

# Lawyer

THE STATE BAR OF MONTANA

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## How to select our justices

*Former MT judge's  
proposal melds  
merit selection with  
retention elections*



Why  
you  
can't  
trust

your fax  
machine

## Legacy



Ranch family now into 3rd generation as lawyers



## Chosen for federal court

*Kalispell attorney Dana Christensen*



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State Bar  
of  
Montana

## THE MONTANA LAWYER

Published every month except January and July  
by the State Bar of Montana, 7 W. Sixth Ave.,  
Suite 2B, P.O. Box 577, Helena MT 59624. Phone  
(406) 442-7660; Fax (406) 442-7763.  
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**SUBSCRIPTIONS** are a benefit of State Bar membership; others purchase a year's subscription for \$40, pre-paid. Third Class postage paid at Helena MT 59601.

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**POSTMASTER:** Send address changes to Montana Lawyer, P.O.Box 577, Helena MT 59624.

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Printed in Billings  
at Artcraft Printers

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Joe Sullivan

## PRESIDENT'S MESSAGE

# The future of the Bar, ours to shape

## *Part I: Would a mentoring program work?*

**F**ifty percent of the current Bar is over the age of 50. Within seven to ten years nearly half the Bar will be retirement age or older. While not all will retire by 2020, it is reasonable to assume a health number will. The implications to the Bar and the practice of law, as a whole, are far reaching.

Absent a steep decline in the need for legal services, demand will quickly outstrip the supply of legal services. What will that do to the cost and availability of legal services? What will advances in technology do to address this increased demand? What do we, individually, need to learn to keep up with the inevitable changes of how law will be practiced? How will these changes impact the traditions and values we hold out as significant to the practice of law?

This is a challenge and an opportunity. We have a chance to shape the future of the practice of law. This is one of those "How do you eat an elephant" type questions. The answer: "One bite at a time".

This President's Message is intended to be the first in a series addressing some of the issues in this vast area of future challenges and ramifications. On one hand, we can wring our hands and worry (a total wasted emotion). On the other hand, we can following the wisdom of my youngest daughter, "Cry me a river, build a bridge, and get over it." I challenge you to embrace the coming change and grasp the opportunity to shape the future of the profession.

**I START WITH** new lawyers. While they are coming into the profession more slowly than current lawyers are or will be retiring, they will gradually make up a greater and greater percentage of the Bar. As a key emphasis of my presidency, I have focused on encouraging the development of the New Lawyers' Section of the Bar. There is a strong core of quality young attorneys in this state. We need to assist their development. While this has been said so many times it is a cliché, it is still valid. The future of our Bar and profession rests with these new lawyers.

A traditional and popular method of assisting new lawyers is mentoring. It has historical roots in the practice of law. Prior to about 1890, law schools were limited in number and a lawyer who had attended law school was rare. Instead, the norm was to be self taught or to be taken on as an apprentice of an established lawyer. Thus, for as much as the first 120 years of this country, mentoring was a nor-

mal means of learning to practice law.

Several states have very successful mentoring programs, including Ohio, Georgia, and Utah. Oregon has just instituted a mandatory mentoring program. These are the traditional one-on-one assigned pairings form of mentoring. Mentors say that such a role was the best thing they ever did in their legal career. Likewise, mentees express appreciation for the collegial friendships developed through a mentoring program.

**HOWEVER, THE PICTURE** is not always rosy. Ask the Alabama State Bar. In 2005, it began developing a mentoring program for new lawyers and kicked off the program in 2007. Despite 300 initial applications by mentees, the program quickly died and was disbanded in 2009.

Similarly, the Nebraska State Bar had a traditional one-on-one mentor-mentee program. After substantial effort, it too was scrapped.

The problems expressed with these programs had some similarities. From both the perspectives of the mentors and mentees, there were complaints that no one had the time needed to invest in the program. From the mentees there were complaints the program merely consisted of older attorneys reliving war stories and nothing substantive was being learned. Some mentors complained that the new lawyers were using the program merely as another means of networking for their next job.

In both states there were attempts to vary the traditional approach. Alabama started a listserv hoping it would generate interest in the more technologically suave young attorneys. It generated few hits. Nebraska attempted an answer line for new lawyers. It likewise generated very few phone calls.

**WHILE MANY IN MONTANA** have discussed and even experimented with mentoring programs, the stories of Alabama and Nebraska raise huge red flags. What would you do if you built it and they did not come. Blind faith or pure optimism may work in a fictional corn field in Iowa, but what if you are talking about investing the volunteer time of others and the limited revenue and finite resources of the Bar.

**More on THE FUTURE, Page 19**

# Mid-point status of Bar-watched bills

Feb. 24 marked the halfway point in the 2011 Montana Legislative Session, and was the deadline for transmittal of bills from one legislative chamber to the other.

At that deadline, the State Bar of Montana was closely monitoring 18 bills that benefit the judicial system and/or the practice of law as a whole. We have tracked that list of bills daily on the Bill Watch List at [www.montanabar.org](http://www.montanabar.org), and will continue to do so. Links to each bill's text can be found on the List.

But on Feb. 24, nine of the bills died because they had either been rejected by the House or Senate, or failed to be transmitted to the other chamber. As of Feb. 25, here is how the Bar-watched bills fared:

## Bills still alive

- **House Bill 2**, the bill that funds state government, including the judicial branch, is an appropriations bill and is not effected by the transmittal deadline. It is still in the House committee process. The Bar supports adequate funding for the Judiciary and for the Office of Public Defender.
- **HB 306** eliminates the requirement for a notary public to keep and maintain a journal. The bill was passed by the House and sent to the Senate. The State Bar has actively supported this bill.
- **HB 521** would allow a referendum of Montana voters to provide for partisan election of Supreme Court justices and district court judges. The bill was approved by the House State Administration Committee. Referendum bills are not affected by the transmittal deadline. The State Bar opposes this bill.
- **HB 585** would require public disclosure when a state agencies procure the services of private attorneys. Referred to House Appropriations Committee, not subject to the transmittal deadline.
- **Senate Bill 175** would ask Montana voters to amend the State Constitution to change the selection of Supreme Court and district court judges to a merit-based appointment system, from the current election system. Appointments would be followed by judicial performance evaluations and retention elections. The bill was tabled in Senate Judiciary Committee, but is not affected by the transmittal deadline and could be revived.
- **SB 322** would set up a referendum to establish the venue for lawsuits against the Legislature that challenge the constitutionality of a statute. A hearing was cancelled in the Senate Judiciary Committee, but referendum bills are not affected by the transmittal deadline and could be revived. The State Bar opposes this bill.

- **SB 323** would set up a referendum to allow two-thirds of the Legislature to override court decisions that invalidate a statute. A hearing in the Senate Judiciary Committee was cancelled, but referendum bills are not affected by the transmittal deadline and could be revived. The State Bar opposes this bill.

- **SB 268** would set up a referendum to require election of Supreme Court justices from districts. The bill was passed by the Senate, 30-20, and sent to the House. State Bar opposes.

- **SB 378** would require mail notice before filing a instrument affecting title to or possession of real property. A March 2 hearing was set in the Senate Taxation Committee; the bill does not have to meet the transmittal deadline. State Bar opposes.

## Bills that died

- **HB 245** would have cut the number of Supreme Court justices from seven justices to five. The House Judiciary Committee tabled the bill and it missed the transmittal deadline. The State Bar actively opposed the bill. The prevailing argument was that the bill would increase the workload for the remaining justices and slow down the appeals process.
- **HB 281** would have revised the statutes relating to guardians ad litem in child custody, parenting, and parenting contact cases – establishing training guidelines, a grievance process, and fees. The bill was tabled by the House Judiciary Committee and missed transmittal. The Bar opposed the bill because it had a provision for a citizen advisory committee that would review attorney performance – an act that allows the Legislature to regulate the practice of law.
- **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. The bill was tabled in the House Judiciary Committee and missed the transmittal deadline. The State Bar opposed the bill.
- **HB 371** would have revised statutes on the practice of law. The bill was tabled in the House Judiciary Committee and missed the transmittal deadline. State Bar opposed.
- **HB 438** would have revise marriage dissolution laws by requiring counseling in certain instances. The bill failed in a House floor vote, 40-60.
- **HB 455** would have amended the Montana Administrative Procedure Act to allow non-attorney representation before agencies. The bill was tabled in the House Judiciary Committee and missed the transmittal deadline. State Bar opposed.

● **HB 557** would have allowed political parties to support and oppose judicial candidates. The bill failed in a House floor vote, 49-51. State Bar opposed.

● **Senate Bill 45** would have extensively revised notary-public laws, including a requirement that notary journals to be transferred to the secretary of state upon a notary's termination from office. The bill was tabled in the Senate Administration

Committee and missed transmittal.

● **SB 123** would have required that a justice of the Montana Supreme Court must self-recuse from a case when he knows that a party or party's attorney has, within the previous eight years, made contributions to the justice's election campaign of more than \$250. The bill was tabled in the Senate Judiciary Committee and missed transmittal. ○

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## MONTANA ATTORNEYS

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# A new player in the Swandal legacy of law

*Something about this Shields Valley ranch family is turning out lawyers*

By Kendra Anderson

The word "legacy" gets thrown around a lot in the Shields Valley, north of Livingston, one of the increasingly rare regions of the West where the population is still dominated by multi-generational ranching families. But even in this vast, rugged land of cattlemen and women, legacies are not the exclusive province of ranch families.

One of the Shields Valley's best-known family legacies is the one established by the Swandal family, generations of which continue to live and work on ranch land settled by their immigrant ancestors over 100 years ago, when the Swandal Patriarch, Nels 'Swandal', immigrated to the United States from Svandal, Norway, in 1909. Nels, along with five of his six brothers, started a ranching operation that has endured and thrived for more than five generations. However, the determination and independence that compelled the Svandal brothers to migrate to unknown territory and stake their claim in the grueling business of raising sheep and cattle has also allowed them to thrive in the legal profession.

**LIKE THE SVANDALS** before her, Bonnie Swandal ventured into foreign land when she sat for the Montana Bar Exam in 1967. Not only was she the sole woman to sit for the Exam that year, she was a 38-year-old ranch wife who spent her days working alongside her husband and raising five children. What would be considered an unconventional undertaking for a middle-aged mother of five who lived 35 miles from town, even today, rightfully marked Bonnie as a maverick among the women of her time and place. She hadn't attended college or law school, neither of which was a prerequisite to sitting for the Bar Exam in Montana at that time.

In 1967, candidates for admission to the Bar in Montana could gain admission if they were able to pass the Bar Exam, regardless of whether they had attended college or law school. However, the odds of doing so for those without the benefit of



Three generations of Swandal attorneys:

Rebecca, Bonnie, and Nels at Rebecca's law school graduation

a higher education were, predictably, dismal.

Two-thirds of those who sat for the Exam in 1967 failed. Bonnie Swandal passed. And, in doing so, she began a legal legacy which currently includes her son, District Court Judge Wm. Nels Swandal, her granddaughter, Rebecca Swandal and, most recently, Bonnie's grandson's wife, Kimberly Deschene, with whom Bonnie, at the age of 81, recently formed the partnership of Deschene & Swandal in White Sulphur Springs.

Currently, all applicants to the State Bar of Montana must prove that they have graduated from an accredited college and law school and pass the Montana Bar Exam. In 1965,

Bonnie's brother, Bob Brogan, a lawyer at the time, encouraged her to do as he had done several years before and take a home study course to prepare for the Bar Exam. Bonnie's son, Nels, recalls the Herculean effort Bonnie poured into her preparation for the Exam. She woke at 2 a.m. and studied until she woke her children at 6 a.m., after which she fed them breakfast, got them off to school, and commenced working alongside her husband, Austin, on the ranch. After the children came home from school it was time to make dinner, help with homework, do laundry, clean the house, bathe the children, put them to bed, and prepare to repeat the schedule again. And again. And again. For six grueling months.

True to form, Bonnie had no intention of slowing down when she was compelled to stop practicing in Park County in 1994, when Nels was elected to be the local District Court judge. So, at the age of 65, she enrolled at the University of Nevada in Las Vegas and earned bachelor's degrees in Psychology and Human Services, in 1999 and 2003.

Graduates of the University of Montana School of Law weren't required to take the Bar Exam as a prerequisite to practice law when Nels graduated from the School in 1978, so he went straight from school to work. Like his mother, he did his fair share of work on the ranch, even though he was working as a lawyer at Bonnie's law firm. By that time, his mother's practice had already become a family affair that, in addition to his mother, also included his aunt, June Swandal Miller, who served as the firm's office manager. "Aunt Junie", now 81, still manages the firm with the unflinching professionalism that prompted Bonnie to hire her 43 years ago.

**THE THIRD GENERATION** of the Swandal legal legacy was marked on Sept. 25, 2009, when Bonnie appeared with special permission of the Montana Supreme Court in the Livingston courtroom over which her son, the Hon. Wm. Nels Swandal, has presided since 1994, and moved the court for the admission of her granddaughter, Rebecca Swandal, to the practice of law in Montana.

Neither Nels nor Bonnie claims any credit for persuading Rebecca to pursue a career in the law. In fact, both snicker at the notion of persuading Rebecca, as fiercely independent as her Swandal ancestors, to do anything to which she wasn't already inclined. Her father admits aggressively persuading her to pursue a career in medicine, and not just because she was academically gifted in science and biology. His motivation: "I just wanted her to be able to take care of me when I got old." But a childhood spent with free reign over her grandmother's law office and cruising the halls of the County-City Building where her father served as Park County attorney for 12 years, along with her precocious brothers, Nels II ("Little Nels") and Austin, must have made an impression. In third grade Rebecca wrote, "I'm going to be a lawyer" in her journal.

Understandably, there wasn't much whining to Bonnie about the rigors of law school by either Nels or Rebecca. Rebecca will admit to just a little whining while she was studying for the Bar Exam, but she's quick to point out that she was always mindful of her grandmother's exponentially more difficult introduction to the legal profession, "But that's her," Rebecca said, laughing, "I don't try to compete with that

standard."

Like the unshrinking Swandals before her, Rebecca has managed to build on the foundation laid by her predecessors and forge her own path. She graduated as the valedictorian of her class at Shields Valley High School in 2002, with high honors from University of Montana in 2005, and with honors from the UM School of Law in 2009, after which she served as a law clerk for Montana Supreme Court Justice John Warner. After Judge Warner retired, Rebecca worked as an associate attorney for Crowley Fleck's Bozeman office for a year, until the lure of practicing law in the firm begun by her grandmother four decades earlier enticed her to return to Livingston, where she has recently joined the law firm of Swandal, Douglass & Gilbert.

**IN THE MIDST OF** all its success, the Swandal legacy has not been exempt from tragedy. Aside from the sentimental component inherent in Rebecca's intimate three-generational swearing-in ceremony, there was another compelling reason that prompted the Swandals to hold their own ceremony, in lieu of attending the en-masse swearing-in held by the State Bar. The Bar swearing-in ceremony was scheduled to be held on the anniversary of the death of Bonnie's grandson, Nels' son, and Rebecca's older brother, Little Nels, who had died four years earlier as a result of complications of diabetes, at the age of 25. Irony and tragedy were amplified to what, for most, would be an unbearable degree when Little Nels' and Rebecca's younger brother, Austin, died at the age of 24, one week after Rebecca was admitted to the practice of law. Austin's funeral was held four years to the day after the death of his older brother.

But legacies are born of faith and fortitude, both of which the Swandals maintain with dogged determination. Like their predecessors, the Swandals have persevered in the face of tragedy, carrying with them a disproportionate share of wisdom gleaned from life's most difficult experiences. While this breed of wisdom is no less vital to lawyers, and perhaps even more so, than a familiarity with statutes, caselaw and codebooks, perhaps the most important component of the Swandals' success in the legal profession is an obvious respect and affinity for an all too often defiled vocation; after all, it isn't too many careers that are alluring enough to entice a great-grandmother back to work, after 16 years of "retirement."

Obviously, Bonnie's not one for leisure or convention but, of all the avenues she could have chosen to pursue at this point in her life, she chose to return to the profession she loves. Although, as she points out in her characteristically wry manner, it's not exactly like she's starting all over: "[i]t's not like the days when I was commuting 35 miles south from the ranch to my office; now I'm commuting 35 miles north."

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# A proposal for increasing the independence & accountability of the Montana Supreme Court

By **Gordon Bennett**  
former Helena district judge

## Basics

■ The fundamental principle of the democracy we cherish is the rule of law.

■ However well drafted our laws may be, there will always be conflict over what they mean and how the must be applied.

■ Our judicial system was devised and exists to resolve these conflicts.

■ The indispensable requirement of that judicial system is that it be neutral. As U. S. Supreme Court Justice Anthony Kennedy has observed:

*The law makes a promise – neutrality. If the promise gets broken the law as we know it ceases to exist. All that's left is the dictate of a tyrant or perhaps a mob.*

■ Judicial neutrality can be established and maintained if, and only if, our judges are *independent* of all outside influence.

■ The *appearance* of judicial independence or the lack thereof, is as important as judicial independence in fact.

## Historical notes

Judicial independence was created and fostered by the tyranny Justice Kennedy referred to. It originated in 1215 with Magna Carta when some English barons attempted to overcome the king's tyranny by replacing his authority with the judgment of their peers and "the law of the land." From this, a primitive judicial system evolved. But the royal tyranny continued for 500 years by His Majesty sacking recalcitrant judges or cutting their wages.

Finally, in 1701, what had become Parliament ruled that the king could not fire his judges unless they misbehaved, and he couldn't reduce their salaries while in office. But 75 years later the king was still at it in the American colonies, which was complained of in the Declaration of Independence: the king "made judges dependent upon his will alone for tenure and the amount of payment of their offices."

To avert such tyranny, our constitutional founders provided federal judges with permanent tenure "during good behavior" and a guarantee their salaries would not be diminished. And one of the members, Hamilton, observed in the Federalist

papers: "The complete independence of the courts is peculiarly essential in a limited constitution." And the Montana constitution prohibits diminution of judge's salaries but doesn't provide permanent tenure, with or without good behavior.

And so it is, as we approach the 800th birthday of Magna Carta, we have little concern about royal, presidential, gubernatorial, or legislative tyranny affecting our judiciary. There is, however, a rapidly rising and ever greater concern that the independence of the judiciary, the neutrality of our courts and the rule of law are being increasingly threatened by the *tyranny of money* – increasingly large amounts of money applied by special interests to influence or determine the outcome of judicial elections.

All this came about when it was discovered that appellate courts are the bargain basement of elective finance. Consider: A U. S. Senate campaign might cost 10 or 20 million dollars and a U. S. House seat might cost half that much. A recent California campaign for governor cost one of the candidates \$140 million. But a campaign to elect a single supreme court justice whose presence on the court could change completely the complexion, orientation or single multimillion-dollar decision of the court might cost less than a million dollars. This discovery was made by a celebrated political counselor who guided its implementation with great success in many states in many elections.

Augmenting this development, the U. S. Supreme Court enfranchised corporations and other organizations as people, whose 1st Amendment free-speech right entitled them to contribute limitless amounts of money to political campaigns. It also decided that judicial candidates were entitled under the same amendment to announce their opinions on matters that were before the courts, or could be before the candidate if elected, thereby adding attraction and consideration to the electoral auction block.

The factual result can be simply stated. Between 1990 and 1999, acknowledged and recorded state appellate fundraising totaled \$83 million. Between 2000 and 2009 the ante had been raised to \$206 million. Much of this money came in large chunks from special interests laden with justiceable issues in or headed toward the courts before which they might or would appeal as litigants.

Perhaps the more disturbing data, revealed repeatedly by credible surveys, are that three-quarters if our citizenry believe campaign contributions affect the outcome of judicial decisions, and nearly half of state judges agree.



## Solutions

So what possible, workable measures can be taken to reduce the impact of money on the selection and retention of judges, principally and primarily justices of the our Supreme Court? There are no magic or simple solutions and few have been offered or attempted. Among them are replacing “non-partisan” elections with straight merit selection of all judicial candidates, public financing of elections, public education, and more timely, “daylight” on judicial campaign contributions.

Montanans are not likely to give up, entirely, the election of judges. After all, they persist and seemingly insist on electing the Supreme Court clerk. Two vain attempts have been made to obtain legislative approval of public financing. Attempts are being made by members of the Bar and educators to inform students and the electorate on courts and their function, but adequate instruction on the election and retention of judges seems far over the horizon. The state’s Political Practices Commission has jurisdiction over judicial elections but it is, and probably will be, abstemiously funded and short of resources and personnel, so its ability to shed light on judicial campaign funding is exceedingly limited.

It is only realistic to concede it will never be possible to eliminate the influence of money on politics. As far as the judiciary is concerned, that influence has been directed principally at the election of appellate court justices. The bottom-line question, then, is how can the actual or perceived influence of campaign financing on the selection and retention of our Supreme Court justices be reduced or controlled?

Inasmuch as it cannot be anticipated that the amount of money available for judicial elections can or will be limited in any way, the only way to reduce the influence of money on judicial selection and retention is to reduce the number of campaigns. I would suggest this be accomplished by establishing the system set forth below.

### Judicial independence

1. Supreme Court vacancies occurring between biennial regular sessions of the Court would be filled by *revolving appointment of district court judges* by the chief justice. This would provide valuable experience for the district judges, expedite the replacement process and provide needed assistance to the Court.

2. To *permanently replace* vacancies occurring or anticipated to be recurring between regular sessions because of resignation, death, removal, or completion of a term, the Judicial Nominating Commission would, 60 days prior to the convening of the regular Court session, invite applications of candidates to fill such vacancies within 30 days. The basic candidate qualification would be 35 years of age and 10 years of practice before the Montana bar. Within 15 days thereafter, the Commission would select and submit to the governor the names of three to five nominees and the governor would have 15 days to make his appointment. If the governor fails to act within that time the chief justice would be required make the appointment within 15 days. The appointment would then be submitted to the state Senate, which would be required to confirm or deny before adjournment.

3. Upon being confirmed, the justice would be duly installed and serve two years until the next general election at which time he would be required to stand, unopposed, on a non-partisan ballot for retention or rejection by a majority of voters voting on that ballot. If not retained, his term would conclude at the end of the year and the resulting vacancy would be handled by the Supreme Court as noted above. If retained, he would be entitled to serve an additional 18 years, or to the age of 70, whichever came first, without again standing for election.

4. In its submission to the governor, the Judicial Nominating Commission would be required to forward the applications and supporting papers of its nominees and a statement of its reasons for their nominations, all of which would be duly published. Thirty days before the retention election, the Judicial Standards Commission would publish its recommendation for retention or rejection together with a statement of its reasons for doing so.

### Judicial accountability

The above process would reduce the impact of money on judicial elections simply by reducing the number of elections. This should provide some assurance to the general public that their Supreme Court is not beholden to moneyed special interests and that their justices are free to rule independently.

But there nevertheless would be monumental resistance from the public to relinquishing its electoral franchise unless there be adequate assurance that this independence would not be abused. They would demand that judicial independence be balanced by judicial accountability.

Several measures could be taken to strike that balance. To develop confidence in the judicial selection and retention processes I would suggest reconstituting and revitalizing both the Judicial Nominating and Standards commissions.

The Judicial Nominating Commission could be revitalized, and should be in any event, by adding members of high visibility, impressive public stature, marked accomplishment, personal credibility and impeccable reputation. They should also be representative of highly diverse interests and backgrounds.

Simply as an example, I would propose this kind of constituency:

Chief justice (or a senior associate justice if the chief justice is a candidate)  
Attorney general  
Law School dean  
President of Montana State University  
Speaker of the House  
President of the Senate  
State Bar president  
Retired district judge  
Montana Chamber of Commerce president  
Montana League of Women Voters president.  
Montana Trial Lawyers Association president  
Mt. Defense Trial Lawyers Association president  
CEO of Montana Blue Shield Blue Cross  
A Native American delegate

To increase confidence in the performance of the Court as a whole and that of its individual members, I would reconstitute the Judicial Standards Commission and shed greater light on its operations. Again, as an example only, I would suggest personnel constituency along these lines:

- A retired member of the Supreme Court, if available, appointed by the chief justice
- A retired district court judge designated by Montana Judges Association.
- Delegates of The Montana Trial and Defense Trial Lawyers associations.
- Delegates of the Montana County Attorneys Association, and Montana Association of Criminal Defense Lawyers.
- A majority of non-lawyers drawn from interested associations such as the Montana League of Women Voters, domestic relations and child abuse advocates, ranchers, environmental and sports advocates, political party leaders, a physician delegate from the Montana Medical Association, etc.

The Standards Commission should be authorized to accept petitions for involuntary recusal or substitution and should revise a system for expediting their disposition. It should also bring its work out of the shadows by publishing reports of its activity to the extent practical and possible. It should report periodically on the status and state of the courts and perhaps grade their performance. And, as noted, it should publish its

recommendation that justices be retained or rejected before the single retention election.

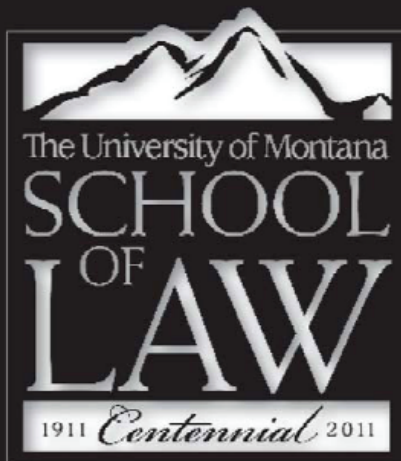
### Conclusion

During an unsuccessful attempt to obtain public financing for judicial races, the cry raised up against it was, "If it ain't broke don't fix it." The counter-cliché is, of course, "An ounce of prevention is worth a pound of cure." But the fact is the expenditure of inordinate special-interest judicial campaign funding has reached little old Montana. Since the year 2000 we have had at least three Supreme Court campaigns that have attracted total direct and political-action committee contributions of well over a half million dollars each, one of which exceeded \$845,000. So the threat of influence and corruption is real.

Is the threat great enough to require modification of our judicial campaign practices? Jean Bowman, an outstanding member of the judiciary committee of Montana's Constitutional Convention, thinks so. Karla Gray, our retired chief justice, thinks so. As does retired associate justice of the U. S. Supreme Court, Sandra Day O'Connor.

Our state is exceedingly fortunate in having an outstanding judiciary. We are confident our judges and justices preside and decide independently. It is unquestionably time, however, to shore up that independence against the threatened baneful influence of campaign finance and to balance the security of independence with full accountability on the part of the court.

○



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# A word from MLSA's new executive director

By **Alison Paul**, executive director  
Montana Legal Services Association

**A**s many of you already know, I am the new executive director of the Montana Legal Services Association (MLSA). In assuming the position from Klaus Sitte, I have some large wingtips to fill. I am honored to be given the opportunity to continue to work together with MLSA's staff and Board of Trustees and the access-to-justice community to address the legal needs of Montana's low-income residents.



Alison Paul

During my 12 years at MLSA, I have often seen firsthand the truth of Justice Hugo Black's statement "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." I started at MLSA in 1998 as an attorney with the Domestic Violence Unit. Each time a survivor of domestic violence would tell me her story, I felt a pang for the five other survivors that could not get through my door, either because we had not done a good enough job of showing them the way, or because we did not have the resources to let them in the door once they found us. That feeling led me to seek opportunities in management at MLSA, first as the managing attorney of the Domestic Violence Unit and then as MLSA's deputy director. I believed then, and still do today, that MLSA has an obligation to use the limited resources we have to provide as many people as possible with high quality legal information and assistance.

**THE MISSION OF MLSA** is to protect and enhance the civil legal rights of, and promote systemic change for, Montanans living in poverty. One of the primary ways that MLSA fulfills this mission is providing direct legal services by MLSA attorneys and paralegals. In 2010, MLSA provided direct legal services to 4,809 low-income clients. However, with only 15 attorneys available to provide direct representa-

tion to clients who may live hundreds of miles apart, we have tried to use our limited resources as efficiently as possible.

Around 2005, MLSA adopted a model of delivering legal services through statewide units specializing in certain types of law. This was a change from the "local office" approach of the past. MLSA was no longer able to afford an office in every community, and did not want to limit services to only those clients who happened to live in a location where MLSA could retain an office. Now, prospective clients can call MLSA's centralized intake unit – (800) 666-6899 – or complete an online application at [www.mtlsa.org](http://www.mtlsa.org), regardless of whether they live in Eureka or Billings, and potentially receive services from staff at any of MLSA's current locations. Using this approach, MLSA has been able to keep the number of clients served across the state steady, even while facing hard financial times and reducing the staff by 10 FTEs in 2009.

**MLSA ALSO HAS DEVELOPED** innovative technological ways to provide low-income Montanans with the tools they need to enforce their civil legal rights. For example, MLSA launched its legal information website [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org) in 2003, and usage rates have substantially grown each year since then. In recent years, MLSA's LiveHelp operators have provided assistance to website visitors and helped them find the legal information they need using live chat technology.

In addition, more than 3,000 completed documents are created each year using automated documents developed by MLSA, which walk the user through a series of questions and then automatically generate forms with the proper blanks filled in. In fact, MLSA's Self-Help Law Unit specializes in helping clients use automated web-based forms to file for dissolution of marriage. Using these and other technologies, MLSA can exponentially increase the number of people MLSA is able to help through means including advice and information, pro se assistance, direct representation by staff and pro bono attorneys, printed materials and web-based information.

MLSA has developed strong working relationships with

## MLSA is providing tax-filing services

During this tax season, the Montana Legal Services Association reminds people of its tax-related services. MLSA's Low Income Tax Clinic (LITC) provides free legal services to low-income people who have federal tax disputes with the IRS. The LITC is always in need of tax attorneys and accountants willing to volunteer their services pro bono. If you are interested in volunteering with the

LITC, please contact August Swanson at [aswanson@mtlsa.org](mailto:aswanson@mtlsa.org) or (406) 442-9830, ext. 33.

Also, MLSA is in its sixth year of partnering with Montana's credit Unions, Rural Dynamics Inc., Opportunity Link, AARP, and the Montana Department of Revenue on the Montana Free File project. Montanans can log onto the Montana Free File website to find loca-

tions throughout the state where they can receive free tax preparation and information on how to file their federal and state taxes online for free through the I-CAN! E-File program.

Last year, 6,483 Montanans took advantage of e-filing through I-CAN! and received over almost \$9 million in tax refunds. For additional information about I-CAN! and other free tax filing opportunities, visit [www.montanafreefile.org](http://www.montanafreefile.org).

organizations including the State Bar of Montana, State Law Library, Montana Supreme Court, Montana Justice Foundation, Montana Coalition Against Domestic & Sexual Violence, Montana Credit Unions for Community Development, and the Montana Office of Consumer Protection & Victim Services. In addition, and with assistance from the Governor's Office of Community Service, MLSA has actively participated in and managed various AmeriCorps programs to support MLSA and other organizations' efforts to address poverty-related issues in Montana.

Despite these efforts, much more remains to be done. In recent years, about 14 percent of Montanans – well over 100,000 people – have lived at or below the federal poverty level. With the current recession that number continues to grow, and MLSA turns away far more people than we can

serve. Given MLSA's limited resources, Montana's low-income community needs help from pro bono attorneys and other individuals and organizations willing to serve.

Throughout my years at MLSA, I continue to be impressed by MLSA's staff, Board of Trustees, and the Montana access-to-justice community. In particular, I am impressed by their dedication and innovation in the face of what feels like a continued starvation cycle of funding limitations.

As we move forward, I am committed to preserving and building upon the existing aspects of MLSA that best serve our clients, while continually searching for ways we can innovate and improve. I am asking the Montana legal community to share that commitment and support access to justice for all Montanans. ○

By **Allison Smith-Estelle**  
& **Mitzi Vorachek**,  
Domestic & Sexual  
Violence Services

## Montana lawyers need to be educated about domestic violence

The costs of domestic violence, both human and financial, are staggering. One in four American women will be battered by a husband or boyfriend (current or former) sometime during her adult life<sup>1</sup> and a total of 1,640 women and 700 men in the United States were killed by their intimate partners in 2007.<sup>2</sup> In 2010, nine of those murdered were Montanans.<sup>3</sup> Medical and mental health care costs as well as lost productivity total \$8.3 billion annually<sup>4</sup> and over 7.9 million paid workdays are lost in this country each year due to domestic violence.<sup>5</sup> Costs to the criminal justice, child welfare and education systems, and therefore to our pocketbooks and communities, are also high.

Victims of domestic violence face extraordinary challenges, and most of the time, they face several at once. Many face economic challenges brought on or exacerbated by the violence, such as the loss of income due to separation from, or incarceration of their batterer, loss of their own income due to injuries, the sudden need to pay for childcare or a security deposit, the inability to find a job.

Those who are engaged with the criminal justice system often find that the demands of such engagement – the emotional drain, the time required for meetings and court proceedings, the need to repeat their story over and over again, the delays – are exhausting.

Many are simultaneously dealing with injuries or other medical issues brought on by the violence – broken bones, post-traumatic stress disorder, head injuries, miscarriages – all of which are time consuming to address and exact financial and emotional costs.

Those with children deal with their children's fears, anxieties, confusion and sadness on a daily basis, very often while the children's father is doing everything in his power to undercut their mother.<sup>6</sup>

Adding to this long list of challenges is the relative lack of resources, legal and otherwise, available to assist victims of domestic violence in rural and frontier<sup>7</sup> communi-

ties. Rural and frontier communities are less likely than urban and suburban communities to have childcare programs, public transportation, or domestic violence shelters,<sup>8</sup> and agencies that do exist to help vulnerable populations are often an hour, or four hours, away.

Gaining access to the justice system is essential to ensure that victims receive the legal remedies necessary to prevent and minimize the lifelong and often devastating effects of these crimes. While legal aid organizations provide excellent self-help resources and serve as a resource for legal questions related to domestic violence, their caseloads and urban locations make legal assistance inaccessible to many.

Civil cases are rarely simple in the context of domestic violence and the consequences of these cases can be severe and sometimes life-threatening for victims and their children. It is much more likely a victim will achieve a positive and just outcome if an attorney is educated on the complicated, multi-faceted dynamics of domestic violence. Not only will this provide an invaluable benefit to victims knowing an attorney understands the issues they are facing, but improves the quality of service the attorney can provide.

### Busting the myths

Not all victims get pistol-whipped or punched in the face, and that there aren't always going to be documented physical signs of abuse to show a judge or jury. Shame and embarrassment keep many victims from telling their lawyers (or anyone else) about the brutal rapes or other sadistic forms of sexual violence they have experienced unless they are explicitly asked. If a victim can't remember all of the details of their

**More DOMESTIC VIOLENCE, Page 26**



Demaray



Winsick



Lynch



Diveley



Murray



Wood

## Bar staff undergoes a crop of changes

The State Bar of Montana shuffled its staff in February, hiring two new part-time employees to fill vacancies, and allowing one of its employees to move to half-time status from full-time.

The staff members with new duties or schedules are:

- **Robin Demaray**, who worked as the Bar's receptionist from 2007 to 2009, has returned to the Bar from her job at the state Office of Public Instruction. Ms. Demaray will be the receptionist on the front desk four days a week, and will become the Bar's membership benefits coordinator. She also will act as coordinator with Bar sections.

- **Susan Winsick**, an accountant, who worked for the Bar from March to July 2010, returns as a part-time accounting and dues-collecting assistant.

- **Kathy Lynch**, our front desk receptionist and publications distributor, will be the new fee arbitration coordinator, assist with CLE activities, and continue

### New AmeriCorps VISTA member joins Bar for 2011

Brooke Redden is the new Equal Justice Outreach Coordinator and AmeriCorps VISTA at the State Bar of Montana in Helena. She replaces Brendan Kelley, whose year-long volunteer program ended in January.

This year Ms. Redden will develop legal "trail guides" targeted at issues that affect low-income Montanans. These guides will be designed as a legal resource for pro se litigants in Montana.

Prior to her service in Montana, Ms. Redden grew up in Austin, Texas. She moved to Ithaca, N.Y., and attended Cornell University. She graduated with a bachelor's degree in Government in May 2010.



to do legal publications distribution. She also will man the front desk one day a week.

- **Jill Diveley**, the Bar's membership coordinator and Deskbook & Directory editor, will also be the Bar's webmaster.

- **Mary Ann Murray**, the State Bar accountant, has moved from part-time to

full-time in her accounting duties. She also is the staff coordinator with the Bar's new Finance Committee.

- **Charles Wood**, the communications director, has moved into semi-retirement at age 64, now working half-time focusing on editing *The Montana Lawyer* magazine and other publications, fly-fishing, and working on his urban farm.

## Dues & CLE packets coming in separate mailings

The dues packets for State Bar members were in the mail by March 1, and payments for State Bar dues, license tax, Supreme Court fees, and section dues must be back at the State Bar offices by **April 1**. To pay your dues online, go to [www.montanabar.org](http://www.montanabar.org) and click the "login" button at the top. Under your name, click the "renew" link. If you mail in your dues payment, please enclose the form mailed to you.

**CLE affidavits** will be mailed to Bar members on April 15 and are due back at the Bar on or before May 15. Those who miss the May 15 CLE-affidavit filing deadline will be charged a \$50 late fee. If an attorney does not file the CLE affidavit by July 1, he can face suspension.

## Area E loses one trustee

The State Bar Board of Trustees in December cut the number of trustees representing Area E, much of eastern Montana, from two to one. The move was made after a study to determine whether the geographic distribution of Bar trustees met the Bar bylaws.

Present Area E trustees Ryan Rusche and Olivia Norlin will serve out their terms before the reduction is in effect.

# Upcoming CLE seminars for Montana lawyers

## CLEs with Ethics & SAMI\* credits

\*Substance Abuse / Mental Impairment

5.0 Ethics credits required every 3 years – 1.0 of them must be a SAMI credit. See [www.montanabar.org](http://www.montanabar.org) for SAMI updates.

March 8 Billings – Crowne Plaza Hotel

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

March 11 Billings – Hilton Garden Inn

**Family Law** 7.0 CLE credits, including 1.0 Ethics credit. CLE Institute of the State Bar of Montana, (406) 447-8539. See detail of speakers, program and registration at [www.montanabar.org](http://www.montanabar.org)

March 11 Kalispell – Red Lion Hotel

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

March 11-12 Missoula – Hawthorne Suites

**CLA/CP Short Course Review for Paralegals** 13.0 CLE credits, including 1.50 Ethics (no SAMI) credits. Montana Association of Legal Assistants, (406) 543, 3800.

March 16 Billings – Crowne Plaza Hotel

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

March 16 Webcast

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

March 17 Missoula – Hilton Garden Inn

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

March 18 Butte – War Bonnet Inn

**Medical Marijuana** CLE 6.25 CLE credits, including 1.0 Ethics (no SAMI) credit. CLE Institute of the State Bar of Montana, (406) 447-2206. See detail of speakers, program and registration at [www.montanabar.org](http://www.montanabar.org)

March 18 Missoula – Grant Creek Inn

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

March 22 Teleconference

**How Ethical Rules Govern the Conduct of Estate Planners** 1.50 CLE credits, including 1.50 Ethics (no SAMI) credits.

## Other web & phone CLEs for Montana credit are:

■ For the State Bar of Montana's approved online CLEs, go to [www.montanabar.org](http://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=broseLive](http://www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=showAppPage&pg=semwebCatalog&panel=broseLive)

■ Lorman Education Services' teleconferences at [www.lorman.com/teleconferences/](http://www.lorman.com/teleconferences/)

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

Cannon, (800) 676-0734

March 25 Bozeman – Wingate Inn

**New Lawyers CLE** 5.0 CLE credits, including .50 Ethics (no SAMI) credit. New Lawyers Section of the State Bar of Montana (406) 761-3000.

March 25 Bozeman – Holiday Inn

**Land Use Law** 6.0 CLE credits, including 1.0 Ethics (no SAMI) credit. National Business Institute, (800) 930-6182

March 25 Missoula – DoubleTree Hotel

**Attorney-Paralegal Practices** 6.25 CLE credits, including 1.0 Ethics (no SAMI) credits. Paralegal Section of the State Bar of Montana, (406) 447-2206

April 6-7 Butte – War Bonnet Inn

**Housing Conference** 14.0 CLE credits, including 2.0 Ethics (no SAMI) credits. Montana Fair Housing, (406) 782-2573.

April 7 Billings – location to be announced

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

April 13 Webcast

**The Art of Advocacy** 3.35 CLE credits, including 3.35 Ethics (no SAMI) credits. Periakto Productions, (605) 787-7099

## All other CLEs

March 10-11 Helena – Metcalf Building, Capitol Complex  
**Writing Administrative Rules of Montana** 10 CLE credits. State Professional Development Center, (406) 444-8539

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

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

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

April 5 Webinar  
**Social Media CLE** One-hour noon webinar. CLE credits pending. CLE Institute of the State Bar of Montana, (406) 447-2206

April 7 Tele-webinar  
**Paralegal CLE: Cheap & Easy Online Legal Research** 1.0 CLE credit. IPE, (866) 240-1890

April 8 Helena – Holiday Inn Downtown  
**Natural Resources Permitting** 6.75 CLE credits. CLE Institute

of the State Bar of Montana, 447-2206.

April 19 Webinar  
**.PDF Security & Metadata** One-hour noon webinar. CLE credits pending. CLE Institute of the State Bar of Montana, (406) 447-2206

April 21 Missoula – Missoula County Courthouse  
**The Law, the Guardian, & Understanding the ICWA** 1.0 CLE credit. 4th Judicial District Court, (406) 258-3461

April 22 Missoula – DoubleTree Hotel  
**Public Road Law** 7.50 CLE credits. Western Seminars, (406) 777-3669.

April 25 Helena – Colonial Hotel  
**Public Road Law** 7.50 CLE credits. Western Seminars, (406) 777-3669.

April 26 Teleconference  
**Allocation of Assets in Estates** 1.50 CLE credits. Cannon, (800) 676-0734

## STATE BAR CALENDAR

March 11  
**Family Law Update CLE**, Hilton Garden Inn, Billings

March 14  
**Content & advertising deadline** for April *Montana Lawyer* magazine

March 29

March 18  
**Medical Marijuana Update CLE**, War Bonnet Hotel, Butte

March 18-19  
**Lawyers' Assistance Program Committee** meeting, Fairmont Hot Springs

March 25  
**Attorney-Paralegal Practice Points CLE**, DoubleTree Hotel, Missoula

March 25  
**New Lawyers' Section CLE**, noon-5 p.m., Wingate Hotel, Bozeman

March 29  
**One-hour Technology Webinar**, noon-1 p.m. Investigative Tools for Lawyers on the Internet

**Commission on Self Represented Litigants** meeting, 1:30 p.m., State Law Library, Helena

April 1  
**Deadline for return** of dues statements and dues to Bar  
April 5

**One-hour Technology Webinar**, noon-1 p.m. Social Media

April 7  
**State Bar Executive Committee** meeting, Missoula

April 8  
**State Bar Board of Trustees** meeting, 9 a.m., UM School of Law

**Natural Resources/ Permitting CLE**, Holiday Inn Downtown, Helena

April 15  
**CLE affidavits mailed** to Bar members

**Content & advertising deadline** for May *Montana Lawyer* magazine

April 19  
**One-hour Technology Webinar**, noon-1 p.m. .PDF Security & Metadata

April 29  
**Practical Practice Tips CLE**, Holiday Inn Downtown, Missoula

May 14  
**CLE affidavits due** back at State Bar offices



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## Law School celebrates 100th birthday

On Feb. 17, the University of Montana School of Law celebrated its centennial birthday. What began with a small class of 17 men in 1911 learning mostly legal theory on the third floor of Main Hall has grown into a professional school with a shiny new building that admits about 80 students annually and prides itself on graduating lawyers with practical legal experience.

The school has amassed a long list of distinguished alumni who have gone on to become governors, federal judges, attorneys general and Montana Supreme Court justices. Alumni have served as the deans of law schools at Duke and New York University. In the last decade, the U.S. attorney general, FBI director, U.S. solicitor general and four U.S. Supreme Court justices have given presentations at the law school.

Since UM was founded in 1893, university leaders discussed the need for a law school, but the idea wasn't developed further until after an endowment was established in memory of William Wirt Dixon, chief legal counsel for the Anaconda Copper Mining Co., who died in 1910. The law school was the second professional school established in Montana after the School of Engineering, which was transferred to Bozeman in 1913.

## Women's Law Section to hold annual dinner

The Women's Law Section of the State Bar will hold its annual Spring Dinner in Missoula on Friday, April 29, to honor women in the legal profession.

At the dinner, the Section will honor the winners of the Fran Elge Scholarship and the Margery Hunter Brown Assistantship. Missoula District Judge Karen Townsend will be a speaker.

The tapas-style dinner will be held at the Stensrud

Building at 314 N. First Street in Missoula at 7 p.m. A reception begins at 6:30. The cost is \$30 per person. The dinner will include two courses (2-3 tapas dishes per course) and a dessert course, from Silk Road Catering. The menu also will include vegetarian and gluten-free options..

The Women's Law Section will hold its annual membership meeting at 5:30 p.m. on April 29, just prior to the dinner. All members, and anyone interested in becoming a member, of the Women's Law Section are invited to attend the meeting and dinner.

## Legislator wins Women's Law assistantship

The Women's Law Section will award its 2010-2011 Margery Hunter Brown Law Assistantship to Rep. Michele Reinhart, a third-term Montana legislator and second-year law student at the University of Montana.

On April 29, Rep. Reinhart will present her research and activities exploring the feasibility of an environmental crimes unit in Montana. Rep. Reinhart's presentation will be held at noon, in the Castles Center of the UM School of Law, and any interested parties are encouraged to attend.

The Margery Hunter Brown Law Assistantship was established in 1993 in honor of Brown, upon her retirement as professor and dean of the School Law. It encourages scholarly commitment to human equality and the resolution of issues concerning Indian Law, public land and natural resources law, the rights of women and minorities, or a combination or variation of these areas. The award recipient receives between \$500-\$1,000 and must present at a seminar or other appropriate forum the results of research, a project, or activities in which the recipient has been engaged as a result of the assistantship.

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## THE FUTURE, from Page 4

I recently had an opportunity to attend a round table conference on mentoring. Several of the states and programs described above were represented.

Randy Emelo of Triple Creek Enterprise Mentoring Systems presented on the state of mentoring. Triple Creek specializes in the study and development of mentoring programs in the corporate world, including companies such as Dow, McDonald's, AT&T, and others. Part of their process focuses on adult learning. The idea being, if mentoring is a form of teaching, you must understand the student's learning processes to have a successful program.

Mr. Emelo's presentation politely but quite bluntly suggested a one-on-one

assigned mentoring program is contrary to how we have taught this next generation to learn. He also suggested such a mentoring process is contrary to how this next generation of learners uses technology to process information. What was clear, from an adult learning perspective, was that our traditional form of mentoring dating back to the 1800's may not be the best method to assist new lawyers in the practice of law.

The presentation in no way suggested mentoring, as a whole, was some how obsolete. Rather, he suggested new approaches that are being used in corporate settings which could be adapted to Bar programs.

**DUE TO LIMITED SPACE**, I will leave you in suspense until next month's

President's Message to discuss these suggested new and different approaches. In the meantime, I want to issue this month's challenge. I want to hear from you. I want to hear what you think is good or bad about mentoring. I want to hear suggestions as to what should be in a program. I want to hear opposition to such a program. I want to hear what you would need in such a program. I want to hear what you would be willing to contribute to such a program. You can send your comments to me directly at [jsullivan@dslawoffices.net](mailto:jsullivan@dslawoffices.net).

If you want to help shape the future of the profession, this is such an opportunity. Speak now or forever hold your peace. ○

*The following State of the Judiciary message was delivered to the 2011 Montana Legislature in February by Chief Justice Mike McGrath:*

## '1,000 cases each day'

### Chief Justice Mike McGrath's State of the Judiciary

Reagan, after noting that he occasionally disagreed with some of their decisions, stated:

*I know that the Supreme Court of the United States is the only group . . . in history that has exercised significant authority*

*over such a long period of time without having need for battalions of fighting men to enforce their decisions . . . . It's a healthy reflection of the fact that the vast majority of our citizens respect and abide by the decisions of the judiciary as a matter of course.*

In Montana, our courts process 1,000 cases each day – 365,000 per year. That, of course, includes all matters, including misdemeanors. But it adds up to one case for every three Montana residents. At 1,000 cases per day, our courts are busy and, in our larger communities, the workload for court employees is very heavy.

Many people come to court because their lives are in crisis. They include victims of crime, and people charged with crimes, children suffering from child abuse, ranchers who can't irrigate because of a water dispute, businesses being wrongfully sued by disgruntled employees, workers injured on the job, neighbors fighting over disputed property boundaries, entrepreneurs challenging the government's interpretation of legislation and mothers seeking child support to buy diapers.

They come because they know they have rights. They know that there are laws that will protect them. They know they will get an answer to their problem.

And they know they will be treated fairly, by an independent judge – not a person beholden to money interests or partisanship or social status. Rather a judge who will listen to their grievance and make a decision based on the merits of each individual case.

If you listen to the grievances being expressed by the demonstrators in the Middle East these past few weeks – what you hear. . . they want what we have. They want a right to be heard by their government. They want to be governed by the rule of law and not by fiat as determined by despotic rulers and autocratic administrations.

Our founders developed a system that has become the blueprint for political and economic success for the modern world.

In the words of historian Joseph Ellis, American success is: "about the triumph of representative government bottomed on the principle of popular sovereignty, a market economy fueled by the energies of our citizens, a secular state unaffiliated with any official religion, and the rule of law that presumes the equality of all."

What our founders knew was that if this republic they had created was going to succeed, it had to be based upon the rule of law, and that rule of law requires an independent and impartial manner of resolving disputes – be they commercial matters, family crises, criminal charges or removal of public officers. And as Ronald Reagan said: "our heritage of individual liberty is dependent on the rule of law."

And the system works!

**SPEAKING TO THE** Supreme Court in 1982, President

Ted Olson served as the U.S. Solicitor General in a Republican Administration. His wife was killed on 9/11. Some of you have heard me quote his remarks, written in the *Wall Street Journal*, before, but I think it is worth the repetition:

*Every day, thousands and thousands of judges – jurists whose names we never hear, from our highest court to our most local tribunal – resolve controversies, render justice, and help keep the peace by providing a safe, reliable, efficient and honest dispute resolution process. The pay is modest, the work is frequently quite challenging, and the outcome often controversial. For every winner in these cases, there is a loser. Many disputes are close calls, and the judge's decision is bound to be unpopular with someone.*

*But in this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful society. And a robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law. . . . Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process.*

**THE JUDICIARY IN MONTANA** understands that we have the responsibility described by the President and strive daily to ensure that we uphold these traditions.

Those 1,000 people per day that end up in our courts know that our justice system is based on the rule of law and not individual whim. Our disputes are resolved within an orderly system that provides all parties the opportunity to be heard, and is based upon law.

In fact, our economy depends on this independent system. Investors and other businesses have the right to rely on an orderly and prompt dispute resolution process. They have the freedom to enter contracts and the ability to have those contracts enforced. They know that even in the most remote



courthouse in Montana, they will get a fair hearing and a timely decision.

Furthermore, individual citizens have the rights enunciated in our Constitution and the ability to enforce those rights whether they are in Libby or Terry, Billings or Butte. And all of us have the right to expect the courts to make those decisions based on the merits of each individual case – by judges independent of bias, prejudice or political influence.

**AS AN INDEPENDENT** third branch of government, our responsibilities are great but our needs are small.

Our budget is less than 2 percent of the general fund. Yet we recognize that with judicial independence comes the corresponding responsibility to be accountable: accountable to the people who elect us, and accountable to the Legislature, especially as to how we spend public funds.

In an effort to be more accountable, the judicial branch has undertaken a series of performance measures. At the Supreme Court, a number of new case processing measures have been implemented.

Last session, I told you that the Court is very much aware of concerns about backlogged cases. Significant improvements have been made – I can now tell you that our caseload is current. We have no cases over a year old and our average time to resolve a case is less than 100 days. And, because we are current, we were able to shift personnel from the Supreme Court to our most crowded district courts in Gallatin and Cascade Counties.

District Court performance standards are now being developed. Surveys of court users are completed and formulas have been adapted to accurately measure caseloads and case timeliness. The efforts you made last session to add three District Court Judges in Yellowstone, Flathead and Lewis & Clark Counties are just beginning to show improvement. The people in those communities and the judicial branch thank you for that assistance.

**ALSO LAST SESSION**, we experienced significant budget reductions – including vacancy savings and across-the-board cuts. Plus, at the request of the executive branch, we reduced our appropriated budget by a significant amount. Our branch consists of 54 independently-elected officials, 46 of whom are elected from their local community. As the vast majority of our budget consists of personnel costs, it is hard to find additional areas to cut.

We have done a good job of managing our resources; we have found the waste. Additional budget reductions will fall on the backs of the overworked local judiciary and inevitably result in delay and court backlogs. Of course the losers under that scenario are your constituents, especially small business and working people.

We have learned that backlogged courts are bad for business. We are trying hard to remedy that problem. However, we do have ways that the Judiciary can help with future budgets.

Drug courts and treatment courts in general can and do save taxpayer dollars. And the last two sessions, legislators had the foresight to fund a small portion of these programs.

Not long ago 50 percent of the children in foster care were

there because of their parents' use of drugs – methamphetamine in particular.

An incredibly high percentage – up to 90 percent – of prison inmates (both male and female) are incarcerated with chemical dependency problems – as many as half for meth. And, of course, many of our prisoners have severe mental illness problems.

All of these social problems cause a tremendous drain on state and local government budgets. That is why the new governor of Georgia announced, in his inaugural address last month, that he was proposing increased funding for drug courts as a cost-saving measure.

**TREATMENT COURTS DIVERT** some of these people to less expensive and more effective alternatives. They can keep kids out of Pine Hills or even more expensive out-of-state placements. They divert new commitments from our state prisons to less expensive alternatives in the community.

Drug courts reunite shattered families and turn participants into productive members of society. Recently, we issued a report that catalogs the success of Montana's drug courts. Some of the highlights include:

- The re-offense rates for those participants that had been discharged for two years or more are remarkable, only 1.2 percent were arrested for a felony, and only 10.5 percent committed misdemeanors. That means that only 10 percent committed as much as a misdemeanor, a significant drop in recidivism.

- Adult drug court graduates had a 17.6 percent increase in employment during the program, family Drug Court graduates had an incredible 61.8 percent increase in employment.

- In two and one-half years, 20 participants were pregnant – 14 gave birth while in the program, 12 of those babies were born drug free, an immense saving of taxpayer dollars.

Many of our judges in Montana are committed to addressing these problems in their communities – problems they see every day.

Treatment courts are a strain on judges' time and energy. However, they are very rewarding as well. They do see good things happen in a courtroom – not a common occurrence in our courts.

Nationally, it has been proven that treatment courts are by far the most effective thing we can do to address drug abuse and the problems that go with it.

**WE ALSO PROPOSE** to continue our Court Help Program, to assist individual Montana citizens with court service areas, places where you can get proper forms and assistance with the court process without unnecessary expense. Not all legal matters need attorneys. There are many ways we can simplify the process and provide people with helpful solutions.

Most people cannot afford an attorney – so they come to court without. Fully 30 percent of our Court's cases are presented with at least one party not represented by an attorney.

In Flathead, it's 80 percent of the domestic relations cases.

These cases tend to be very messy, these cases are time consuming, these cases are very frustrating—not only for the Judge but the parties themselves.

This program provides some direction—some explanation of how to navigate through the process, it does not offer legal advice.

Since the program began, our two full-time centers in Kalispell and Billings have assisted 12,000 individuals and small businesses navigate through the complexity of our court system. We do this with volunteers who are recruited and trained by the limited staff that we have. Because our tiny budget is leveraged by volunteer labor, this program operates in 24 counties—all across our state.

This program does significantly increase judicial efficiency and it does reduce court backlog.

Finally, we hope to be able to introduce some new efficiencies at the Water Court thanks to suggestions from the

Legislative Audit Committee. Started in 1979, the task is to quantify every water right, in every drainage, in the state of Montana—all 220,000 claims—a monumental task. We are working with Representative McNutt and Senator Wanzenried on a proposal that will be coming your way soon.

The way our citizens approach the court system is changing dramatically; clearly our courts must adapt to these changing times.

Thanks to you, last session, for providing some funding for these important programs. I hope they will be able to continue. We believe our proposals will help to ensure that the small business owner, the man injured through no fault of his own, the mom, the defendant wrongly accused, and the child crying in the crib get their opportunity to resolve their crises. We also hope that by making the court system more efficient and responsive to the public's needs, we can avoid coming to you in a future session asking for more judges. ○

## Panel picks Kalispell attorney to be federal-judge nominee

From the **Missoulian**

Kalispell attorney Dana Christensen has been tapped for consideration as a candidate to replace U.S. District Judge Donald Molloy, of Missoula, who will begin senior status this summer.

Christensen, 59, confirmed his interest in the job as a federal judge in February, and U.S. Sen. Max Baucus, D-Mont., has submitted the Kalispell attorney's name to President Barack Obama for consideration.

"I understand that I am under consideration, and it is a great honor," Christensen said.

In December, following Molloy's announcement that he would retire in August 2011, Baucus named a committee of five Montana attorneys to search for a replacement for Molloy.

In January, Billings attorney Martha Sheehy, who co-chaired the selection committee, sent Baucus a letter announcing that the five members had chosen Christensen unanimously.

"We have received expressions of interest from (and concerning) numerous very qualified candidates," Sheehy stated in the letter. "The committee unanimously and enthusiastically recommends the nomination of Dana Christensen of



Dana Christensen

were: James Goetz, Bozeman; Candace Fetscher, Missoula; Karla Gray, a former chief justice of the Montana Supreme Court, Helena; and Milton Datsopoulos, Missoula.

President Obama will now make a nomination for the judicial post and forward it to the Senate for approval.

Attorneys who have practiced law with Christensen, as well as Montana's two other federal judges, say the experienced attorney is well-suited for a federal judgeship.

"I don't think there is a better prospect in the whole state," said U.S. District Judge Richard Cebull, of Billings, who was nominated by President George W. Bush in 2001 and

Kalispell. Mr. Christensen's character, reputation, intelligence and knowledge of the law make him an ideal choice for Montana's federal district court."

Other committee members

confirmed by the Senate the same year. "I can't imagine anyone who knows Dana's background and his history, Democrat or Republican, is going to object to him filling Judge Molloy's vacancy. There is not a better selection that can be made."

When Cebull was a lawyer specializing in medical malpractice cases, defending hospitals and physicians embroiled in civil litigation, he and Christensen represented clients in the same cases. Christensen's talent in the courtroom was evident then, Cebull said, and his legal chops have only been sharpened through the years.

U.S. District Judge Sam Haddon, of Great Falls, also a 2001 Bush appointee, said Christensen has built an unassailable reputation among judges and other Montana attorneys.

"He is in my opinion a very fine lawyer and he is a good man," Haddon said. "If he is confirmed by the Senate and is sworn in as a judge I would be pleased to work with him."

Haddon noted that Christensen is a member of the American College of Trial Lawyers, an organization whose bylaws limit members to one percent of the national bar. An attorney cannot become a member except by invitation.

"There are a lot of lawyers in Montana who believe Dana is the finest insurance defense lawyer in the state," said Greg Munro, a law professor at the University of Montana and former classmate of Christensen's. "He is recognized



for his excellence in appearing in front of juries, developing cases, clients, his excellent intrapersonal skills with people – all of those traits will serve him well as a judge.”

The importance of a federal judge’s role cannot be overstated, Munro said. “There are people who believe that being a United States Article 3 federal judge is more important than being a United States senator,” he said. “Federal judges have a tremendous amount of power. You can see it in the difficulty of the natural resources and environmental decisions Judge Molloy has been forced to make, decisions that will affect the state for years and years to come.”

Although it is customary for a president to nominate a candidate to the federal bench after conferring with the senior senator from the state where the judge will serve, Baucus’ office emphasized that he is not responsible for the nomination.

In 2009, when Baucus recommended his current fiancé, Melodee Hanes, as a candidate for Montana’s U.S. Attorney, it was Christensen who vetted the senator’s recommendations. Hanes was a former state office director for Baucus, and her consideration as U.S. Attorney came under scrutiny when it was revealed that she and Baucus were romantically involved. At the time, Christensen said he did not know the two had a romantic relationship, and that Hanes was well-qualified for the position. The job of U.S. Attorney ultimately went to Mike Cotter, a Helena attorney.

Responding to Republican criticism that Christensen appears to have had a political advantage in the recommendation process, Judge Cebull said politics has nothing to do with it.

Given the current political leadership in Montana and the United States, Cebull said it’s only natural that a Democrat would get the nod for the federal judgeship.

“When Sam [Haddon] and I were nominated we were being nominated as Republicans,” Cebull said. “I was appointed by a Republican senator, and now we have a Democratic president, two Democratic senators, and a Democrat is going to be nominated as judge. Big deal!”

○

## COMMENTARY

# Public defender chief, commission dedicated to improvement

*Kenneth Olson, Great Falls attorney and vice chairman of the Public Defender Commission, wrote the following in response to recent publicity regarding former commissioner James Taylor’s resignation from the Commission.*

I have been on this Commission for about two years. I have reviewed with interest and some dismay, Jim Taylor’s resignation letter. The dismay arises from the timing and the attendant negative article in the Helena newspaper. I have tremendous respect for Jim Taylor and all that he has contributed to this system, in its inception, creation and nurturing. He is owed great respect and gratitude for his vision, effort and devotion.

I don’t presume to know Mr. Taylor’s thoughts other than what he’s expressed in his letter. Nor do I choose to debate with him nor attempt to change his mind. I do believe the American University study, which I know Mr. Taylor was instrumental in bringing about, has caused everyone in the system to focus on improving it. I have had the unique opportunity to observe its effect. Change does not occur overnight, nor does it occur without resistance and setbacks. But, I believe that significant change has occurred, and is occurring, particularly due to the system’s reaction to the AU study. I hope that Jim Taylor can take some satisfaction in that fact.

Changes that I’ve seen and have been pleased with are these:

**(1) I HAVE LISTENED** to former Commission Chair Mike Sherwood praise Randi Hood’s effort in getting this program up and operating from scratch. Surely that was a most daunting task. I am not privy to all the

machinations and relationships that were engendered in the early years. I have listened to complaints about Randi’s leadership from different sources. I am not naive enough to believe that some of the complaints, including Mr. Taylor’s, may have some basis in fact.

But I can only form opinions based on what I know. As a commissioner, I have been pleased that, when an issue arises, it is promptly dealt with by the office. I agree with Mr. Taylor that we are lucky to have Harry Freebourne’s services and echo his praise of Harry’s contributions. But I have seen Randi Hood, Harry, Cathy Doyle, and their staff pull together to address constantly arising issues. I have not seen resistance nor complaints but, instead, compliance or good faith attempts at same.

The Commission has made consistent demands on Randi Hood and the main office. We have had prompt responses. I have seen a great effort to make things work. I don’t know what happened before to cause Mr. Taylor to question Randi’s leadership. But, speaking only for myself, over the last two years, I’ve seen nothing that would cause me to believe she needs to be replaced.

**(2) THE EFFORTS** of Mike Sherwood caused the Commission to try to make the process and operation more open to everyone in the system. We’ve established liaisons. We’ve held meetings where “the troops” have had the opportunity to meet face-to-face with Commissioners. They are free to tell us their problems and complaints. Many of them have had the courage and the commitment to do so. That opportunity to communicate remains and is encouraged.

At Commission meetings, we now

have most regional deputies, several FTEs, contract attorneys, staff members, and others in attendance. I believe we have had more feedback, accessibility, and discourse now than when I was first a commissioner. As a Commission, we've addressed problems in Kalispell, Billings, and Missoula when we've become aware of them.

Are there still problems? Sure. Do we still fall short at times? Certainly. But, my perception is that we have a much more open, cooperative, and engaged group of people – across the board – that we did when I became a part of the Commission.

The AU criticisms have all been addressed. It has caused us all to make many needed changes and they are occurring. Our information gathering system has been very greatly improved. Our attorneys – FTEs and contractors – are cooperating to input data relating to case openings and closings. Our case weighting system is in place and providing better and much needed information. All our personnel have been evaluated. I believe significant efforts are being

made, by everyone, to improve the system.

**(3) I APPLAUD** the effort that has gone into addressing the AU criticisms that were identified. I don't believe the public appreciates the efforts that have been made. Recently, I attended the legislative committee meeting regarding our budget. I was pleased to see that it was well attended by staff, regional deputies, FTEs, contract attorneys, union reps, Commission members, and many others in support of our goals. As I recall, we had difficulty getting such a response at the legislative hearings at the last legislative session. People are more much engaged.

Mr. Taylor mentioned that the Commission has failed thus far in its efforts to obtain a reasonable hourly rate of compensation for the contract attorneys ... We haven't "failed" in the sense that we haven't tried. We are trying once again to convince the Legislature to increase the funding. It is woefully low. We all know that. But, in the end, we are at the mercy of the Legislature. We all share Jim's frustration in this regard.

I am proud of the effort Fritz Gillespie has made as our new chairman. He has provided effective leadership and dedicated a great deal of time and effort

to the tasks at hand. He is to be commended.

**(4) LASTLY**, as a commissioner and a criminal defense lawyer, I realize that this system can only work effectively, through the efforts of those in the trenches. It is not easy work, especially with the pay that is available. I hope that our "troops" do not believe their efforts are not appreciated by our Commission members. They are appreciated very much.

It is very easy to become discouraged. But I would urge all to keep the faith, keep up the good work that you are doing, and keep striving to improve the system. I don't know that it is necessary to tear it down in order to improve it. I believe that, as a Commission, we certainly have the will to keep improving the system. Hopefully, the Legislature will listen to the strong case that has been made to fund the pay ladder, approve hiring new FTEs and increase the hourly rate for the many fine contract attorneys. If it does not happen, it will not be due to a lack of concern, effort, or will of anyone in the system, including the members of the Public Defender Commission. ○



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## Court appointments

*The Montana Supreme Court has appointed the following persons to Court commissions and task forces:*

- **Commission on Rules of Evidence** – Helena attorney Brant Light was appointed to a four-year term to replace Helena attorney John Connor, whose term expired. Great Falls attorney Elizabeth Best was reappointed to a new term.
- **Equal Justice Task Force** – The Court reappointed to new three-year terms Task Force members Alison Paul, State Sen. Shannon Augare, Helena attorney Tammy Plubell, and Billings District Judge Mary Jane Knisely.
- **Commission on Self-Represented Litigants** – Kim Crowley, library director of the Flathead County Library System, was appointed to a three-year term, replacing Peg Allison, whose term expired. Billings District Judge Russell Fagg was reappointed to a new three-year term.

By **Steve Adams**

## Faxing in the age of privacy

The presence of digital documents loaded with confidential information firing around the Internet has drawn identity thieves, hackers and other nefarious characters like ants to a picnic.

And why not? While the technical know-how to pull a document out of cyberspace might be beyond the capabilities of the average Internet user, it is often child's play for those want to steal your private information for their own purposes. If corporate giants can't guarantee security [think WikiLeaks], what chance does the ordinary small attorney practice have?

Identity thieves are just one reason the Health Insurance Portability & Accountability Act (HIPAA) prohibits confidential patient medical records from being sent via e-mail. The U.S. government says e-mail is just not secure enough.

It's also one of the reasons faxing still remains so prominent in industries such as the legal profession, healthcare, real estate, mortgage banking, insurance, and others that need to transmit large amounts of confidential information quickly. Because faxes use a different type of technology to break documents into electronic bits during transmission, anyone trying to intercept a fax would end up with nothing more than a lot of incomprehensible gobbledygook.

**EVEN WITHIN** the faxing world, however, there are different degrees of security and privacy. At the low end sit fax machines. While they are secure during the transmission part, they still leave security or privacy holes.

One of the biggest is that since fax machines are expensive to own and operate relative to their day-to-day value, most are shared between all the workers in a department or an entire company. As a result, they sit in a common area where they can be easily accessed. Unfortunately, that also means documents that come in on the fax machine sit exposed, available for anyone to view.

Then there are the issues with sorting and distributing. If one person delivers faxes, he will have to at least get a quick look at what's there in order to decide where it goes. This means people other than the intended recipient can view the potentially private information. And there's always the possibility that a fax can be delivered to the wrong person, further exposing confidential information. If that person decides to do something bad with it, the results can be disastrous.

**PRIVACY IS ALSO** a concern at the sending end. If you walk away while sending a 10-page fax, that information is going to sit out in the open until you retrieve it. Not exactly the picture of confidentiality and trust you're hoping to portray.



So if you can't send e-mails, and fax machines aren't secure enough,

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abusive situation, nor tell their story in chronological order, it doesn't mean they are lying. Head injuries, long-term denial or suppression, or living in constant crisis are just some of the reasons a clear response can be difficult for a victim to produce.

Victims don't always report their assaults to law enforcement and rarely leave the abusive relationship the first time violence occurs because their abusers beg them not to or promise to kill them if they do. Victims often return to the abusive relationship because they and their children are physi-

**The Domestic & Sexual Violence Services in Carbon County is really the gold standard of domestic violence services. A recent grant to extend services to teen education was a feather in their cap.**

— Patricia Fain, Montana pro bono coordinator

cally threatened, stalked and harassed. They may have recanted during a previous criminal case, dropped a protective order, or displayed other seemingly counterintuitive behaviors because of threats or promises of change. Many victims are challenged by their religious faith that shames them for considering divorce, or by their communities who help perpetuate the myth that all children need a mother and a father, regardless of how much one parent may abuse the other. Many victims still love the perpetrator who beats them.

It's not just victims of domestic violence that need to be understood. Many perpetrators are charming individuals to the outside world. They are often well-spoken, calm, and in control. They are skilled at making their victims look crazy and unstable, and masters at manipulating children to say bad things about the victims. They are the breadwinner of the family and may appear to be a source of stability.

In order to effectively serve victims of domestic violence, lawyers need to not only understand the legal issues surrounding domestic violence – order of protection, divorce, custody – but also to put the dynamics of domestic violence into context. The ability to educate judges and juries about the realities of and circumstances surrounding domestic violence, respond to opposing counsel's attempts to discredit a victim, ask detailed questions of their clients and the perpetrators in order to paint a complete picture of the violence and its impacts, is critical.

### **Effective representation of domestic violence victims**

Beyond explaining the dynamics inherent in domestic violence cases, lawyers need the skills to explain to a judge why children need to be included on an order of protection or why visitation or joint custody can be dangerous for both the children and the victim. Aside from the fact that between one-third and one-half of all men who abuse their female partners also abuse their children, research shows that exposure to domestic violence causes negative changes in brain structure and function in growing brains, some of which cause enduring emo-

tional, behavioral, cognitive, social, and physical problems.<sup>9</sup> Despite these facts, many judges still do not make the link between domestic violence against a parent and the effect of that violence on the children.

Approximately 76 percent of women killed by their batterers were stalked in the year prior to the murder. Acts of physical violence increase in intensity and frequency after a domestic violence victim has left the relationship. Women who leave their batterers are at 75 percent greater risk of severe injury or death than those who stay,<sup>10</sup> so those who choose to leave often need to take dramatic steps in order to do so safely. An attorney who can effectively articulate why a victim wants a name change, has moved around in the past or needs to relocate with her children will often determine if justice is served in the end.

Economic abuse is a common form of domestic violence and includes sabotaging a person's efforts to work or go to school, not allowing her access to the family checking or sav-

ings account, or refusing to put her name on a home mortgage or car loan, effectively limiting her ability to build credit.

These tactics are used to maintain control over another person and limit options for financial independence. An effective attorney can educate about why a victim finds herself in a more economically disadvantaged position as it pertains to division of assets or placement of children.

The good news for Montana lawyers is that training and other resources are available. Most communities have domestic violence programs, whose trained advocates are skilled at providing emotional support to victims seeking legal action and have tools to help victims share their stories, which in turn allows attorneys to focus their time and efforts on the legal case. Advocates are a valuable resource to lawyers and should be viewed as such. Second, trainings are available at both the state and national levels to help attorneys gain the knowledge and tools they need to more effectively serve their clients. Finally, lawyers should consider seeking out the services of expert witnesses. Expert witnesses are trained as forensic experts who testify about their expertise as specifically relates to a case, as well as general experts, who can testify about the dynamics of domestic violence and/or advise counsel.

### **The difference**

Despite threats, stalking, and economic hardship, victims of domestic violence leave abusive relationships all the time. They often find themselves in court without a lawyer when their perpetrators have legal counsel. They find the courage to struggle through complicated legal paperwork on their own, attempt again and again to find legal resources, borrow money to pay for legal fees, and occasionally succeed in legally freeing themselves from their perpetrators and creating greater safety for themselves and their children.

In the end, domestic violence victims want what we all want: safety, fair treatment, respect and justice. For victims of

Knowledge and application of sound legal practices make nonprofit organizations more effective and better able to

focus their resources on supplying the vital resources needed in their communities. Fortunately for Domestic & Sexual Violence Services, the law firm of Holland & Hart sees pro bono work as an important component of its vision and values and extends that belief with its pro bono representation of DSVS.

Dr. Allison Smith-Estelle, executive director of DSVS, said, "Having competent, reliable legal counsel isn't possible with our modest budget but is really essential for our organizational mission.

## How Montana law firms can help domestic violence programs

Holland & Hart allows us to focus on what we do best – serving those in crisis. The benefit extends far beyond our non-profit doors."

DSVS and similar organizations also have benefited from the generous contributions of services by Crowley Fleck which declares it is "committed to the philosophy that community service is part of the privilege of practicing law." In 1996, the firm took a unique step and joined a handful of firms in the U.S. by forming a full time, in-house pro

bono program. Gary Connelley who has guided Crowley Fleck's program for the past 14 years stepped up and provided much

needed guidance and counsel to advocates, staff, and directors.

The Montana Supreme Court Statewide Pro Bono Program is partnering with DSVS to create and deliver domestic-violence specific continuing legal education for Montana attorneys. Consider participating when the opportunity is available. For information about future training, CLE or resources, contact Patty Fain at [pfain@mt.gov](mailto:pfain@mt.gov) or at (406) 794-7824.

domestic violence, the legal system may be their only chance to be safe, and an attorney may be the only one who can make that happen. As difficult as some of these cases can be, it is critical that victims of domestic violence have appropriate legal counsel. In Montana on more than one occasion, lack of access to legal representation for a domestic violence victim contributed to their death. We have no choice but to do better and we need your help to get there.

**ALLISON SMITH-ESTELLE**, PhD, is the executive director of Domestic & Sexual Violence Services, based in Red Lodge. She received her doctorate from the Harvard School of Public Health in 2003 and serves on the faculty of Montana State University-Billings.

**MITZI VORACHEK** is the founder, former executive director, and now program director for DSVS. Both Smith-Estelle and Vorachek have been certified as expert witnesses for domestic violence cases. They can be reached by phone at (406) 446-2296 or via e-mail at [info@dsvsmontana.org](mailto:info@dsvsmontana.org).

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6. For the purposes of this article, the authors will refer to victims of domestic violence as female and perpetrators of domestic violence as male. While the authors acknowledge that men experience domestic violence and that same sex abuse occurs as well, the vast majority of individuals experiencing domestic vio-

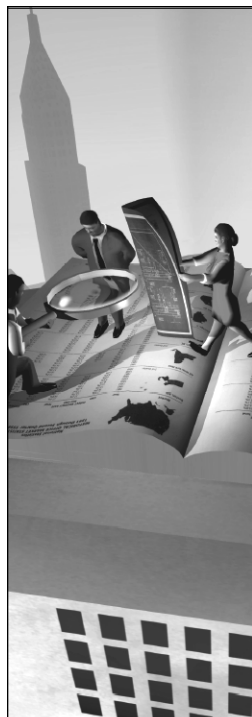
lence in the United States and worldwide are women.

7. Frontier communities are typically defined as having fewer than six people per square mile. Montana ranks second only to Wyoming in terms of the percentage of its population living in frontier counties; 2000 Census data place 54% of Montanans in such communities.

8. National Center on Rural Justice and Crime Prevention, 2002.

9. Dr. Bruce D. Perry, M.D., Ph.D, [www.childtrauma.org](http://www.childtrauma.org)

10. Barbara Hart, National Coalition Against Domestic Violence, 1988.



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## NEWS ABOUT MEMBERS

Keil Law Firm announced that **Paul L. Neal** and **Jay B. Reno** joined its Conrad office as associate attorneys.

■ Paul L. Neal grew up on his family's cattle ranch in Augusta, Mont. He received his BS degree in Philosophy from the University of Montana in 2007 and his law degree from the UM School of Law in 2010. He was admitted to the State Bar of Montana in October 2010. Before practicing law he was a cattle rancher and wildland firefighter. As a third-year law student he argued before the 9th Circuit Court of Appeals. In private practice he will concentrate on water rights, oil & gas, property, and natural resources.



■ Jay B. Reno grew up in Whitefish. He received his BA degree in Studio Art / Art History from the University of Puget Sound in 2004 and his law degree from the University of Montana School of Law in 2010. He was admitted to the State Bar of Montana in the fall of 2010. Before practicing law he worked as a photographer and heavy equipment operator. His civil practice covers a wide range of general civil matters, with focus in the area of agricultural, business, estate planning, real estate transaction, and mediation services.



The Helena law firm of Gough, Shanahan, Johnson & Waterman announced the recent association of Charles Robison and Murry Warhank.

■ **Charles Robison** earned his MBA from the University of Montana in 2010. Prior to joining Gough, Shanahan, Johnson & Waterman he operated a public relations firm and served as the deputy for Help America Vote Act programs in the Office of the Montana Secretary of State. Mr. Robison's practice

includes insurance coverage, employment law, construction law, products liability, management, and communications consulting.

■ **Murry Warhank** graduated from the S.J. Quinney College of Law at the University of Utah in 2007 with high honors. Prior to joining Gough, Shanahan, Johnson & Waterman, Mr. Warhank practiced in Salt Lake City with the firm of Snow, Christensen & Martineau. He also served Hon. J. Thomas Greene, a senior judge in the U.S. District Court for Utah. Mr. Warhank's practice includes insurance, personal injury, products liability, construction, and tax litigation.

The Montana Legal Services Association (MLSA) welcomed attorney **Joe Hardgrave** back to Montana to work in the Billings office. Originally from Arkansas, Mr. Hardgrave graduated from law school at Nova Southeastern University in Florida. He served as an AmeriCorps fellow attorney with MLSA's Native American Unit in 2008 and 2009, focusing on various projects including the drafting of wills for American Indian clients with trust property. Most recently, he worked at California Indian Legal Services. In his new role with MLSA's Native American Unit, Mr. Hardgrave will handle several types of cases, including the representation of people charged with crimes in the Northern Cheyenne Court.



**Kathryn C. Mazurek** has joined the Bozeman law firm of Kasting, Kauffman & Mersen as an associate attorney. Ms. Mazurek was raised in Charlevoix, Mich. She received her bachelor's degree from the University of Montana with highest honors, and her law degree from the University of Montana School of Law. She will assist the firm in all aspects of its general practice of law.

## DEATHS

### John Roy Gordon, Missoula attorney

Missoula attorney John Roy Gordon, 68, died from lung cancer complications on Feb. 9 at St. Patrick's Hospital in Missoula.

Mr. Gordon was born in Denver. He moved to Boise, Idaho, at an early age, and subsequently moved to Chicago at age 10 where his father attended seminary. The family then moved to Filer, Idaho, where he lived until moving to Kalispell; he completed his senior year at Flathead County High School.

He attended the University of Montana and UM's School of Law and received his juris doctorate, with honors, in 1967. He was a member of Phi Delta Phi and an associate editor of the *Montana Law Review*.

In 1967-1968, Mr. Gordon clerked for Judge Walter Pope of the 9th Circuit Court of Appeals in San Francisco. In 1968, he became an associate with the law firm Bjella & Jestrab in

Williston, N.D. In 1976, he became a partner in Murray, Kaufman, Vidal & Gordon in Kalispell. He practiced in all levels of Montana courts including the federal district court and the 9th Circuit Court.

Mr. Gordon married Carol Wandesforde Lattin in 1991. They moved to Missoula where he was a partner of Reep, Spoon & Gordon. In 2003, he became a partner of Spoon Gordon where he worked until he became ill in 2009.

Mr. Gordon loved riding mountain trail bikes and a variety of motorcycles, and traveling to NASCAR races. He was also a big Grizzly football supporter. He and Ms. Gordon traveled to Scotland, England, Hawaii, Turks and Caicos, and Italy.

Mr. Gordon was a member of the State Bar of Montana where he was on the board of trustees, was chair of the CLE Institute from 1989 to 1992, and was on the CLE board. He was a member of the Montana Defense Trial Lawyers, the



ABA, the U.S. Court of International Trade, a commissioner of the Missoula County Airport Authority, and a member of the American Board of Trial Advocates.

Mr. Gordon is survived by his wife of 19 years, Carol, three daughters and two stepsons.

## Other deaths

● **Barbara Lange Dutton**, 57, a Butte legal secretary for the Bob McCarthy Law Office and the legal department of the Town Pump main office in Butte, died at home in Butte on Feb. 13, from ovarian cancer.

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