periaktos.bizvision.com/>

On the State Bar website: www.montanabar.org

CLE seminar list updated daily under “CLE”



STATE BAR CALENDAR

June 13

Board of Bar Examiners meeting, 10 a.m., State Bar offices, Helena

June 15

Group Benefits Trustee meeting, 10 a.m., Mountain West Benefits Conference Room, 3390 Colton St., Helena

June 17

New Lawyers' Workshop and lunch, 8 a.m.-1:15, Great Northern Hotel, Helena

June 17

State Bar Road Show, 1:30-4:30 p.m., Great Northern Hotel, Helena

Reception for attorneys and New Lawyers' Workshop participants, 5-6:30 p.m., Great Northern Hotel, Helena

June 22

Annual Meeting Committee conference call, noon

September 15-16

State Bar Annual Meeting, Red Lion Hotel, Kalispell

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 2011, \$20

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

Public Discipline Under MT Rules of Professional Conduct
2010, 192 pages annotated
CD \$40

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

Statute of Limitations Manual
1998, 95 pages w/2001 Update
Book \$25

Step-parent Adoption Forms
2003, 5 forms
Book \$20

U.S. & Montana Constitutions
Pocket-sized booklet
\$4 each

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Court reporters get wish: 3rd parties nixed

By **Melody Jeffries Peters**
Missoula court reporter

The Montana Court Reporters Association is at the end of an 11-year journey to prohibit third-party contracting, which proves the race goes not always to the swift, but to those who keep on running. Sometimes fighting third-party contracting felt like a David and Goliath battle, pitting the plaintiffs against defense, but with the support of the bar and tenacity of MCRA members, our goal is achieved.

Rule 28(c) of the M.R.Civ.P., Before Whom a Deposition May be Taken, has been modified at the request of court reporters and counsel. Here's the background on the reasons for the change and how the new rule, Rule 28(d), affects you and protects your client.

Documented in Montana as early as 1996, insurance companies have been entering into exclusive contracts with large, out-of-state, third-party contractors. These agencies then subcontract, or "network" as it's sometimes called, with local reporters for the services needed.

Those arrangements result in the third-party contractor directing and controlling the terms and conditions of transcript production and exhibit duplication. Sometimes special transcript formats are required by the third party, such as shortening line lengths or increasing font size and margins, thereby lengthening the deposition and causing an increase in pricing.

The most striking effects were felt by the plaintiff's bar. Pursuant to contracting agreements, local reporters send their transcripts to the third party for production, billing and delivery. The third-party contractor produces the final transcript and invoices the work. Local insurance defense counsel don't even receive invoices and don't know what they're paying per page, but plaintiff's counsel is charged a higher fee to recapture the money lost when providing a discount to the hiring party. Greg

Munro addressed this issue in an article entitled, "From the People Who Brought You Safeco Field: Safeco Court Reporters!"

One thing the court reporters had going in our favor was the landmark case of *In the Matter of the Rules of Professional Conduct*, 2000 MT 110, where the Montana Supreme Court found many of the insurers' cost containment procedures interfered with defense counsels' exercise of independent judgment and duties under the Rules of Professional Conduct and violated ethical rules and constituted the unauthorized practice of law. In short, you can't send an attorney into a knife fight with one hand tied behind his back. Professor Munro posited that when an insurance company dictates the court reporting service that the lawyer will use, the same specter of interference in independent judgment arises.

So where's the rub for reporters? Why would we turn down reporting for our defense clients who were being forced by their carriers to work with these contracting agencies? In accordance with NCRA's Code of Ethics, court reporters are to be fair and impartial toward each participant and be alert to situations that are conflicts of interest. Any reporter who participated in contracting was in violation of several tenets of our Code of Ethics.

Additionally, by giving up control of our product, we forfeit accountability. We must be mindful that disinterest and neutrality have historically formed the foundation of the court reporting profession, and attorneys are entitled to rely on that neutrality and be assured that all parties are treated equally and fairly.

To defeat contracting, our association agreed we needed to modify Rule 28(c), Before Whom a Deposition May be Taken. We solicited advice from the National Court Reporters Association and from attorneys on both sides of the table to develop the language. We enjoyed excellent support from Montana attorneys no matter whom they repre-

sented. We're grateful to the defense counsel who brought this matter to our attention and to Jim Manley and Syd McKenna for their support and direction. We owe a debt of gratitude to Randy Cox and Elizabeth Best. As members of the Advisory Committee on the Rules of Civil & Appellate Procedure, their support was invaluable.

On the advice of the Advisory Committee, the Supreme Court adopted the language below:

Rule 28(d): Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, shall not enter into an agreement for reporting service which does any of the following:

- (1) Requires the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney.
- (2) Requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation, or in any way offers any incentives or rewards to the attorneys, parties to the litigation, or to anyone else who has an interest in the litigation;
- (3) Gives an exclusive monetary or other advantage to any party; or
- (4) Compromises the impartiality of the court reporter, or that may result in the appearance that the impartiality of the court reporter has been compromised.

I'm reminded of the phrase in the

movie “Liar Liar” where Jim Carey is in the courtroom and he yells, “And the truth shall set you free!” Many reporters have stood on the right side of this national disagreement for a long, long time, as financially costly as it’s been. But if you don’t stand for something,

you’ll fall for anything. We held our stand because it was the right thing to do, the ethical thing to do. I’ve long had faith that the truth would come, and with the adoption of Rule 28(d), the truth is here. Contracting, gift-giving and incentives will not be allowed in Montana.

And with that, we will all be set free.

ALL OF THE ARTICLES referenced can be found at www.jeffriescourtreporting.com/documents.htm

THE FUTURE, from Page 4

and older (commonly grandparents communicating with grandkids). Estate-planning attorneys may want to consider the value of learning how to advertise on social networks. How do you competently warn your client? Historically, counsel will tell a client about confidentiality in their initial meeting and instruct the client not to talk with anyone about the case. If you do not know about or understand Facebook and other social network sites, use of social networks are not likely to come up in this initial conversation. If your client is a literalist, as many are, his Facebook page may well contain everything you discussed, how the client feels about the case, and all kinds of unsolicited admissions. The client will tell you later, “You said not to talk about it, you never said I could not Facebook about it.” Ignorance is not bliss. You need to know about technology and its current uses to best serve your clients.

What is your value?

Another key trend created by expanding technology and networking (both socially and business) is a value or rating given each participant. Currently, businesses value employees and evaluate potential new hires on their knowledge base, using things like resumes and transcripts to determine knowledge and experience. An emerging component of an employee’s value to the business and any team efforts it may have is the employee’s ability and willingness to share knowledge and experience as well as the quality of the information shared. The same holds true in the world of social networking. Just look at any Internet discussion board or forum. Look at a thread on that board and you will see each participant has a rating, usually the number of posts and some quality rating of those posts given by other participants.

Consider how this is contradictory to how the legal profession has traditionally functioned. Our knowledge base is our asset. We charge to share that knowledge. How will the legal

profession adjust in an environment where both in business and socially a low value is given to someone who hoards knowledge or only shares that knowledge for a price? This is not to say the “pay per view” approach long followed by lawyers is out the window, however, it will be met with more and more resistance and competitive challenges. The profession as a whole needs to be prepared to address such issues.

What the bench and the profession are doing

In Montana, the Judge’s Committee on Education is dedicating an entire upcoming conference to technology and related evidentiary and discovery issues. The State Bar is working to assist them. The State Bar’s Technology Committee is also working on a series of webinars and portions of other CLEs to assist attorneys in recognizing problem areas related to technology and teaching basic competencies to ensure attorneys understand what is currently out there.

Nationally, the ABA has a major project called Ethics 2020. In part, this project attempts to update the Rules of Professional Conduct to address issues arising as a result of our ever-changing technology.

Conclusion

So, what will you be doing in ten years? If you are like roughly 50 percent of the Bar, you will be at or beyond the retirement age of 65. If you are younger, the number of colleagues you have in the Bar will be smaller with no real indication that the demand for legal services will similarly decrease. Considering the potential increased workload, people not being able to obtain or afford legal representation, and the resulting stress on the court system due to a greater influx of pro se cases, the law of supply and demand dictates that something has got to give.

Technology will be a tool that will assist us in delivering justice to those in our community. If we stay current as to what technology is out there, know how it is used, and understand how it impacts the judicial system, we will be best situated to serve our clients and the courts. ○

EXAM CONCERNS, from P. 15

especially lawyers in small or solo firms. The online test proposed by the bar examiners is useful, but we question whether it will achieve the same effect.

Third, the bar examiners have offered no rationale for raising the passing

score. 135 is the median score for jurisdictions using a 200-point scale, but many jurisdictions have passing scores between 130 and 135. How was 135 chosen? We are unaware of any evidence that applicants with scores between 130 and 135 are incompetent or have been more frequently involved in malpractice claims or disciplinary matters.

Moreover, the bar examiners have not considered the potential impact of the increased passing score — especially in combination with changed weighting of standardized testing — on those who have historically faced barriers to the legal profession. Will this have an effect on access-to-justice initiatives?

Finally, the proposal recommends

changing more than one variable, meaning it will be impossible to assess the impact of any of them. The petition proposes to (1) eliminate the Montana essay questions, which test Montana law and are written in one hour rather than 30 minutes; (2) change the weight of all components of the exam; and (3) increase the passing grade.

Forging ahead with a proposal that is

not designed to fix any problem, has not considered potential impacts, and changes more than one variable will lead to unintended results. We urge the Montana Supreme Court to appoint a committee of practitioners, bar examiners, faculty, judges, and other interested constituents to investigate and address these concerns before making any changes.

BETH BRENNAN and KRISTEN JURAS teach at the University of Montana School of Law. The opinions expressed herein are their individual opinions. The School of Law has not taken a formal position in support of or against the Petition to Adopt the Uniform Bar Exam.

LETTERS

Board member in running for president-elect

Dear Members of the Bar,

I would like to announce my candidacy for president-elect of the State Bar of Montana. For the past 13 years, I have been a trustee of the State Bar for Yellowstone, Stillwater, Carbon, and Big Horn Counties. I am also a member of the Professionalism Committee of the State Bar, which assists in the preparation and presentation of the New

Lawyers' Workshop, Road Show, and seminars at the annual meetings.

As a State Bar trustee and member of the Professionalism Committee, I have a great appreciation for the State Bar and all it does. I would like to continue to champion the Bar as its president-elect. I hope to show how and why the State Bar is useful and beneficial to those who currently do not believe so, and redirect if need be, the efforts of the Bar to better serve you.

After growing up in Pennsylvania and graduating from Duquesne University School of Law in Pittsburgh, I moved to Montana in 1982 to accept a position as a staff attorney for the Office of Disability Adjudication & Review of the Social Security Administration. In 1983, I was admitted to the Montana Bar. I am also admitted to the Pennsylvania Bar Association.

In 1987, I left Social Security to open my own practice. Initially, I engaged in a general practice of law. Over time, I have limited my practice to representing clients involved in Social Security disability appeals. I represent clients not only before the Social Security Administration, but also in the U.S. District Court and the 9th Circuit Court of Appeals.

In addition to my involvement in the State Bar, I have been actively involved in my local community as well. I am a



Pam Bailey

past president of the Yellowstone Area Bar Association, and I am currently the president of the board of directors for Billings Studio Theatre. For the past 18 years, I have been a member of the Billings West Rotary Club. I am also a current board member for Job Connections Inc., which assists disabled individuals in job placement and independent living.

Throughout my 29 years of practice in Montana, I have greatly benefited personally and professionally from my involvement in both the state and local bar associations. I would be honored to serve as your president-elect.

I would appreciate your support in the upcoming election.


— Pamela J. Bailey, candidate for State Bar president-elect

New UM fund honors Davis

I noted in the April issue that a wonderful tribute to [the late Helena attorney] Gary Davis was included. I wanted to let *The Montana Lawyer* know that the University of Montana School of Law has set up the "Ethics & Professionalism Fund" in Gary's name. This fund will provide scholarship assistance to students. See details at <http://umt.edu/law/gifts/default.htm> and <http://umt.edu/law/gifts/ethicsandprofessionalismfund.html>.

We look forward to assisting worthy students in the years to come as a result of Gary's legacy.

— Patience G. Woodill, program assistant
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- Provide training on computerized in-court procedures.
- Cut programs
- Provide a directory and deskbook free to all members. (2)
- Promote the lawyer discipline system.
- Access fines and penalties to recoup the cost of discipline and client damages covered by the bar.
- Expend fewer resources on remedying problems (discipline, client protection fund, lawyers assistance program) and more on general practice assistance.
- Continue aggressive action resolving bar complaints.
- Offer an online forum for collaboration and networking on substantive law issues.
- Reduce the cost to all bar members that the bar spends on addressing problems of impaired attorneys. (2)
- Provide more substantive information on the impaired attorney problem.
- Make inactive dues affordable.
- Provide meaningful access to reasonably-priced health insurance.
- Provide job placement assistance to new lawyers. (2)
- Provide additional resources for new lawyers such as publications.
- Develop a mentor program for new lawyers.
- Take an active role in grading sitting judges.
- Increase resources available for the state law library.
- Provide more activities at the local level with bar groups.
- Offer more paralegal clinics in the middle part of the state.
- Dues should not be used for political activities. (3)
- Provide additional low-cost legal services. (2)
- Sponsor lawyers who wish to do pro bono work, but can't afford it.
- Coordinate pro bono statewide.
- Bar spends too much time emphasizing pro bono.
- Publicize pro bono options more fully.
- Push the Montana Legislature for a better public defender system.
- Improve The Montana Lawyer magazine. (2)
- Allocate small portion of dues to reserves.
- Advocate for reciprocity with other states.
- Reduce dues (13)
- Work to improve the reputation of the profession.
- Create public service announcements supporting the practice of law. (2)
- Educate the public about the legal system in general.
- Encourage sections to report activities they are doing with extra fees.
- Become a voluntary bar association. (2)
- Improve website (2)

XI. COMMUNICATIONS

● Ninety percent of respondents indicated the frequency of the State Bar's communication (all types) with them was just right. Eight-three percent indicated the frequency of e-mail communications was just right.

● E-mail updates and *The Montana Lawyer* magazine were rated the most effective means of communication with members.

● Forty-nine percent of respondents receive the majority of their information about the State Bar from *The Montana Lawyer* magazine. Another 22% receive the majority from the bar's website.

FURTHER BREAKDOWN

1. What is the most effective way to share information with you about State Bar programs, services and events that you may be interested in? (5=Very Effective, 1=Very Ineffective)

E-mail updates (4.51-mean)

The Montana Lawyer magazine (4.28)

Letter, postcard by regular mail (3.75)

Website (3.74)

Personal contact from a colleague (3.56)

Section or committee communications (3.13)

Social networking site (Facebook) (2.13)

2. How do you receive the majority of your information about State Bar resources and services?

The Montana Lawyer magazine 49%

By calling the State Bar office 1

Website (www.montanabar.org) 22

Mailings 10

E-mail notices 18

XII. WEBSITE

● Almost all respondents (99%) have visited the bar's website.

● Most frequently utilized areas of the website are the CLE calendar, classified ads, and "Today's Top Legal News" articles.

● Least frequently utilized areas of the website are local bar newsletters (71% are not aware of), online bookstore, and legal research (59% are not aware of).

FURTHER BREAKDOWN

Which of the following features of the Web site do you utilize?

<u>Website area</u>	<u>Never</u>	<u>Rarely</u>	<u>Often</u>
Legal research	42%	39%	19%
Bar section pages	34	56	10
Today's Top Legal News	24	49	28
Classified ads	28	41	31
Ethics opinions	16	59	24
Legal links	26	54	20
Online CLE catalog	22	56	22
Upcoming CLE calendar	13	50	37
Online bookstore	46	46	7
Local bar newsletters	50	39	10

XIII. SOCIAL NETWORKING

- Half of respondents participate in social networking sites.

FURTHER BREAKDOWN

1. Your reasons for participating in each of the following sites:

Social networking site	Personal	Professional	Both
Facebook	88	2	10%
LinkedIn	11	76	13
LegallyMinded (ABA site)	0	86	14
Other, please specify:	14	57	29

Other social networking sites:

Twitter (3)
AVVO
MySpace

XIV. THE MONTANA LAWYER MAGAZINE

- Eighty-two percent of respondents frequently read (14% occasionally) the print version of the magazine.
- Four percent frequently read (11% occasionally) the online version.
- Ninety percent prefer the print version. Most frequently cited reasons were “I like to have a hard copy” (64%) and “I was not aware of the online version” (23%).

- The items rated most beneficial in the magazine included:

1. Substantive law articles
2. State Bar news
3. Upcoming events

FURTHER BREAKDOWN

1. What prevents you from preferring the online version of *The Montana Lawyer*?

I like to have a hard copy	64%
I was not aware of the online version	23
Online version is too difficult to print	1
Other, please specify:	12

Other reasons:

- Hard copy is portable – Can take to lunch, when traveling, etc. (19)
- Unaware of when it is available. Hard copy is a reminder that it is published. Bar should send an e-mail with link when it is available. (11)
- Difficult to download and/or read online. (11)
- Reading hard copy is nice break from computer. (4)
- I save hard copies as reference materials.


2. Please rank and select the three items/columns in *The Montana Lawyer* magazine which are the most beneficial to you:

- Substantive law articles (908) (total weighted score)
- State Bar news (655)
- Upcoming events including CLE (501)
- Practice updates (324)
- Personal articles on members, judges (306)
- State Bar calendar (163)
- President’s message (99)
- Section or committee news (84)
- Other items:

- Classifieds (21 responses)
- Ethics violations/ethics opinions (2)
- Jobs section/announcements/hirings (4)
- News about members (5)
- Supreme Court rule changes and activities (4)
- Access to Justice
- General articles on international legal topics
- Discipline

3. What other topics would you like to see addressed in *The Montana Lawyer*?

- Magazine is well done. (15 responses)
- More substantive articles. (7)
- Practical news and how-to articles on nuts and bolts topics. Tips for becoming more efficient. (6)
- Give Bar sections rotating columns. (4)
- Monthly profile of a member. (3)
- Pro bono opportunities. (3)
- Some articles too long. Shorter articles preferred. (3)
- The ink smells bad. (3)
- Abbreviated pro/con articles on various issues. (2)
- More articles of interest to paralegals. (2)




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- Regular column on civil procedures. (2)
- Synopses of MT Supreme Court cases. (2)
- Send magazine in timely fashion. (2)
- Appellate issues
- Improving the profession
- Sample presentations for schools, senior centers
- Case law updates
- Earlier notice of CLE programming in magazine.
- Improve aesthetic feel of the magazine.
- Don't include discipline proceedings.
- More topics of interest to government lawyers.
- Columns by state district judges on things to do/avoid.
- More stories about lawyers doing good work.
- More reviews of law-related books and office technology.
- Regular column of practical advice.
- More information on what is happening at the law school.
- Rules changes better highlighted.
- Technology tips.
- Articles on Youth Court and other areas of youth law.

4. Rather than receiving State Bar publications – like legal manuals and CLE materials – in printed form, would you prefer receiving them digitally (on CD, memory stick, or download from web)?

Yes, digital is best	47%
No, I prefer, printed publications	53

XV. STATE BAR STAFF

- Fifty-seven percent of respondents indicated they had contact State Bar staff within the past year.
- The satisfaction level with their interactions with staff was 4.54 (on a scale of 1-5 with 5 being the highest).

XVI. YOUR CONCERNS

- Thirty-seven percent of respondents indicated they were satisfied in the professional life.
- Thirty percent indicated the practice becomes more rewarding as time passes. Nineteen percent indicated it becomes less rewarding.
- Eleven percent would do something else if money weren't an issue.

FURTHER BREAKDOWN

1.. How concerned are you about the following issues and their impact on the profession and your practice? Please rate on a scale of 1-5 with 5=very concerned and 1=not at all concerned.

- Lack of public understanding and confidence in the judicial system (3.99 - mean)
- Public perception of the profession (3.69)
- States' budget crises (3.49)
- Availability of legal services to Montana's low-income population (3.54)
- Tort reform (2.97)
- Unauthorized practice of law (3.11)
- Increased client expectations about value of services

rendered (2.88)

Increased competition due to globalization of the practice and legal outsourcing (2.54)

Increased competition due to the availability of online legal information and do-it-yourself tools (2.54)

The obsolescence of traditional elements of practice such as document preparation (2.46)

2. How concerned are you about the following issues and their impact on you and your law practice? Please rate on a scale of 1-5 with 5=very concerned and 1=not at all concerned.

Keeping current in the law (3.95)

Balancing work and personal life/family (3.86)

Earning a living (3.73)

Keeping up with and using technology (3.59)

Providing good service to my clients with limited time (3.49)

Relationships with colleagues within my organization (3.19)

Career development (3.10)

Job security (2.93)

Availability of mentoring/training (2.76)

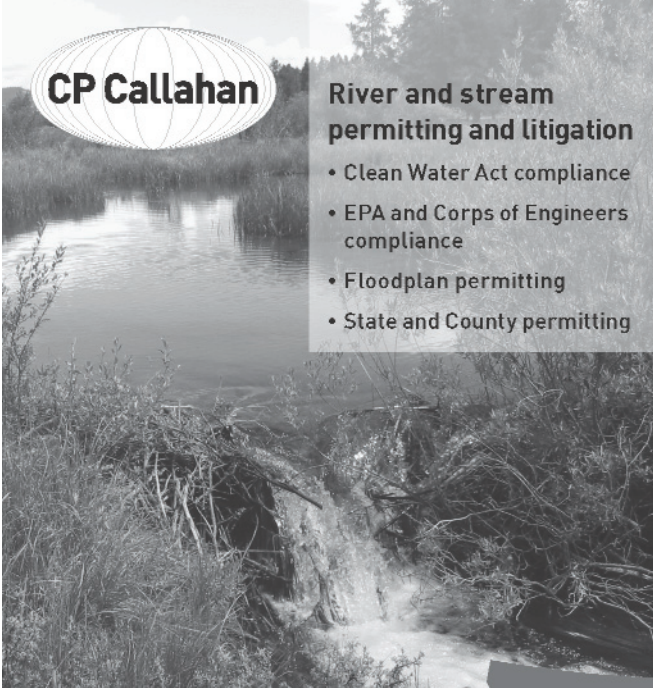
Finding and keeping good staff (2.61)

Managing the business aspects of my practice (2.18)

Billable hours (2.11)

Finding clients (1.99)

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NEWS ABOUT MEMBERS

Attorney General Steve Bullock presented Missoula Attorney **Amy S. Rubin** the Outstanding Advocate of the Year award on May 3 in the Missoula County Courthouse rotunda. Mr. Bullock remarked that for over 20 years, "in all of Ms. Rubin's professional and volunteer roles, she has been committed to providing access to justice for low income individuals, particularly the victims of domestic violence, sexual assault and stalking. Ms. Rubin set up and supervised attorneys for three different federally funded Legal Assistance for Victims programs in Montana, she serves as the supervising attorney for the DOVES/Confederated Salish & Kootenai Legal Assistance for Victims program, she helped launch the Missoula Family Law Self-Help Center, and she mentors new attorneys interested in representing domestic violence victims.



Jo Messex Casey has relocated her law practice to Hendrickson Law Firm. Ms. Casey received her BA from Eastern Washington State College in 1979, her MURP from Eastern Washington University in 1981, and her JD from the University of Wyoming in 1989. She served as an assistant attorney general in Washington state for 10 years before entering private practice in Billings in 2000. Her practice covers a wide range of general civil matters, with a focus on family law, general civil litigation, and personal injury. Her contact information is: 208 N. Broadway, Suite 324, PO Box 2502, Billings MT 59103; phone (406) 245-6238; fax (406) 245-6253; e-mail jo@henwlaw.com. Ms. Casey's long-time legal assistant, Marsha Brown, will join her.

The Livingston law firm of Swandal, Douglass & Gilbert announced the association of attorney **Rebecca Robyn Swandal** as a member of the firm. Ms. Swandal was raised on her family ranch near Wilsall and is the third generation in her family to work for Swandal, Douglass & Gilbert. She graduated from the University of Montana School of Law with honors in 2009. She has served as a law clerk for Montana Supreme Court Justice John Warner, and has recently completed a year of work in general civil private practice. She will engage in the general practice of law, including civil matters, criminal defense, and transactions.



Heather M. Ready has joined the Billings law firm of Karell Dyre Haney as an associate attorney. She received her BA degree in Political Science and Public Administration in 2004 from Carroll College, where she was a member of the Forensics Team. While residing in Missoula, Ms. Ready was a member of the Women's Law Caucus and the Rural Advocacy League; she interned with Montana Legal Services Association, Missoula City Attorney's Office, and a private law firm. She is a former member of the Family Violence Task Force in Yellowstone County. Originally from Laurel, Ms. Ready has practiced law in Billings since receiving her juris doctorate from the University of Montana School of Law in 2007. Her primary areas of practice include real estate, estate planning, and commercial law.



Yvette Lafrentz, originally from South Dakota, joined the Montana law firm of Doney Crowley Bloomquist Payne Uda in 2010 and admitted to the State Bar of Montana in April 2011. Ms. Lafrentz received her MBA and law degree from The University of South Dakota School of Law in 2009, and is licensed to practice law in South Dakota. While at The University of South Dakota, Ms. Lafrentz was a member of the Moot Court Team, honing her appellate skills. Ms. Lafrentz has 10 years of business experience and clerked for the 1st Judicial Circuit Court of South Dakota. Her practice in the Dillon, Mont., office focuses on water law, access and easement issues, business/corporation law, as well as wills, trusts, and estate planning.

Choteau District Judge **Laurie McKinnon** was named as the CASA (Court Appointed Special Advocates) Judge of the Year for her service on behalf of children, volunteers, and the Front Range CASA program.

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DEATHS

Bill McNamer, Billings attorney

Billings attorney Bill McNamer, 82, died on May 16.

Mr. McNamer was born in Shelby. He attended college at the University of Montana and Gonzaga University before graduating from law school at UM in 1955. He served in the Korean War as an infantry platoon officer. He moved to Billings, where he practiced law for 50 years and served in both the Montana House of Representatives and Senate.

He is survived by his wife, Elizabeth, four daughters and one son.

Charles Cyr, ex-U.S. attorney

Charles Krest Cyr, a former U.S. attorney for Montana, died on April 29 in Cocoa Beach, Fla.

Mr. Cyr was born in 1917 as the fourth generation of family residing in Montana, and raised in Missoula. He graduated from the University of Montana in 1944 with a degree in Law.

Mr. Cyr engaged in private practice of

law in Missoula until 1953. He was appointed by President Eisenhower as U.S. attorney for Montana with an office in Butte.

Mr. Cyr was litigation attorney for the Montana Power Company from 1960-1966. From 1966 to 1972, he was assistant general counsel, vice president of the Anaconda Company's Chile Exploration Company and various other subsidiary companies. Mr. Cyr retired as vice president and chief counsel of the Anaconda Aluminum Company and general attorney for Atlantic Richfield Company in 1982.

Mr. Cyr is survived by his wife Cynthia, three daughters and one son.

Gary Christiansen, Kalispell lawyer

Long-time Kalispell attorney Gary Ray Christiansen died April 22 in Mesa, Ariz., at age 71.

He was born in Beaver Crossing, Neb., and became an Eagle Scout. In

1961 he graduated from the University of Nebraska, then was commissioned into the U.S. Marine Corps.

Mr. Christiansen graduated from the University of Montana School of Law School in 1967. He practiced law for more than 30 years in Kalispell. He was active in Ducks Unlimited and Rotary International, and was a charter board member of the Hockaday Museum.

He is survived by his wife and son.

Other deaths

● **Harvey Lee Schlieman**, 81, a Montana native who graduated from the University of Montana School of Law and spent most of his career in the oil business and practicing law in the Middle East, died on May 16.

● **Kathy Lynn Miller**, 54, of Missoula, who had worked as a paralegal for the Garlington & Lohn law firm, died Feb. 28 at her home.

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CLASSIFIEDS POLICY: Minimum charge of \$60 for all ads. Ads over 50 words charged at \$1.20 per word. Send classified ads to *The Montana Lawyer* magazine, PO Box 577, Helena MT 59624 or e-mail to cwood@montanabar.org. Include billing address. Deadline for the August issue is July 12, there will be no separate July issue. Call (406) 447-2200 for information.

ATTORNEY POSITIONS

STAFF ATTORNEY: The Western Environmental Law Center, a nonprofit public interest environmental law firm, is seeking a staff attorney for its Northern Rockies office in Montana. Visit www.westernlaw.org/about-us/job-opportunities for details.

SOCIAL SECURITY: People's Law Center, a legal nonprofit organization, is seeking an experienced Social Security Disability practitioner to work with our staff on a contract basis. This individual will interact with and represent individual clients before the Social Security Administration at all levels including federal court. Travel will be required to attend hearings. Requirements: 5-plus years of Social Security Disability experience, computer literacy, excellent written and verbal communication skills, and excellent customer services skills. Send a letter of application, resume, and references to Peoples Law Center, Attn: Susan Gecho Gobbs, PO Box 5046, Helena MT 59604-5046. Visit our website at www.peopleslawcenter.org

LITIGATION LAWYER: Ebeltoft Sickler Lawyers, a growing and progressive regional law firm located in Dickinson, N.D., seeks to hire a litigation lawyer with 3 or more years of legal experience. A successful applicant must have courtroom trial experience and be licensed to practice, or eligible to become licensed to practice, in North Dakota. A successful applicant will receive a regionally competitive compensation package that will reward beneficial experience and encourage a long-

term relationship with the firm. This is an opportunity for a motivated lawyer to join a successful AV-rated firm. Visit our website at www.eskgb.com. Please submit your letter of application and resume to Ebeltoft Sickler Lawyers, Attn: Randall N. Sickler, PO Box 1598, Dickinson ND 58602-1598. All applications will be kept confidential.

ATTORNEY: Seeking attorney for well established currently solo estate planning/elder law specialty practice. Requirements: 5-plus years estate planning experience, excellent writing skills, interest in elder law. Experience in elder law preferred. Send letter of application, resume, references, transcript, sample estate plan, sample brief, and statement of elder law interest and/or experience to Ms. Sol Lovas, CELA, Attorney at Law, PO Box 399, Billings MT 59103. www.lovaslaw.com.

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LLC / INSURANCE CONSULTANT:

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claims litigation involving multi-million dollar settlements, and insurance contract review and negotiation of policy terms. I am available to assist with claims strategy, provide expert witness testimony for depositions or trial and other insurance-related projects. Attorney references provided upon request. Margo Hickman, Livingston, Montana. (406) 222-7267 or (708) 989-2378 (cell). Mhick1444@mac.com.

MEDICAL/LEGAL CONSULTANT:

Internal medicine / gastroenterology: Theodore W. Bohlman, M.D. Licensed, Board Certified IM/GI. Record Review and medical expert testimony. Contact: 208-841-0035, tedbohlman@me.com

BANKING EXPERT: 34 years banking experience. Expert banking services including documentation review, workout negotiation assistance, settlement assistance, credit restructure, expert witness, preparation and/or evaluation of borrowers' and lenders' positions. Expert testimony provided for depositions and trials. Attorney references provided upon request. Michael F. Richards, Bozeman MT (406) 581-8797; mrichards_59730@yahoo.com.

CERTIFIED COMPUTER EXAMINER:

Forensic analysis of computers, hard drives, CD/DVD media, floppy disks, cell phones, PDAs, and any other digital storage devices. Civil, criminal, interoffice, or personal cases welcome. Certified by the International Society of Forensic Computer Examiners. Contact James Andrew Holmes, CCE, AtaData LLC at (406) 498-5193, jaholmes@ata-data.info, or www.atadata.biz.

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Retrieval and examination of computer and electronically stored evidence by an internationally recognized computer forensics practitioner. Certified by the International Association of Computer Investigative Specialists (IACIS) as a Certified Forensic Computer Examiner. More than 15 years of experience. Qualified as an expert in Montana and United States District Courts. Practice limited to civil and administrative matters. Preliminary review, general advice, and technical questions are complimentary. Jimmy Weg, CFCE, Weg Computer Forensics LLC, 512 S.

Roberts, Helena MT 59601; (406) 449-0565 (evenings); jimmyweg@yahoo.com; www.wegcomputerforensics.com

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

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MISCELLANEOUS

REQUEST FOR PROPOSALS: The Town of Stevensville in Ravalli County is soliciting proposals from interested legal firms to provide contract legal services to the Town. Work will be related to water rights applications and transfers necessary to complete the Town's water system improvement project. The selected legal firm will need to prepare the required water rights applications with assistance from the Town's engineer. Questions and responses should be directed to Lew Barnett, Mayor, PO Box 30, Stevensville MT 59870; (406) 777-5271. The entire RFP can be found at: www.stevensvillewater.blogspot.com. Proposals must be postmarked by June 30 at 5 p.m. Include five copies and mark outside of response package with "Water Rights – Legal Services."

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