

# MONTANA LAWYER

State Bar  
— of —  
Montana

August 2014 | Vol. 39, No. 9

Annual Meeting 2014

## BIG FUN IN BIG SKY

Sept. 24-26 | Big Sky Resort

- Hot-topics — 10.25 CLE/2 ethics
- Supreme Court oral arguments
- President's Reception with wine, beer, distillery tastings
- Awards banquet and luncheon
- And more ...



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### Also in this edition:

- > State Bar mourns passing of Duke Crowley
- > Evidence Corner: Duke Crowley's final exam
- > President-elect looks ahead to term

- > Health Care Law: Telehealth services
- > Look back at Randy Cox's tenure as chairman of Montana Board of Bar Examiners

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### From the cover

Picturesque Lone Peak will provide the backdrop for the State Bar of Montana's 40th Annual Meeting at Big Sky Sept. 24-26.

See the details on Page 12.

Cover photo by Glenniss Indreland, courtesy of Big Sky Resort.

# Priorities of term: Divorce law reform, attorney rights

Betsy Brandborg got me into this State Bar stuff about 10 years ago. She muscled me on to the Board, and now, the only real way off of it is to become President, then Immediate Past President, and then a line in the desk book until the end of time. I start this two years' long goodbye with not a hint of melancholy or regret. I have had lots of fun, made some new friends, developed an appreciation for what I may not have appreciated as much as I should and I hope added some value. But, it's time to let the next wave take over.

Tradition has it that the president-elect, me in this instance, writes the August "Letter" and thus I write.

I will mercifully pare down the points I wish to make to three. Then we can all get back to summer vacation. I will have more to say later. I have a year to clear my head.

## **POINT ONE — Hats Off to Randy Snyder**

We all owe a big "shout out" (as they say nowadays) to our outgoing president Randy Snyder. I have known him since we debated against each other in high school back when he, not I, was from the biggest city in the state. He hailed from Great Falls, I from Billings. We crossed paths again as undergraduates in the "liberal" arts department at University of Montana, an irony I won't expand upon here.

As Pam Bailey before him, the burden of attending to state bar duties could not be diluted among other lawyers in the office. He, as she, were solo practitioners. An hour dedicated to the State Bar was food off his table, or at least Malbec out of his goblet. He has traveled the state corner to corner and the nation end to end. He, almost single-handedly, put free legal research in the hands of every active Montana practitioner through the new State Bar contract with Fastcase.

He now passes into the status of Yer Chief Deputy Emeritus. If you get a chance to thank him personally, do so. Add a kind word for his wife, Linda.

## **POINT TWO — When the love is gone, the lawyers and judges step in.**

People get married for all sorts of reasons, and take great pride in their decisions. They don't want, expect or even tolerate the state's intervention in the choice. When things fall apart, they want the state to vindicate all of their rights, real and imagined.

To make things easier and less expensive we have burdened the law with all sorts of procedures that have made the process harder and more expensive.

I am going to do whatever I can to help the Legislature clean up past mistakes and hopefully not make new ones in making the process easier and less expensive. This will be a focus of my work for the next year, and has already started.

More about this later. Any volunteers towards this effort will be immediately enlisted in the effort.

## **POINT THREE—The Practice of Law is a RIGHT you earned, not a privilege.**

The members of the State Bar work hard. They — I mean "you" — balance family, faith, work and society in a manner to their — I mean "your" — liking. Usually with great results. I don't know many of you that really need my pedantic guidance on how you should lead your personal or professional life.

I still cannot sharpen a knife, cook a decent biscuit or land a fly on water with anything but a thud and a tangle. When I fill in these deficits in myself, I can take up with fixing all of you. I will not be part of any expanded erosions on your liberties in the way of increased dues, increased CLE obligations, mandatory pro bono, or mandatory anything else. Some, not me, suggest that attorneys, by being licensed, have a duty to society itself, which might be true. The issue becomes, who polices that duty?, who gets to define it?--the state, or the attorney.

I say YOU do. Attorneys have done their best, not when they please those in power, but when they challenge those in power.

Many say things like, "Because the practice of law is a privilege not a right, the state can condition this privilege on ..." When a sentence starts with such a premise, the conclusion will almost universally be an effort to tell someone else what to do. The premise is wrong. The practice of law is a right, not a privilege. The United States Supreme Court said so in 1867.

"The practice of law is not a matter of grace, but a right for one who is qualified by his learning and his moral character." *Schwartz v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796, 64 A.L.R.2d 288 (U.S., 1957), and *Ex parte Garland*, 71 U.S. 333, 18 L.Ed. 366, 4 Wall. 333 (1866).

I intend to remind anyone who will listen of your right to practice law, every time I need to.

Thanks very much for showing me some degree of confidence by electing me the President of the State Bar of Montana for the next year. Truthfully, the efforts of hundreds of others over scores of years have kept and maintained a very well-run State Bar. There is no great need for improvement even if I were to embark on some radical agenda, and blessedly there are few vulnerabilities should I drop the ball.

Now, back to your vacation.....

Mark D. Parker

### Helena firm welcomes three attorneys

The Helena Law Firm of Morrison, Sherwood, Wilson & Deola PLLP announce that Harley R. Harris, Scott Peterson and Rob Farris-Olsen have joined the firm.



Harris

Harris is joining the firm as a senior associate. He was recently general counsel for MATL LLP, developer of the Montana Alberta Tie International Transmission Line. Prior to that Harris was a partner at Luxan & Murfitt PLLP, an assistant attorney general, and a Supreme Court fellow for the National Association of Attorneys General. He is also a member of the board of directors of Intermountain. Harris has over 25 years of experience in representing and advising clients in the areas of water rights, property, commercial, environmental, renewable energy, public utility, oil and gas, and administrative law, as well as in complex civil litigation. He will focus his practice on helping individuals, organizations and Montana businesses to find effective solutions to complex legal and regulatory problems.



Peterson

Peterson is joining the firm as an associate. He graduated with honors from the University of Montana School of Law in 2011, where he served as the Articles Editor for the Montana Law Review and competed in National Moot Court. After law school, Peterson served as a Montana Supreme Court law clerk for the Honorable Brian Morris. Before joining the firm, Peterson worked for Erik Thueson on a series of insurance class actions and FELA trials, and is excited to continue his legal career at the firm. Peterson's practice will focus on insurance disputes, bankruptcy, personal injury and consumer protection.



Farris-Olsen

Farris-Olsen, a Helena native, is also joining the firm as an associate. He graduated with honors from the University of Montana School of Law in 2011, where he participated in the Environmental Law Group and the International Law Students Association. He also served as the MontPIRG Board Chair. After law school, Farris-Olsen clerked for the Honorable Michael Wheat of the Montana Supreme Court. Following his clerkship, Farris-Olsen worked for Montana Legal Services Association helping Montana homeowners avoid foreclosure and protecting consumer rights. Farris-Olsen's practice will focus on bankruptcy, consumer protection, criminal defense, environmental protection, foreclosure defense and family law.

### Myers joins Guthals, Hunnes & Reuss

Laura T. Myers has recently joined the law firm of Guthals, Hunnes & Reuss, P.C., of Billings as an associate attorney. Myers received her Bachelor of Science from Carroll College in 2010 and her Juris Doctor from the University of Idaho in 2012. Prior to joining the law firm, she worked for Stockman Bank in its asset



Myers

management division. The focus of her practice will be in the areas of business and corporate law, banking law, commercial bankruptcy and estate planning.

### Jones joins Bulman Law Associates

Bulman Law Associates, PLLC, is pleased to announce that Brad J. Jones joined the firm as an associate disability attorney on July 1, 2014. His practice will focus on workers' compensation disputes, denial of veterans' benefits, and Social Security disability hearings and appeals. Brad graduated from the University of Montana School of Law in May 2013 and has been admitted to practice in Montana.



Jones

In law school Brad was the President of the UM Military Legal Society and Vice President of the Willamette chapter of the J. Ruben Clark Law Society. Brad is currently an Infantry Platoon Leader in the Montana Army National Guard where he has served since 2009 and recently returned from five months of training at Fort Benning, Georgia.

With his addition, Bulman Law Associates is now able to accept new workers' compensation claims, veterans' benefits disputes and claims related to Social Security disability benefits.

### Montague joins Franz & Driscoll PLLP

Ada C. Montague graduated from the University of Montana School of Law in May of 2013 with a certificate in Natural Resource Conflict Resolution and a B.S. in Watershed Studies. She is the first hire at Franz & Driscoll, PLLP, which celebrates its 10th anniversary this year.



Montague

Her accolades include graduating with honors from Vassar College and receiving the Margery Hunter Brown Fellowship while she was a law student at UM. Originally from Virginia, she has made Montana her home for the last 10 years.

Her previous work experience reflects an interest in natural resource management and a hands-on, practical approach - Youth Crew Leader for the Montana Conservation Corps, carpenter for Big Timberworks, and Planner for Gallatin County. She will focus her legal practice in the area of water law under the mentorship of firm partner, Holly Franz.

### McDowell joins Casper, Wyoming, law office

Welborn Sullivan Meck & Tooley P.C. has announced that Jennifer L. McDowell, who practices in the firm's Casper, Wyoming, office, has accepted the position of special counsel with the firm.

McDowell began her career in a state and local tax litigation boutique, where she honed her tax and financial expertise and developed a proficiency in administrative and appellate practice. Primarily servicing oil and gas, chemical, construction and transportation companies, she guides business taxpayers through audit, refund, protest and other administrative processes; works with tax authorities to obtain positive outcomes for her clients; and litigates state and local tax disputes.



McDowell's prior experience has been invaluable as her practice has expanded to include oil and gas law along with mergers and acquisitions, general business transactions and corporate law, real estate, campaign law and structured settlement transfer approvals. Since joining the firm, McDowell has represented an oil and gas services company in a federal minimum wage audit, an oil and gas operator in a federal royalty investigation by the Inspector General, and a majority shareholder in a shareholder derivative action. She currently represents working interest owners in their acquisition of production properties along with negotiations involving areas of mutual interest, joint operating agreements and master service contracts; advises principal owners in forming corporations, limited liability companies, joint ventures and partnerships; and acts as general counsel for various contract, employee and shareholder issues.

### Leque joins Berg, Lilly & Tollefsen

Berg, Lilly & Tollefsen P.C. has announced that Katharine E. Leque has joined its law firm in Bozeman. Katharine is a 2012 graduate of the University of Montana School of Law and a 2009 honors graduate of Montana State University.



Leque

While in law school, Leque served as executive editor of the Montana Law Review and interned at Phillips Haffey P.C. and the Missoula City Attorney's Office. Before joining Berg, Lilly & Tollefsen, P.C., Leque practiced law at Phillips Haffey P.C. as an associate for two years concentrating on civil litigation and insurance defense. Her areas of practice include commercial, civil and business litigation, insurance defense, contract law, construction law, business law, real estate law and family law.

She can be contacted via 1 W. Main St., Bozeman, MT 59715; 406-587-3181; or [katharineleque@berglawfirm.com](mailto:katharineleque@berglawfirm.com).

### Missoula firm welcomes Farago

Garlington, Lohn & Robinson PLLP has announced the addition of Scott Farago to the firm's business and tax practice.

Farago, a Missoula native, received his Bachelor of Science degree in Business Management from Montana State University and his J.D. from the University Of Montana School Of Law. In addition, he also earned his LL.M. in Taxation from the University of Washington School of Law. Scott may be reached at [swfarago@garlington.com](mailto:swfarago@garlington.com). Garlington, Lohn & Robinson, PLLP, 350 Ryman St., Missoula, MT 59802. Phone: 406-523-2500 Web: [www.garlington.com](http://www.garlington.com).

### Towe, Fitzpatrick form new Missoula firm

Jamie Towe and John Fitzpatrick have joined to form Towe & Fitzpatrick, PLLP, at 619 Southwest Higgins, Suite. O, Missoula, MT 59803. Towe and Fitzpatrick will continue their practices in the areas of plaintiffs personal injury, insurance disputes and bad faith, railroad FELA claims

and medical negligence.

Towe is a 1994 graduate of the University of Montana School of Law. After graduating from law school he served a one-year clerkship at the Montana Supreme Court working for the Honorable Justice Terry N. Triewweiler. After that, and ever since, he has worked in a private civil litigation practice beginning as an associate for Thueson & Lamb in Helena. After returning to Missoula and working for Milodragovich, Dale, Steinbrenner & Binney for a couple of years, he opened Towe Law Office in Missoula in July of 2002. Fitzpatrick is a 1996 graduate of the University of Montana School of law. After graduating, John worked two years at what is now known as Crowley Fleck in Billings, and then joined Doug Buxbaum and Craig Daue to form the law firm Buxbaum, Daue & Fitzpatrick. For the past 16 years, John has represented plaintiffs in complex personal injury and medical malpractice cases on a statewide basis. Kimberly Towe, a 1995 graduate of the University of Montana School of Law, will also be practicing with the firm. She has 17 years of experience handling civil cases. She began her legal career as a law clerk for the Honorable Karla M. Gray at the Montana Supreme Court. After her clerkship, she spent six years with a Montana defense firm, specializing in medical malpractice defense, products liability and toxic tort litigation.



Jamie Towe



Fitzpatrick



Kim Towe

After six years of litigation practice, she took some time off to focus on family. During that time, she continued to practice part time doing contract work with various Montana lawyers. Jamie, John and Kim can be reached at 406-829-1669 or toll-free at 855-748-8693 or [jamie@towefitzlaw.com](mailto:jamie@towefitzlaw.com); [jfitz@towefitzlaw.com](mailto:jfitz@towefitzlaw.com); [kim@towefitzlaw.com](mailto:kim@towefitzlaw.com).

### Hearings Bureau changes name

The Hearings Bureau at the Montana Department of Labor and Industry has changed its name to the Office of Administrative Hearings (OAH).

David Scrimm, Chief Administrative Law Judge, says the name change was made, in part, to correct the misperception that the Hearings Bureau was a bureau within each and every division that forwards appeals for hearing. The change was also made to clarify the independent nature of the office and to help parties, attorneys and the courts to better distinguish the office from other parts of the department. The change only affects the name and will not have any impact on hearing procedures.

Concurrent with the change to Office of Administrative Hearings, a new website was built that contains additional information to help parties better understand the process and to better prepare themselves for hearing. The website can be found at <http://dli.mt.gov/hearings>. If you have suggestions for additional material for the website please contact OAH at 444-4662.

### IN THE MATTER OF APPOINTMENTS TO THE CRIMINAL JURY INSTRUCTIONS COMMISSION

#### Summarized from July 15 Order No. AF 06-0112

Mark Fowler, a member of the Criminal Jury Instructions Commission, has resigned his position. The Court expresses its gratitude to Mark Fowler for his service to the legal profession and the people of Montana.

Tammy Ann Hinderman has expressed interest in being appointed a member of the Commission. With the consent of the appointee, IT IS HEREBY ORDERED that Tammy Ann Hinderman is appointed to the Criminal Jury Instructions Commission for a four-year term to expire on August 1, 2018.

### IN THE MATTER OF APPOINTMENT TO THE BOARD OF BAR EXAMINERS

#### Summarized from July 1 Order No. AF 07-300

Randy Cox, Chair of the Montana Supreme Court Board of Bar Examiners, has tendered his resignation from the Board. The Court thanks Mr. Cox for his years of dedicated service to the Board of Bar Examiners, to this Court and to the people of Montana.

Cindy Thiel, attorney from Missoula, has indicated her willingness to serve on the Board.

IT IS ORDERED that Cindy Thiel is appointed to the Board of Bar Examiners effective the date of this Order, for an indefinite term.

### IN THE MATTER OF THE MONTANA RULES OF CIVIL PROCEDURE

#### Summarized from July 1 Order No. AF 07-0157

On June 25, 2014, the Montana Access to Justice Commission submitted for consideration by this Court a proposed amendment to Rule 23 of the Montana Rules of Civil Procedure, regarding the disposition of residual funds in class action cases. The language proposed to be added is as follows:

#### Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees and other court-approved disbursements. This rule does not prohibit the trial court from approving a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than 50 percent of the residual funds shall be disbursed to the Montana Justice Foundation to support activities and programs that promote access to the Montana civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage either to the Montana Justice Foundation or to another nonprofit entity for purposes that have a direct or indirect relationship to

the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

IT IS ORDERED that public comment will be accepted on the proposed amendment to M. R. Civ. P. 23 for a period of 60 days following the date of this Order. Such comments shall be filed, in writing, with the Clerk of this Court.

### APPOINTING MEMBERS TO COMMISSION ON COURTS OF LIMITED JURISDICTION

#### Summarized from July 1 Order No. AF 06-0263

The terms of the Honorable Douglas G. Harkin (retired), Bernie Cassidy and Kelly Addy on the Commission on Courts of Limited Jurisdiction expired on June 30, 2014. All three are willing to continue to serve as members of the Commission for additional terms.

IT IS ORDERED that The Honorable Douglas D. Harkin (retired), Bernie Cassidy and Kelly Addy are reappointed to serve in their respective positions as members of the Commission on Courts of Limited Jurisdiction for additional four-year terms commencing the date of this Order and ending June 30, 2018.

### REAPPOINTMENT TO THE COMMISSION ON PRACTICE OF THE SUPREME COURT

#### Summarized from July 1 order No. AF 06-0090

The term of two of the three non-attorney members of the Montana Supreme Court Commission on Practice, Rich Ochsner and James Jacobsen, expired on June 30. The term of the attorney-at-large member of the Commission on Practice, Ward E. Taleff, also expired on June 30. Therefore, pursuant to Section 1, Rule 1A of the Rules for Lawyer Disciplinary Enforcement that non-attorney members and the attorney-at-large member of the Commission be appointed by the Court, and with the consent of the appointees and the Court's thanks for their dedicated service,

IT IS ORDERED that Rich Ochsner of Missoula, James Jacobsen of Helena and Ward E. Taleff of Great Falls are hereby reappointed to the Commission on Practice of the Supreme Court of the State of Montana, to four-year terms ending June 30, 2018.

## Discipline

### PUBLIC CENSURE OF ROBERT G. MCCARTHY,

#### Summarized from June 24 Order No. PR 13-0492

CHIEF JUSTICE MIKE McGRATH: This is the time and date set for the public censure of Robert G. McCarthy, a member of the State Bar of Montana. Sir, are you the Robert G. McCarthy who is the subject of disciplinary action in this Court under our Cause Number 13-0492?

**Discipline.,** next page

**Discipline**, from previous page

JUSTICE PATRICIA COTTER: Mr. McCarthy, this public censure is being delivered today in accordance with our order of May 13, 2014, a copy of which was sent to you. These proceedings are founded upon your tendered admission that you violated Rules 1.15, 1.7 and 2.1 of the Montana Rules of Professional Conduct by failing to promptly deliver to a client funds that he was entitled to receive; representing a client under circumstances in which there was a significant risk that your representation would be materially limited by your personal interests; and failing to exercise independent professional judgment and render candid advice to your client.

Mr. McCarthy, we hereby impose upon you the public censure of this Court.

### DISCIPLINE OF ATTORNEY ROY JOHNSON,

#### Summarized from Order No. PR 13-0079

The Montana Supreme Court accepted and adopted the Commission on Practice's recommendation that Montana attorney Roy Johnson be suspended from practice for three months.

On Jan. 29, 2013, a formal disciplinary complaint was filed against Johnson. Johnson filed a response.

The Commission on Practice held a hearing on the complaint on July 17 and Oct. 16, 2013, at which Johnson was present with his counsel and testified on his own behalf.

Based on the allegations of the complaint and the evidence produced at the hearing, the Commission concluded that Johnson violated several provisions of the Montana Rules of Professional Conduct (MRPC) during his representation of Eunice Souseley in dissolution and adoption proceedings. The Commission concluded Johnson violated Rule 3.3, MRPC, by failing to advise the district court regarding all material facts in the ex parte adoption proceeding. It further concluded Johnson engaged in misrepresentation in violation of Rule 8.4(c), MRPC, by failing to provide notice of the adoption proceeding to the man who had been Souseley's husband when the child was conceived and born, and by failing to fully apprise the adoption court of the parenting plan adopted in the dissolution

of that marriage, failing to identify Souseley's former husband as having parental rights, and failing to fully disclose the facts of Souseley's former husband's relationship with the child. Finally, the Commission concluded Johnson violated Rule 8.4(d), MRPC, in that he engaged in conduct prejudicial to the administration of justice by failing to correct an error in the adoption decree after-the-fact.

The Commission unanimously recommended that, in light of his prior disciplinary history and as a result of these violations of the Montana Rules of Professional Conduct, Johnson be suspended from the practice of law in Montana for three months and that Johnson be ordered to pay the costs of proceedings.

In his written objections, Johnson challenged one of the Commission's findings of fact as incomplete, and argued that two of its conclusions — that he failed to advise the adoption court regarding all material facts and that he failed to notice Souseley's former husband of the adoption proceeding and to fully apprise the adoption court of the parenting plan that was in effect — are contradicted by certain evidence in the record. Having reviewed the record, however, the Court concluded that clear and convincing evidence supports the finding and conclusions.

Johnson also argued that remedial measures he has taken since the proceedings before the Commission render incorrect the Commission's conclusion that he engaged in conduct prejudicial to the administration of justice by failing to correct the error in the adoption decree after-the-fact. The measures Johnson claims to have taken, however, are outside the record and thus outside the scope of our review of the findings, conclusions, and recommendations of the Commission on Practice.

Based upon the foregoing,

#### IT IS HEREBY ORDERED:

1. The Commission's Findings of Fact, Conclusions of Law, and Recommendation are ACCEPTED and ADOPTED.
2. Roy Johnson is hereby suspended from the practice of law in Montana for three months, effective September 1, 2014.
3. Johnson shall pay the costs of these proceedings subject to the provisions of Rule 9(A)(8), MRLDE, allowing objections to be filed to the statement of costs.

## State Bar News

# Matthew Thiel named State Bar president-elect

The State Bar of Montana's election results for 2014-15 have been released, with Matthew B. Thiel of Missoula being named president-elect, Shane Vannatta of Missoula retaining his ABA delegate post and nine trustees being selected.

Following are the nine people elected to Board of Trustee posts:

**AREA A:**  
Marybeth Sampsel, Kalispell

**AREA B:**  
Elizabeth Brennan, Missoula  
Leslie Halligan, Missoula  
Liesel Shoquist, Missoula

**AREA C:**  
Ellen Donohue, Anaconda  
**AREA D:**  
Jason Holden, Great Falls  
Mike Talia, Great Falls  
**AREA G:**  
Jane Mersen, Bozeman  
Lynda White, Bozeman



# Committed to raising the Bar

*Bar Examiners chair steps down after 25 years at post*

*"If you want work well done, ask a busy man — the other kind has no time." — Elbert Hubbard <sup>1</sup>*

By Michael Anderson

On April 7, 2014, Randy Cox stepped down as chairman of the Montana Board of Bar Examiners, after having served on the board for 25 years. <sup>2</sup> When Cox was appointed to the board, gas was less than a buck a gallon and a postage stamp cost a quarter. Justin Bieber wouldn't be born for another five years. Over that period, he presided over the testing and admission of approximately 4,300 lawyers in Montana. <sup>3</sup>

To some, the Montana Board of Bar Examiners may appear as a somewhat shadowy group — a "Court Appointed Regulatory Commission," according to the Lawyers' Deskbook. That description conjures an image of bespectacled, gray-haired professorial types, poring over arcane rules of law, crafting tricky essay questions, dissecting answers. The kind that might even profess to know the *Rule in Shelley's Case*. People who rely on raw scores, scaled scores, reliability and standard deviations. It would be fitting that its presiding officer would have a persona like the director of the NSA.

Except that, in Randy Cox's case, it would be wrong. He's been recognized by his peers: American Board of Trial Advocates, Best Lawyers in America, Chambers USA America's Best Business Lawyers, Super Lawyers. He's served on the Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure. <sup>4</sup> He's been a faculty member for the U of M Law School Advanced Trial Advocacy Program, and a coach of the University Trial Team. He's published in the Montana Law Review. <sup>5</sup>

His list of trials and appeals reads like a casebook on tort law: <sup>6</sup>



Randy Cox

wrongful death, <sup>7</sup> professional malpractice, <sup>8</sup> FELA — railroad liability, <sup>9</sup> toxic exposure, <sup>10</sup> bad faith <sup>11</sup> and class actions. <sup>12</sup> His result in *Austin v. Montana Rail Link*, involving the derailment and chlorine spill at Alberton, was chosen by *The National Law Journal* as one of the "Top 20 Defense Verdicts" of 2001. <sup>13</sup> He's been a frequent presenter at over 35 continuing legal education seminars.

1 Hubbard is also the author of the quote: "Don't take life too seriously. You'll never get out of it alive." He died aboard the *RMS Lusitania*, sunk by a torpedo fired by a German U-boat on May 17, 1915.

2 He promptly proposed term limits on board members.

3 There are about 6,000 members of the State Bar of Montana. He's also served with 16 different Board members and 6 administrators.

4 And authored a synopsis, "A New Era: The Amended Montana Rules of Civil Procedure," *The Montana Lawyer*, Feb. 2012.

5 Cox, Randy J. and Cynthia Shott, "Boldly Into the Fog: Limiting Rights of Recovery for Emotional Distress," 53 Mont. L. Rev. 197 (1992).

6 *Keele v. St. Vincent Hospital*, 852 P. 2d 574 (Mont. 1993)(amicus brief); *Palmer by Diacon v. Farmers Ins. Exchange*, 861 P. 2d 895 (Mont. 1993)(amicus brief); *Pfost v. State of Montana & Missoula Co.*, 713 P. 2d 495 (Mont., 1985); *Klaudt v. Flink*, Missoula County (1984).

7 *Seewald v. Riverside Health Care Center, Inc., et. al.*, Cause No. DV-07-400, Missoula Co. (2010); *Julius v. MRL, Inc.*, Cause No. DV-05-0802, Gallatin County (2009); *Woods v. BNSF*, Cause No. ADV-2001-343, Lewis & Clark Co. (2003).

8 *Clark v. Norris*, 734 P. 2d 182 (Mont. 1987).

9 *Lee v. BNSF*, 245 F. 3d 1102 (9th Cir. 2001); *Wildman v. BNSF*, 825 F. 2d 1392 (9th Cir. 1987).

10 *Bennett v. Dow Chem. Co.*, 713 P. 2d 992 (Mont. 1996); *Schelske v. Creative Nail Design, Inc., et. al.*, 933 P. 2d 799 (Mont. 1997).

11 *Kuhns v. Scott & 1st Interstate Bancsystem*, 853 P. 2d 1200 (Mont. 1993); *Haines Pipeline Constr., Inc. v. Montana Power Co.*, 830 P. 2d 1230 (Mont., 1991); *Reilly v. Citizens State Bank*, 822 P. 2d 1088 (Mont. 1991).

12 *Blanton v. Dept. of Public Health & Human Services*, 255 P. 3d 1229; *Polich v. BNSF*, 942 F. 2d 1467 (9th Cir. 1991); *Johnson v. BN*, Cause No. CV-87-132-GF (D. Mont. 1988).

13 *National Law Journal*, Feb. 4, 2002.



He shepherded the adoption of the Uniform Bar Exam for Montana, then supervised the creation of the Montana Law Seminar which follows the administration of the exam.<sup>14</sup>

A Google search will reveal that he and his wife were instrumental in the development of A Carousel for Missoula, regular contributors to the Children's Museum, Youth Homes and the Missoula Art Museum. Did I mention that he consistently manages to accumulate the most billable hours in his firm? All while remaining a devoted husband and raising three outstanding kids?

How disappointing, then, to learn that he makes himself available as a mentor to applicants, Board staff, and almost everyone else. He's had the same legal assistant, Karen Stephan, for 31 years - a tribute to both their tenacity and patience. Uniformly, those with whom he works speak of his teaching skills and accessibility. He takes time to explain - in a frank, forthright and honest manner. He takes pride in his written product, and will sit down with a partner or associate to go over the reasons for changes he makes to drafts. He is reportedly cool under fire. A partner describes him as "solution-minded," rather than prone to blame.

Those who have tried cases against him are equally complimentary, commenting on his intellect, tenacity and preparation. He is described by one opponent as a "fierce advocate," who is personable and professional. Another echoes those attributes, then says, with grudging respect, "It's a shame you have to say

anything nice about Cox."

Board administrators describe him as available, without interfering. They speak of how he usually makes an appearance at each test. How he will make a point to "check in" when he's in town. "I never felt like I couldn't call him up and talk to him, if I had a question," is a repeated observation. They speak of his holding himself and those around him to a high standard, attributing it to his belief that "people will rise to the occasion." "He never made me feel stupid," they say. When it comes to test administration, he devotes effort to getting it right. He'll work through whatever is necessary to make sure that applicants get the score they earned. He'll meet with applicants who are retaking part or all of the exam, explaining how scores might be improved.

At the same time, he took the lead in the effort to raise the "cut score" for the bar exam, once among the lowest in the nation. When asked whether people taking the exam might be impacted, he commented, "They'll study harder." He was in favor of the UBE, in part, because of the resources available through the National Conference of Bar Examiners, and its expertise in testing. He lobbied for a post-exam seminar to inform applicants about what it's really like to practice law in Montana, substantively, procedurally and professionally.

All this is not to say he is without fault. He takes far too much pleasure in wry puns, word-play and bad jokes. He drives too fast. He's a wine snob, inviting friends over for

<sup>14</sup> The seminar materials, which are useful for all counsel, can be found at: [http://courts.mt.gov/library/bar\\_seminar/default.mcpix](http://courts.mt.gov/library/bar_seminar/default.mcpix).



## JESSICA RUTZICK & ASSOCIATES, PC

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The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise.

# MSU Extension publications are priceless resources for all Montanans

By Twyla Sketchley

Dr. Marsha Goetting is an Extension specialist in Family Economics at Montana State University (MSU), which is housed in the Department of Agriculture Economics and Economics in the College of Agriculture. MSU is a land grant institution with a mandate to provide teaching, research, and service to the people of Montana. Goetting is part of a network of Extension agents based in Montana's counties, Indian reservations and tribal colleges, and specialists who are based on MSU's campus. The focus of extension is to empower individuals, families and communities to apply unbiased, research-

based information to make informed decisions. The work of an Extension specialist, like Goetting, seems an odd subject to profile for attorneys. However, Goetting's work can be a great resource for attorneys and clients, particularly those with elder law related questions.

Goetting develops MontGuides.

MontGuides are fact sheets to educate the public on topics ranging from Montana Medical Care Savings Accounts to Medicaid and long-term care Costs. MontGuides started with the help of Montana attorneys.

More than three decades ago, Goetting approached the State Bar of Montana's Section on Taxation and Probate to ask members to review a 13-lesson study-at-home course about estate planning she was developing for Montana Extension Agents. She was apprehensive appearing before such an auspicious group in her new position. She sought the assistance of these attorneys to respond to Extension agents' requests to provide programming in an area she had no background -- estate planning. Her goal was to pilot the study-at-home course with Extension agents and then revise the individual lessons for distribution to the general public, emphasizing that the publications were NOT intended to be a substitute for legal advice. Rather these guides would be designed to help families become familiar with Montana and federal laws in estate planning area. The Section formed a Public Service Committee. This committee reviewed the lessons for legal accuracy and made suggestions for improvement.

A revised 10-lesson study-at-home course with weekly mailings was made available in 1980. Over 6,000 Montanans signed up for the course, overwhelming the Extension publication

budget. This demand prompted Dr. Goetting to again approach the Montana State Bar for help, requesting \$6,000. The Board of Trustees approved the request and MontGuides were born.

Since 1980, many members of the Business, Estates, Trusts, Tax and Real Property Section and in more recent years, members of the Elderly Assistance Committee, have been involved in the review of 36 different MontGuides that provide information to the general public in the estate planning arena. Dedicated Montana State Bar members have provided excellent suggestions and valued knowledge for improvement in content in the MontGuides as changes in state and federal laws necessitated revisions. These MontGuides are now all available online at <http://www.montana.edu/estateplanning/eppublications.htm>. Those of particular interest to Elder Law attorneys include:

## **Accessing a Deceased Person's Financial Accounts.**

(MT200301HR) (2012) Describes how heirs of a deceased person can access his/her financial accounts, depending on whether the accounts were owned jointly with other individuals, had payable-on-death or transfer-on-death designations, or had no designated beneficiary.

**Annuities.** (MT199213HR) (2013) Outlines how to shop for and choose an annuity and how one can help individuals achieve retirement and estate planning goals.

**Beneficiary Deeds in Montana.** (MT200707HR) (2014) Explains how Beneficiary deeds allow owners of real property in Montana to transfer their property to one or more beneficiaries without probate.

**Cremation.** (MT200201HR) (2012) Explores personal and family concerns, state and federal regulations, and costs of cremation.

**Designating Beneficiaries through Contractual Arrangements.** (MT199901HR) (2009) Focuses on transferring assets through contractual arrangements, such as those commonly found with insurance policies, IRAs and employee benefit plans.

**Dying Without a Will in Montana: Who Receives Your Property?** (MT198908HR) (2014) Includes legal terms and detailed examples of possible scenarios for distribution of property should a person die before writing a will.

**Estate Planning for Families with Minor and/or Special Needs Children.** (MT199117HR) (2012) Explains how to provide for children's physical and financial care in case of parents' death. Includes special instructions concerning special needs children and stepchildren.

**Estate Planning in Montana: Getting Started.** (MT199508HR) (2009) Explains how — and why — to arrange for the future use and distribution of your property.

**Estate Planning Tools for Owners of Pets & Companion Animals or Service Animals.** (MT201405HR) (2014)



## MontGuides available online

There are 36 different MontGuides that provide information to the general public in the estate planning arena. They are now all available online at [www.montana.edu/estateplanning/eppublications.htm](http://www.montana.edu/estateplanning/eppublications.htm).

Outlines legal options for owners who plan to name a caregiver for their companion animals, service animals and/or pets in case of the owner's death or incapacitation.

**Federal Estate Tax.** (MT199104HR) (2014) This publication describes how federal tax laws affect individual estates, including changes resulting from the American Taxpayer Relief Act of 2012.

**Gifting: A Property Transfer Tool of Estate Planning.** (MT199105HR) (2014) This MontGuide explains how to use laws that allow gifts of real and personal property to reduce federal income taxes, federal gift taxes and potential federal estate taxes. Included are changes resulting from the American Taxpayer Relief Act of 2012.

**Glossary of Estate Planning Terms.** (MT200202HR) (2013) Provides definitions of some of the estate planning terms used in MSU Extension Estate Planning MontGuides. Keep this glossary close by in case you come across an unfamiliar term.

**Letter of Last Instructions.** (MT198904HR) (2011)

Explains what should be included in a letter of last instructions to assist survivors after the death of the writer.

**Life Estate: A Useful Estate Planning Tool.** (MT200510HR) (2009) Explains how to allow someone to possess property during his/her lifetime before the estate passes on to another person or organization.

**Life Insurance: An Estate Planning Tool.** (MT199211HR) (2013) Explains when life insurance should be part of a family's estate plan.

**Long-Term Care Partnership Insurance in Montana** (MT201202HR) (2014) Provides basic information about the Montana long-term care partnership insurance program, tax benefits, and shopping tips.

**Medicaid and Long-Term Care Costs.** (MT199511HR) (2014) Outlines the legal and tax ramifications, as well as impacts on emotional and physical health of financing long-term care.

**Montana's End-of-Life Registry.** (MT200602HR) (2014) Answers commonly asked questions about the Montana End-of-Life Registry.

**Montana Rights of the Terminally Ill Act.** (MT199202HR) (2012) Describes how a person can choose to terminate his/her medical treatment, should the person have an

**MONTGUIDES**, page 35

YOU ARE INVITED



MONTANA LAW STUDENT PRO  
BONO SERVICE AWARD

CEREMONY & RECEPTION

DATE: OCTOBER 17, 2014

TIME: 4:30 PM

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For the State Bar of Montana's 40th Annual Meeting, we are returning to the site of the first Annual Meeting in 1975 — Big Sky. There are 10.25 hours of CLE on tap, including 2 ethics credits.

### Highlights/activities

Don't miss the Local Bar Reception Wednesday, Sept. 24, from 5 to 7 p.m. at Buck's T-4. Entertainment will be provided by The Buzztones, a Bozeman rock band featuring some local attorneys. The band will welcome Annual Meeting attendees who want a chance at stardom onstage with them to sing or play an instrument. See the ad on page 15 for details.

Half-day programming is scheduled for Thursday and Friday, which will give attendees and their families the chance to take advantage of the many recreational opportunities at Big Sky. While the resort is best known for its world-class skiing, there is plenty to do in September too. For thrill-seekers, the mountain features endless mountain biking, two zipline tours, a bungee trampoline and a giant swing. For sightseers, a Lone Peak Expedition offers spectacular views from 11,166 feet of two national parks and three states. Scenic lift rides give a bird's-eye view of surrounding peaks and a ride to the self-guided nature trail. Golf at the resort's award-winning 18-hole course. Activities are dependent on the weather. Call Big Sky's Basecamp at 406-995-5769 or email [basecamp@bigsky.com](mailto:basecamp@bigsky.com) for questions on availability and reservations. Visit [www.bigskyresort.com/activities](http://www.bigskyresort.com/activities) for more ideas.

The banquet will be at 6:30 p.m. on Thursday, Sept. 25, with a President's Reception preceding it at 5 p.m. The President's Reception will feature wine tastings and samples from a local brewery and distillery. The banquet will feature a special presentation on some of the highlights of the past 40 years of the State Bar of Montana. We will also honor winners of the William J. Jameson Award, the George L. Bousliman Award, the Frank Haswell Award and 50-year members at the banquet.

Friday's Awards Luncheon will honor the winners of the Neil Haight Pro Bono Award, the Karla Gray Equal Justice Award and the Distinguished Service Award.

### Award winners

Please congratulate your peers who will be honored at the Thursday banquet and Friday Awards Luncheon:

- **William J. Jameson Award**  
*D. Patrick McKittrick, McKittrick Law Firm, Great Falls*
- **George L. Bousliman Award**  
*Brent Cromley, Moulton Bellingham PC, Billings*
- **Frank Haswell Writing Award**  
*Former Justice James C. Nelson, for "The Religion Clause: A Sword with Two Edges" (March 2014 Montana Lawyer)*  
*Kristy Buckley, for "ACA Update: Where are we now" (February 2014 Montana Lawyer);*  
*Professor Cynthia Ford, for her series of evidence articles*

# STATE BAR OF MONTANA ANNUAL MEETING

Big Sky Resort | September 24-26



**CELEBRATE 40 YEARS OF  
THE STATE BAR OF MONTANA**

(appearing monthly in the Montana Lawyer in 2013 and 2014).

- **50-year Members:** Gary M. Carlson, Beaverton, Oregon; J. Patrick Giblin, Litchfield Park, Arizona; the Hon. Harry A. Haines, Washington, D.C.; James T. Harrison, Surprise, Arizona; Leonard Lee Kaufman, Kalispell; Jerome T. Loendorf, Helena; Douglas L. Neibauer, Modesto, California; John P. Poston, Helena; Charles A. Smith, Helena; Richard W. Heineman, Wibaux; Leonard J. Haxby, Butte; John R. McInnis, Missoula; Edward D. Yelsa, Anaconda; Joan A. Conley, Bellevue, Washington; Larry Elison, Gold Canyon, Arizona; David L. Johnson, Billings.
- **Neil Haight Pro Bono Award**  
*Pam Poon, Bozeman*

Winners of the Karla Gray Equal Justice Award and the Distinguished Service Award will be announced at a later time.



# Annual Meeting Schedule

## Wednesday | Sept. 24

**5 to 7 p.m.** | Local Bar Reception at Buck's T-4, with music by Buzz Notes, a Bozeman rock band featuring some local attorneys. (Shuttle available; limited capacity, first come, first served)

**7:30 to 8:30 p.m.** Registration desk opens

## Thursday | Sept. 25

**7 a.m.** | Registration desk opens

### Hot Topics CLE 5.0 CLE/1 Ethics

#### LESSONS FROM THE BAKKEN: IMPACT ON PRACTITIONERS

**7:30 to 8 a.m.** | Community ramifications — *Laura Christoffersen, Ryan Rusche*

**8 to 9 a.m.** | Regional ramifications — *Max Main*

**9 to 9:15 a.m.** | Break

**9:15 to 9:45 a.m.** | Property issues — *Chuck Peterson*

**9:45 to 10:15 a.m.** | How to Read a Royalty Statement and Division Order — *Don R. Lee*

**10:15 to 10:45 a.m.** | Estate Planning for Mineral Owners — *Bruce Bekkedahl* 0.5 ethics CLE

**10:45 to 11 a.m.** | Break

**11 a.m. to noon** | "Man Camp Fallout: Water, subdivision, regulatory and environmental issues — *Margarite Thomas, Craig Brown, Martha Williams*

**Noon to 1 p.m.** | Probate: Ancillaries, Re-Openings and What-ifs — *Laura Christoffersen* 0.5 ethics CLE

**10 a.m. to noon** | Executive Committee Meeting

**1:15 to 2:30 p.m.** | Elder Law Committee Meeting

**1:15 to 3:30 p.m.** | New Lawyers Section Luncheon (1.5 CLE)

- Modest Means Business Model — *Shantelle Argyle*
- How to Market and Develop Business for the New Lawyer — *Jessie Lundberg and other New Lawyer Presenters, TBD*

**3 to 5 p.m.** | Board of Trustees Meeting (Bar members invited to attend)

**5 to 6:30 p.m.** | President's Reception (Lone Peak Pavilion) featuring distillery, beer and wine tastings

**6:30 to 9 p.m.** | Banquet — We will honor the winners of the Jameson, Bousliman and Haswell Awards and the recipients of 50-year membership pins. Also, there will be a presentation on highlights of the last 40 years of the State Bar of Montana.

## Friday | Sept. 26

**7 a.m.** | Registration desk opens

### Hot Topics CLE 5.0 CLE/1 Ethics

#### PRACTICE MANAGEMENT

**7:30 to 8:30 a.m.** | Protecting Your Clients' Data — *Sherri Davidoff* 1.0 ethics CLE

**8:30 to 8:45 a.m.** | Break

#### MONTANA SUPREME COURT ORAL ARGUMENTS

**8:45 to 10:15 a.m.** | *Masters Group International Inc. v. Comerica Bank*. Introduction by Greg Munro, interim dean of the University of Montana School of Law, and case summary by Professor Hilary Wandler of the University of Montana School of Law.

#### HOT TOPICS IN HEALTH CARE LAW FOR THE GENERAL PRACTITIONER

**10:15 to 11 a.m.** | ACA for Small Employers — *Kristy L. Buckley*

**11 to 11:20 a.m.** | A New Look at Powers of Attorney, Advanced Directives and POLST — *Erin MacLean, Chuck Willey and Randy Snyder*

**11:20 to 11:40** | Health Law Transactional Concerns for the Montana Lawyer — *J.A. "Tony" Patterson*

#### PRACTICE MANAGEMENT

**11:40 to noon** | The Five Best Fastcase Features — *Joshua Auriemma*

**Noon to 1 p.m.** | 30 Tech Tips in 60 Minutes — *P. Mars Scott, Cort Jensen and Shane Vannatta*

**1:15 to 2:30 p.m.** | Awards Luncheon (Karla Gray Equal Justice Award, Neil Haight Pro Bono Award and Distinguished Service Awards)

**2:30 to 5 p.m.** | Health Care Section Meeting

**3 to 5 p.m.** | Paralegal Section CLE (2.0 CLE credits)

- Fastcase training/demonstration — *Joshua Auriemma*
- Adobe Pro — *Tina Sunderland*

### REGISTRATION INFORMATION

Register online at [www.montanabar.org](http://www.montanabar.org), or mail in a registration form. Special group discount offer: When four members pay for a full registration on one order, a fifth member can receive a free full registration. Call 447-2206 to take advantage of this offer.

# Is Fastcase your firm's research solution?

By Dawn M. Donham

Over the last few years, it has become a priority for State Bar leaders to develop or find a reasonably priced online legal research solution for solo practitioners and small firms. After much research, a new program was rolled out in July for members of the State Bar of Montana through a company called Fastcase.

Fastcase is known for being the “up-and-coming” online legal research presence currently on the market. An article in the June 2008 issue of *Forbes* magazine brought Fastcase to the forefront for many readers, describing the company as one that specifically attracts the attention of smaller sized firms and solo practitioners. Other newer companies include CaseMaker and PreCydent, both of which tend to be easy and cost-effective solutions for small firms and solo practitioners.

To give some background, legal research has been on the plate of most every Big Sky Chapter ALA (Association of Legal Administrators) member for some time. It is a difficult subject to discuss in this group because contracts with big companies like Westlaw Next and Lexis Nexis create circumstances that specifically prevent administrators from having discussions regarding their pricing negotiations. In addition, the contract terms

disable firms' leverage by making it impossible to establish what baseline pricing looks like. Consequently, firms cannot “shop” services and lower prices. And finally, as most Montanans know, geographic location tends to prevent Montana companies from having face-to-face contact with larger out-of-state companies; this is also true in the legal arena. Online research companies are no exception. Because of all of these reasons, administrators have been trying to find an alternate solution (or at least a better way) to get online research tools to attorneys within their firms.

As an administrator, I had the opportunity to sit on the committee that ultimately decided on the Fastcase solution. I felt honored and excited to be included in a group of professionals who were charged with finding the best and most effective online tool for attorneys in the state. What this committee (The State Bar Legal Research Committee) determined through the process is that it wasn't just important to find a “free” solution for its members – it was most important to find a “good” solution. Through my participation, I was impressed by Fastcase's proposal, their platform and the progress they had already made in accumulating data (especially Montana data) in recent years. I'd like to share my impressions and offer up a few struggles,

FASTCASE., page 34

## HEALTH CARE LAW SECTION

**Annual Meeting Notice:** The Health Care Law Section cordially invites all Section members and any other interested persons to our annual meeting, held in conjunction with the State Bar Annual Meeting in Big Sky Friday, Sept. 26, 2:30 to 5 p.m. We will be reviewing the Section's progress in 2013-2014, voting in new Section Council members for the coming year and planning for 2014-2015 Section-sponsored programs and events. All are welcome to join us.

**CLE Notice:** Join the Health Care Law Section members at the State Bar Annual meeting during the Friday Hot Topics CLE from 10:15 – 11:40 a.m. Section members will be presenting general practice topics relevant to the highly regulated health care industry, including the status of ACA implementation for employers, best practices related to health care contracting topics faced by many general practice lawyers, best practices for using powers of attorney and related forms used estate planning and end of life planning.

**Stay Tuned:** Continue to watch for Health Care Law Section articles in the Montana Lawyer over the next year! If you are interested in publishing, please contact our Section or attend one of our Section meetings. If you're interested in joining the Health Care Law Section or have suggestions for additional health care law related topics that you want to see in the Montana Lawyer, please contact Erin MacLean at [emaclean@fandmpc.com](mailto:emaclean@fandmpc.com).



# Many live, online Fastcase training options available

There are many training opportunities available for people who are interested in using Fastcase legal research now that it is offered as a free benefit for active attorney members of the State Bar of Montana.

These opportunities include live training in Montana and a variety of online training options.

The first live training opportunity will be on Friday, Sept. 26, during the State Bar's 40th Annual Meeting at Big Sky. The 20-minute training session will be part of the Hot Topics



CLE offered during the Annual Meeting. (To see the full schedule for the Annual Meeting, see page 13.)

More upcoming live training opportunities will be announced as they are scheduled.

To get started using Fastcase, log on to [montanabar.org](http://montanabar.org) with your username and password, and click on the Fastcase link in the menu at the top of the page. Once there, you can find many online training options at [fastcase.com/support](http://fastcase.com/support). If you have not yet signed in to the State Bar's new website, which launched in late June, you will need to set up a new password. Click on "Forgot your password?" to set up a

password. If you have trouble setting up a password, call the State Bar at 406-442-7660.

Fastcase offers four monthly live webinars. In August, the webinars are:

- Wednesday, Aug. 6, 10 a.m. – 11 a.m. MDT: Introduction to Legal Research on Fastcase
- Thursday, Aug. 7, 10 a.m. – 11 a.m. MDT: Advanced Tips for Enhanced Legal Research on Fastcase
- Monday, Aug. 11, 10 a.m. – 11 a.m. MDT: Introduction to Boolean (Keyword) Search
- Tuesday, Aug. 12, 10 a.m. – 11 a.m. MDT: Fastcase for Paralegals

To register for the webinars, go to [fastcase.com/support](http://fastcase.com/support) and click on Go to Webinars and CLE.

At [fastcase.com/support](http://fastcase.com/support), you will find a variety of other training opportunities. To see a quick reference guide, a complete user guide and other detailed instruction guides, click on Documentation and Downloads.

You can also find video tutorials on getting started and on many features of Fastcase, as well as live chat and email support.

There is also a customer service support phone line available Monday to Friday, 6 a.m. to 6 p.m. MDT. Call 1-866-773-2782 (1-866-77FASTCASE).

## CLE: The Ethics Of Legal Outsourcing

Strickland & Baldwin, PLLP  
Law Firm

### COURSE EXPLAINS THE GROWING TREND OF LEGAL OUTSOURCING AND HOW TO DO IT PROPERLY.

Details and how to register:  
[www.mylegalwriting.com](http://www.mylegalwriting.com)

Or email questions to  
[wiltonstrickland@outlook.com](mailto:wiltonstrickland@outlook.com)  
or [timbaldwin@outlook.com](mailto:timbaldwin@outlook.com)

#### 1 ETHICS CREDIT

Missoula | Kalispell  
Aug. 15 | Sept. 19

Self study credit also available  
Lunch included in both courses

## BE A STAR WITH THE BAR

The Bozeman rock band **The Buzztones** will be performing at the Wednesday, Sept. 24, opening reception for the

### 40th Annual Meeting in Big Sky.

The opening reception will be at Buck's T-4 Lodge  
(about a mile past the Big Sky turn off)  
from 5 to 7 p.m.

Some of the members of The Buzztones are also local attorneys. The band would welcome any cameo performers to sing or play an instrument on a song or two. If you are interested in joining the band onstage, contact Buzz Tarlow at 406-586-9714 before Aug. 30 to discuss your possibilities of stardom.





Photo courtesy of The Billings Gazette/ Larry Mayer  
The sun sets on oil drilling rigs near Watford City, North Dakota, in this Feb. 22, 2013, photo.

# Can oil boom help your practice strike it rich?

*Opportunities exist, but do your homework first*

By Eve Byron

Laura Christoffersen, a Culbertson-based attorney for the past 28 years, turned away 11 potential clients in January, including a criminal case involving a long-term client. In February, that number rose to 16; at times, she declined three cases in one day.

She no longer does DUIs. Domestic abuse. Divorces. Tribal court.

"These are all these cases that I used to do; the difference is now I'm plenty busy doing other things — real estate, a lot of institutional law like with the banks and hospital, which I've done for a long time," she notes.

While Christoffersen tried to refer cases to other

attorneys, there's just not that many practicing in northeastern Montana. Many of those practicing in the area are close to retirement age and Christoffersen isn't seeing much of an influx of younger attorneys who will stick around.

That concerns her. She picks up the Montana State Bar's most recent Deskbook and glances through the list of those practicing in her area, which ranges from Glasgow to the North Dakota line and south from the Canadian border to Glendive. On paper, it doesn't look bad. Five more attorneys are listed now for Region seven — McCone, Richland, Dawson, Prairie and Wibaux counties — than were listed in 2006. Region 17 — Phillips, Valley and Blaine counties — has 18, which is the same number that were practicing



eight years ago. The number in Daniels, Sheridan and Roosevelt counties is only down by one.

But Christoffersen reads between those lines, noting that numerous attorneys are county prosecutors, so they don't take criminal cases. Another is a legislator, so he is often occupied by those duties. Four who are listed are retired and another one is dead.

"I don't see very many young graduates or attorneys in general wanting to come out and start their own practice," Christoffersen said. "Nobody seems to want to be in charge of their own destiny."

Others agree with her, noting that new attorneys — especially those who aren't native to the wide open spaces with their coulees, grasslands and rugged charm — can face a wide range of difficulties in becoming integrated into small communities.

They cite a lack of affordable housing, heightened by the Bakken oil boom's influences flowing in Montana from North Dakota. That's also led to an increase in crime in some areas — including the shocking and brutal murder of Sidney High teacher Sherry Arnold in 2012.

But most of the crimes are lesser assaults, domestic assaults and driving under the influence of alcohol — more than Richland County District Court Judge Katherine Bidegaray said that she's seen in 12 years on the bench. She notes that many of those charged make too much money to be referred to public defenders and those with commercial driver licenses often want to fight DUIs because, if convicted, they lose their CDLs.

"The severity of the crimes and the amount of them has increased, and I think that's just the tip of the iceberg," Bidegaray said.

Bidegaray said that local law enforcement has not been able to fill vacant positions and retain some new hires, which might affect their ability to investigate everything. She also wonders whether the prosecutors have to triage what is ultimately filed because the seriousness of the crimes has increased.

Luke Savage in Sidney stopped doing criminal law at the beginning of 2014 and generally focuses on land and family law. He doesn't necessarily agree that there's a lack of practicing attorneys in northeastern Montana, saying that he knows plenty of people willing to take on new cases — but there's reasons why people aren't being represented by a lawyer.

"It's complicated and it's not," Savage said.

He notes that the transient nature of people working in the Bakken has become a burden for area attorneys. He recalls trying to serve papers on a person whose address was "the white camper with the wolf air-brushed on the side and a red motorcycle leaning against it." After getting burned a few times for "tens of thousands of dollars," he asks for a large retainer now,

but a lot of people don't like to pay money up front.

"I've been taken advantage of quite a bit," he notes.

"Everybody has gotten burned so bad — you send them a bill and they've already moved — so the bigger problem is the inability or unwillingness to pay for attorneys."

That adds pressure to Montana's already overburdened public defender system, which as of February was forecasting a shortfall of \$2.4 million for the fiscal year that ended on June 30.

"A lot of people came for the gold rush and found out that, one, you have to be able to pass a drug test, and, two, you have to live somewhere," Savage said. "Then the drugs came in, and there wasn't as much (high-paying) work as people thought. It's too hard to live here and too cold. A lot of them left, but what trailed in with them was crime and drugs, and that stayed."

Bidegaray said many of those cases are being handled by attorneys from as far away as Billings in numbers never witnessed before. While that's a stop-gap measure, both she and Christoffersen would like to see more young attorneys set up shop.

New people do come to northeast Montana to practice law and believe they can make a killing with criminal practice. But many of the young attorneys don't know how to operate a business and they also don't have a place to live. In addition, the weather and wide open spaces — coupled with gumbo road and the lack of big-city amenities — can drive people away after only a few short years.

And it's those first few years that are important, adds Ken Hoversland in Scobey, who notes that attorneys can do well, but it takes time to build a practice.

"If someone wanted to come in and take over, I think they could make a living," Hoversland said. "But it would take them a while to build up their clientele."

Christoffersen, who is based in her hometown of Culbertson, agrees, adding that everyone who starts out

*'I don't see very many young graduates or attorneys in general wanting to come out and start their own practice. Nobody seems to want to be in charge of their own destiny.'*

*Laura Christoffersen,  
Culbertson attorney*

**BAKKEN.,** page 33

Bakken oil development will be a hot topic at the State Bar's 40th Annual Meeting Sept. 24-26 at Big Sky. There will be 5.0 CLE hours devoted to topics related to the Bakken on Thursday, Sept. 25. A full schedule for the Annual Meeting is on page 15.

# State Bar mourns passing of legendary professor, draftsman of criminal code

By Joe Menden

William F. “Duke” Crowley’s mark on Montana law was cemented with two major accomplishments relatively early in his career — being a principal drafter of the Montana Code of Criminal Procedure in 1967 and leading a major reorganization of the executive branch of state government in 1969.

Anyone who attended the University of Montana School of Law from 1966 to 1999 remembers him as the legendary professor who taught Evidence, Civil Procedure and Criminal Law to generations of Montana’s lawyers — arguably an even bigger contribution.

But the two words that come up again and again when Crowley’s former colleagues, students and friends talk about him have little to do with his accomplishments in government, his prominence as an academic or his lofty legacy — gentleman and storyteller.

The legal profession in Montana lost one of its giants when Crowley died on June 25 at age 91.

The Hon. Donald W. Molloy, a senior United States federal judge on the U.S. District Court for the District of Montana, first met Crowley when he took Evidence from him as a first-year law student in 1973, but he became very close to Crowley after rising to the federal bench in 1995.

“He was able to communicate the significance of rules in a way that really developed a generation of lawyers,” Molloy said. “His legacy is probably that everybody that ever had Duke as a professor or as a colleague will remember him not only for his extraordinary intelligence and knowledge but for his being a good human being and having a sense of humor.”

Molloy said that that sense of humor was a key element of Duke’s success as a professor — especially considering the subject matter of the classes he taught.

“They’re pretty darn dry,” Molloy



William F. “Duke” Crowley

said of Evidence, Civil Procedure and Criminal Law. “When you get someone who can relate a story, that piques your interest. The stories and the humor were just a means he used to keep a dry subject very interesting.”

Missoula attorney Robin Ammons was in the very last Evidence class Crowley taught, in 1999. But she also knew him as his neighbor for 29 years, and her husband, Doug, was Crowley’s neighbor since the 1960s. In Crowley’s later years,

Ammons, a former registered nurse, became his caretaker.

“He loved Montana law,” she said. “When he went to law school ... he criticized the professors who used national casebooks. He just couldn’t understand why they were trying to imitate East Coast law schools. We had all the law we needed.”

Kim Kradolfer considers herself privileged to not only have had Crowley for his three signature courses, but also for

## 'CROWLEYISMS'

The University of Montana School of Law is compiling a list of Duke stories and Crowleyisms. Below is a sampling of some that have been submitted so far. If you have any you'd like to add, email them to [kathleen.reeves@umontana.edu](mailto:kathleen.reeves@umontana.edu).

*Duke was a prosecutor at heart, and when he would conclude talking about the case of a criminal who had committed some heinous crime, he would say, "they put him so deep in prison they had to shoot light into him with a cannon."*

*When he talked about a client who didn't pay his lawyer, he would say "There is a special place in hell for guys like him, right next to the fellow who invented the electric guitar (pronounced Geeetar)!"*

*Of journalism he said, "back fence gossip through a bullhorn."*



Crowley is shown during his days as an assistant attorney general for Montana.

### Criminal Procedure.

Kradolfer said she kept and used the notes from Crowley's classes for decades, probably her whole career as a deputy county attorney in Lewis and Clark County.

"He was legendary," she said. "People would hand down outlines for his class. You could predict when certain stories would come up, and people would reappear to hear those stories again.

"(His stories) painted a picture that really taught you. It was hard to forget. It wasn't that it was easy to remember, it was hard to forget. It was an honor taking a class from him."

Professor David Patterson joined the law school faculty in 1968 and considered Duke his best friend, right up until the day he died.

"He's a giant in the legal profession, and personally, he's a giant," Patterson said. "He was a leader, a mentor, a classic scholar. I think he read every book in the public library."

Patterson, who recently retired from the law school, taught Professional Responsibility, Elder Law, Family Law and Local Government. He said Duke had more influence on his career than any other person. And like Duke, Patterson wrote all his own casebooks.

"I've known him for 40 years," Patterson said. "He was my lodestone. He was always there for me."

Crowley was preceded in death by his wife, Elaine, and a son, Paul. He is survived by his son Matt.

## Tough upbringing in Walkerville

Duke was born in Walkerville on Jan. 16, 1923. He described Walkerville as a small township of huts and saloons on the barren hill above Butte. The road Crowley lived on was lined on one side by a tall fence hiding a gigantic tailings pile, and on the other side, a small row of seven cheaply built houses crammed against each other, clinging to the ridgeline.

Crowley often said his home would have needed at least two upgrades to be a shack, surrounded by ore-crushing mills and the huge steel head frames of the Alice, Moulton, Cora, Badger State and Lexington mines.

Duke's grandfather, Matt Canning, was one of the most prominent attorneys in Montana in the early part of the 20th century, and one of his ancestors, George Canning, was briefly prime minister of Great Britain in the early 19th century. But Matt Canning died when Duke was 3, and Duke's family never saw any financial benefits of his family's prominence.

But growing up in the unique and colorful atmosphere that was Butte in the 1920s and '30s helped shape the person he became. Stories flavored with anecdotes from his youth would come up often in class and conversation.

Ammons said some of the same qualities that made him legendary at the law school also made him a well-known figure in the neighborhood, saying he was the type of neighbor who would stand in the driveway and talk with you for an hour.

"It was a tremendous treat to sit at the kitchen table with him," Doug Ammons said. "It was like sitting at the table with Shakespeare. We just sat there with our mouths open."

Robin Ammons told a story of a legal lesson Crowley once gave to a group of trick-or-treaters — or "little apprentice extortionists" as Duke called them—who came to his house one Halloween.

The house, which Ammons said Elaine picked out when the couple moved to Missoula in the 1960s, was imposing, with an overhanging entryway, cut stone inlaid into the brick on the corners, and a heavy wooden door ornamented with a large iron knocker.

When the trick-or-treaters clanged the knocker on the door, Crowley slowly opened the door holding a bowl of candy. One



# Duke Crowley's final examination: Another kind of evidence column

By Cynthia Ford

All of us lost an icon of the Montana Bar last month when Duke Crowley retired from life. I lost a wonderful mentor, colleague and friend—one of only two people I have ever let call me “Cindy.” (Dave Patterson, whom I also hold in high esteem, is the other). Duke taught me a lot about teaching law in general, and about teaching both Civil Procedure and Evidence. My first day at UMLS, long after I had sold both my practice and my house to take this leap into academia, he disclosed that many on the faculty had opposed my hiring. My second day on the job, Duke set about showing me how to prove them wrong—if I haven’t, it is not his fault. He shared all of his techniques with me, including the fabled (and much maligned) “grid” system of grading. I made a lot of changes over the years (such as encouraging student participation in class discussion and including Indian law in Civil Procedure), but Duke’s advice remains the essence of my approach to my courses and work with the Bar.

Duke’s were big shoes to fill, and in fact I never did. Duke taught nothing but required courses: Civil Procedure I and II, Criminal Law and Procedure I and II, and Evidence. I was hired to teach Civil Procedure and some electives; the law school later hired Melissa Harrison to take over the Criminal Law courses and some electives, while Duke continued with Evidence until his full retirement, when I assumed that course too. The math is obvious and hopefully not gendered: it took two full-time faculty to carry the Duke’s water. (That is why I will never be the Duchess.)

In tribute to Duke, I am using the opportunity to do a sort of evidence quiz, based on his obituary that appeared in the Missoulian. I have inserted numbers in several places, which relate to the underlined sections immediately preceding the number. As you encounter each, consider what objection you might make, what response you would make if the objection were made, and what ruling the judge should make. If you think the ruling will exclude the evidence, identify how you would get this information into evidence: what witness or exhibit you would need, given that Duke is now unavailable. My own analyses, based solely on the text of the MRE, appear in the numbered endnotes. (If I were preparing for trial, I would include both excerpts from the Comments to the MRE and actual cases on point). Relevance is off the table; assume that the case, whatever it is, requires proof of these facts.

## Obituary

“Duke” William Crowley was a Prince of a Man<sup>2</sup>, and a

King of Montana law. His reign<sup>3</sup> ended when he died at home in Missoula on Wednesday, June 25, 2014, at the age of 91.<sup>4</sup> It began in Walkerville (although Butte, America, has always claimed Duke as one of its own) in 1923.<sup>5</sup> In between, Duke’s resume shows that he worked in the mines; served in the military, graduated from the University of Montana School of Law, earned an L.L.M. degree from N.Y.U. (in tax of all things)<sup>6</sup>, married and raised two sons, and read every book in the Missoula Public Library<sup>7</sup>.

If you didn’t know Duke yourself, you probably saw him walking across the Madison Street Bridge on his way to the library, always dapper in an overcoat and fedora. He eschewed exercise for its own sake, but logged miles and miles on his own two feet. He also was a fixture for years at the University dining hall; once his wife was no longer able to cook, Duke ate dinner daily with the undergraduates (and those law students smart enough to garner the benefit of Duke’s experience, wisdom, and endless stories of Montana legal happenings).

If you did know Duke in some capacity, you knew that he was amazing at his job. What you probably did not know, though, was the sheer number and diversity of those jobs, and how influential “that guy from Butte” was in each of them. He served as an Assistant Attorney General, a Deputy County Attorney, and as a private practitioner for the first fourteen years of his career, gaining experience in both criminal and civil law.

In 1966, the law school wooed him into joining the faculty, where he carried an enormous course load for the next 40 years. Singlehandedly, “the Duke” taught the required courses in Civil Procedure, Criminal Law and Procedure, and Evidence to every Montana law student for 24 years. In 1990, he finally was afforded some relief: the law school hired a new professor to take over Civil Procedure. Two years later, another new professor took over Criminal Law and Procedure. Even then, Duke continued to teach all 80-some second year students Evidence until he finally completely retired in 2005.

Although many Montana professors use nationally-published books for their courses, Duke did not believe they provided enough information about Montana law, so he compiled and annually updated his own books in each subject he taught.<sup>8</sup> His classroom lectures are famous in Montana legal circles, and almost every lawyer who ever learned from Duke can (and at the drop of a hat, will) recall and deliver some classic “Crowleyism.” All in all, Duke taught more than 3,000 law students, and he cared very deeply about each one of them. Duke’s students are now scattered around the state and the country, passing on to their mentees the knowledge and skills they learned from Professor Crowley.



Duke's painstaking dedication to legal education was matched by his extraordinary public service to Montana outside the law school. The list of his appointments to state and Supreme Court commissions goes on and on; suffice it to say that Duke was a principal architect of Montana's current Criminal Code, Rules of Evidence, statutes of limitation, venue statutes, and the overall structure of both the executive and judicial branches of state government. Duke's willingness and ability to work for the improvement of Montana has made our state, and our own lives, immeasurably better.

Duke's native intelligence and work ethic played a major part in his accomplishments and impact. However, Duke himself was always quick to credit two enormous outside influences in his life.<sup>9</sup> First, he described himself and his career as the product of the G.I. Bill. Duke was working in a mine in Butte, with no prospect of higher education, before he entered the military. Once he was discharged, he said, the world opened before him, and the next thing he knew, he was a lawyer, never to toil underground again.

The other major influence in Duke's life was Elaine (Hausted) Crowley, from "Andaconda." They married and raised two sons, Paul and Matthew. Missoulian readers will remember Elaine Crowley's many letters to the editor, often penned from her bedside "office" once she was confined to home by ill health. Duke was enormously proud of his wife and both of his sons, and bereft when Paul and Elaine predeceased him.

Matt was a great help to Duke in his last years, returning to the family home from Seattle to take care of his father. Neighbor Robin Ammons and caretaker/friend "Jay" (Jalaine Wark) provided occasional respite care, easing Duke's withdrawal from the external world. With their help, Duke was able to continue to hold court in his living room and kitchen, where Professor David Patterson and his wife Jeanie, Judge Ed McLean, Missoula County Attorney Fred Van Valkenburg, Randy Harrison<sup>10</sup> and others visited periodically. Duke treated his caretakers and visitors to his incredible memory and witty, albeit acerbic, observations about Montana politics and history.

A memorial service will be held at the Law School this fall. In the meantime, please forward your favorite Duke stories and "Crowleyisms" to Kathleen.reeves@umontana.edu.<sup>11</sup> Gifts in Duke Crowley's memory can be made to the University of Montana Foundation for the William F. (Duke) Crowley Endowment and mailed to The UM Foundation, Post Office Box 7159, Missoula, MT 59807-7159.

One of Duke's oft-repeated sayings was "Where the sidewalk stops, so does Crowley."<sup>12</sup> He was wrong: the sidewalk has stopped, but Duke's legacy lives on.

## Conclusions

First off, at trial I would not actually make many of the objections I have scattered through the obituary. I believe in fewer but better objections, both for the sake of time and administration of justice and for not appearing stupid. However, I would include all of them in my trial preparation, so that I at least know that they are possible and what result I expect. If I am pretty sure my objection would be overruled, I am not likely to make it, but I can't make that decision until I have assessed

the possible response from my opponent. On the other hand, if I am the proponent, I want to be sure I have accounted for all the possible objections my opponent might make, whether or not I think they are lame. I will include in that section of my trial notebook the questions [and answers] I intend to use, and right there the possible objections and the responses I will make. That will help me identify the "easiest route to admissibility" too.

Most, but not all, of the objections here are hearsay-based, or its flip side, "foundation" which is the same as "lack of personal knowledge." Most of the objections are relatively easy to defeat, too, so one big lesson is to not be too scared of the hearsay rule. If you anticipate an objection on this basis, and know the definitional requirement (801c), exemption (801d), or exception (803 or 804), which will get around the hearsay problem, build that into your examination before you ask the actual hearsay-like question. Either I will see that you are a step ahead of me, and will refrain from making the objection at all, or I will make a poor objection and the judge's ruling will communicate to the jury that you have the upper hand.

The "better route" to admissibility usually reflects the overall purpose of both Rule 602 and 802: to seat a live witness who actually perceived the event, who will recount to the jury his or her direct memory of that event. As soon as the evidence becomes more indirect, it also becomes much less accurate and trustworthy. If there is a live percipient witness who remembers and can communicate that memory to the court, you can prevent any objection either as to foundation and as to hearsay. The lead-in to the "what happened" question should be: "Do you know [what happened]? [Yes. (If not, might as well shoot the witness or yourself)] How do you know? [I was there and saw it] What happened/did you see?"

If you understood most of the objections, and either why my analysis is right or have a good reason for disagreeing with that analysis, you are using the evidence rules and legal reasoning tools which Duke Crowley so ably imparted. If you graduated from UMLS during his tenure there, you studied at the feet of the master. If you graduated after Duke retired, your instruction derived largely from Duke's earlier work. If you, sadly<sup>13</sup>, did not go to UMLS, you still owe Duke homage because he was responsible for so much of Montana's laws and rules of evidence, civil procedure and criminal procedure.

## Endnotes

1 OBJECTION: Hearsay. Any writing, including one published in a newspaper, is an out-of-court statement, and this is being offered for the truth of what it asserts. 801c defines hearsay, 802 prohibits it.

RESPONSE: 803(17) provides an exception to the hearsay rule for commercial publications.

RULING: Sustained. (Proponent, you have to be kidding me. 803(17) applies to "market quotations, tabulations, lists, directories, or other published compilations, general used and relied upon by the public or by person in particular occupations." This clearly does not cover all articles, even obituaries, published in a commercial newspaper. The impetus for accuracy for stock market reports certainly does not extend to obituaries.)

**DUKE**, from previous page

ROUTE TO ADMISSION: None. The obituary itself is not going to be admissible. I am going to have to call live witnesses or introduce admissible documents.

From here on out, assume that the sentences are spoken by a live witness.

2 OBJECTION: inadmissible character evidence, Rule 404. This has to be a civil case, because you can't prosecute someone who is dead. 404a absolutely prohibits the use of character evidence in civil cases. Furthermore, Duke can't be a witness, so even his character for truthfulness is inadmissible.

RESPONSE: Oh, dear. How about offered to show something other than propensity?

RULING: Sustained, unless you can actually identify the non-propensity relevant fact this evidence would show. Character is not allowed, because of the temptation it creates for a jury to condemn a bad person or pardon a good one on general principles, rather than the exact conduct proven (or not) in the case. In its way, this rule also conforms to the "every day a new beginning" concept: bad guys sometimes do good things, and even good people commit bad acts.

EASIEST ROUTE TO ADMISSION: Avoid the "what kind of guy" phrasing, and instead ask about Duke's acts and their effects, rather than his character.

3 OBJECTION: Lay opinion.

RESPONSE: RULE 701 allows lay witnesses to testify in the form of opinions, so long as those opinions are rationally based on the perception of the witness and helpful to the jury.

RULING: Sustained. This is opinion, for sure, but is not "rationally based on the perception of the witness" in the same way as "I think he was driving about 60 mph because he was going faster than I, and my speedometer said 57." (My favorite 701 ruling is that Montanans can testify about drunk, because we all know that when we see it; not so for effects of prescription drug use). Further, the jury could itself come to that opinion if the witness(es) gave "the facts, ma'am, just the facts." "King" and "reign" are fine for closing argument, but probably violate a strict interpretation of Rule 701.

ROUTE TO ADMISSION: Call a series of witnesses who can testify from personal knowledge that Duke did ... or affected [NOT!! Effected] law in Montana, such as deans, colleagues, students, members of commissions on which he served.

4 OBJECTION: lack of personal knowledge, Rule 602; hearsay, Rule 802.

RESPONSE: The witness was there, and had personal knowledge of the occurrence, time and place of death.

RULING: Overruled.

EASIEST ROUTE TO ADMISSION: Obtain and submit a certified copy of the death certificate. It falls under 802(9), record of vital statistics. The certification sidesteps the authentication requirements of Rule 901, via 902(4).

5 OBJECTION: Hearsay, lack of personal knowledge (same as above). Even if the witness were there when Duke died, he would not have personal knowledge of Duke's age, which requires knowing his birthdate. Even Duke himself did not KNOW when or where he was born (none of us do, so your birthday is rank hearsay ☹).

RESPONSE: If the witness is a family member, and knows that the family reputation is that Duke was born, 803(19) provides an exception to the hearsay rule.

RULING: overruled.

EASIEST ROUTE TO ADMISSION: The death certificate probably contains both the date and place of birth, so that might do double duty. If that information is not on the death certificate, then simply obtain a certified copy of the birth certificate as well, to meet both 802(9) and 902(4).

6 OBJECTION: hearsay. The resume is an out of court statement, Rule 802.

RESPONSE: This is not offered for the truth of the matter asserted. (This is the only way to escape the bar of 802; there is no exception to the rule or exemption to the definition which would apply).

RULING: Then what is it offered for? If the proponent can come up with some relevant, non-truth-of-the-matter purpose, the judge should overrule the objection. In this case, the opponent should ask for a limiting instruction under Rule 105. If there is no real alternative purpose, the judge should sustain the objection.

EASIEST ROUTE TO ADMISSION: If in fact you need to prove each of the asserted propositions, you should do so individually. For those events where a living person actually observed Duke in the described role, that person can testify orally. Official documents are even more efficient, but of course require work ahead of time to gather appropriately formalized versions: military discharge papers (public records, 803(8)), transcripts and diplomas from the educational institutions (business records, 803(6)), and mine employment records (also business records, 803(6)). Note that the business records exception in Montana state courts requires a live custodian of records to testify to the foundational facts, unless the other side will stipulate to the admissibility. Unless there is doubt about the foundation, your opponent should do so, as you should for her. In the FRE, updated 803(6) dispenses with this requirement if the proponent provides "a certification that complies with Rule 902(11) or (12) or with a statute permitting certification." Montana should modernize its corollary to match.

7 OBJECTION: Lack of personal knowledge, speculation, Rule 602.

RESPONSE: Logical: "Well, almost every book." Better: "This librarian does have personal knowledge, both from her own interactions with Duke and as custodian of his borrowing record, admissible under 803(6) (again).

RULING: Overruled.

EASIEST ROUTE TO ADMISSION: Call the librarian to perform double duty: testify to what she personally observed, and as the foundation witness for the exhibit, Duke's borrowing record.

8 Introduction of the latest editions of each of these "facpacs" as trial exhibits, using UMLS librarian Prof. Stacey Gordon as a foundation witness to verify that the exhibits are in fact actual copies of Duke's actual books:

OBJECTION: Hearsay, Rule 802, out of court statements.

RESPONSE A: Under the 801(c) definition of hearsay, these exhibits do not qualify. They are not being offered to prove what they say, but rather as examples of the work of Prof. Crowley.

RESPONSE B: Your honor, these publications satisfy the ancient documents exception, 803(16), because the witness has verified that each of the exhibits was found in the UMLS collection, and that each is more than 20 years old.

RULING: Overruled.

EASIEST ROUTE TO ADMISSION: Offer the exhibits as straight up exhibits, using both responses above, but if necessary (if the judge looks like she is wavering and might sustain the objection), concede that they are illustrative only. The effect is that they are more easily admitted, but will not go to the jury during its deliberation. [I will devote a later column to this distinction.]

9 OBJECTION: Hearsay.

RESPONSE: This out-of-court statement is not offered to prove in fact that

**DUKE**, from previous page

these two influences caused Duke's success, but only to show that Duke himself believed this to be true. This purpose, to show the state of mind of the speaker, is another non-hearsay use of out-of-court-statements, per 801(c).

RULING: Overruled.

EASIEST ROUTE TO ADMISSION: Use a witness who had heard Duke make this statement, and preface the question to him with: "Do you know whether Duke believed there were any special influences on his life and work? How do you know that? [Duke told me, several times]. What influences did Duke discuss with you?"

10 OBJECTION: Foundation, Rule 602, lack of personal knowledge.

RESPONSE: The witness (either son Matt or caretaker Jay) does have personal knowledge and observed each of the listed people visit Duke in his last years. Your honor, if necessary, I can also call each of the people who certainly has personal knowledge of his or her own visits, but it is more efficient to simply call the witness who knows about all of them.

RULING: Overruled.

EASIEST ROUTE TO ADMISSION: Defuse the possible objection by simply asking the foundation question up front: "Witness, do you know who visited Professor Crowley in his last years at home? [Yes] How do you know? [I was there and saw them come in and out myself; I usually answered the door, got them coffee and cake, and left them to chat, but let them out at the end of the visits] Ok, please tell us who came regularly? [List...] Rule 602 specifically says "Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony."

11 OBJECTION: Hearsay.

RESPONSE: This statement is not an assertion, and so it does not fit within 801(c). Commands are not assertions of fact; neither are questions.

RULING: Overruled.

12 OBJECTION: Hearsay.

RESPONSE: Not hearsay under the definition of 801(c), because not offered for the truth of the matter asserted. This is offered to show Duke's state of mind, a well-recognized alternative use of an out-of-court-statement.

RULING: Overruled.

EASIEST ROUTE TO ADMISSION: Use any person who heard Duke say this more than once. My choice would be my other great colleague and Duke's closest confidant, Prof. Emeritus David J. (Patterson, that is).

13 I count myself in this category. If I had known about UMLS when I graduated from college, I would have known it was ideal for me: beautiful location, great faculty and students, and actual instruction in "how" as well as "why." I figured out my mistake a year into law school, and applied to transfer to Missoula. Even though I graduated magna cum laude from one Ivy League school and was enrolled and doing similarly well at an Ivy League law school, Montana had actual standards and refused me. I'm not bitter — but it does amuse me...and is the reason that I do not have first-hand personal knowledge of, and thus could not testify to, Duke's classroom jokes.

*Cynthia Ford is a professor at the University of Montana School of Law where she teaches Civil Procedure, Evidence, Family Law, and Remedies.*



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# Telehealth services networks: A promise not fully delivered

By Steve Kreitner

*This article is part of a series of articles presented by members of the State Bar's Health Care Law Section.*

Health-care institutions and providers are increasingly looking to telehealth services technology as a way to help improve clinical outcomes, increase the accessibility and convenience of health-care services for their patients, and lower costs. This effort is clearly seen in the proliferation of telehealth networks across the United States. The American Telemedicine Association reports that there are 200 telehealth networks and 3,500 telehealth service sites spread across the country. Over half of all U.S. hospitals offer telehealth-related services and hundreds of thousands of Americans are using telehealth services, including remote cardiac monitors, remote consultations and other health and wellness applications.<sup>1</sup> The Northwest U.S. has 41 telehealth networks that serve the states of Alaska, Washington, Oregon, Idaho, Utah, Wyoming and Montana.<sup>2</sup>

The state of Montana has an established history of using telehealth services to reach rural communities that need medical and specialist care: Three telehealth networks already cover eastern and north-central Montana<sup>3</sup> and a fourth network in western Montana is in the initial stages of implementation<sup>4</sup>.

The presence of so many telehealth networks, however, does not mean that they have achieved a satisfactory level of success in actually reaching patients. As an example, a 2013 article in Medicare & Medicaid Research Review<sup>5</sup> observed that, despite higher Medicare reimbursement payments and lower regulatory burdens imposed by Congress, only 369 telehealth practitioners saw 10 or more Medicare patients in 2009. The authors noted that reimbursement issues, complex interstate licensure requirements, and regulatory compliance issues are often among the top cited reasons why telehealth technology has yet to fully deliver on its promise.

This article provides a brief introduction to telehealth services technology and the more important and related legal issues, so that Montana lawyers can better assist their health-care clients in taking advantage of telehealth technology's promising potential.

## What is telehealth?

"Telehealth" and "telemedicine" are often confused and used interchangeably, so a good starting point is to understand the intended distinction between the two terms. Telehealth is a broad term that encompasses the use of health information



and telecommunications technologies to deliver clinical care to remote patients, provide both patient and health related education, and to administer public health services. Telemedicine, on the other hand, is a more specific term that refers to clinical care (assessment, diagnosis, treatment, monitoring and education) being delivered by a licensed health-care provider at one location ("distant site") to a patient at another site ("originating site") by means of health information and telecommunications technologies. A telepresenter is a person that assists the patient and is present at the originating site when appropriate.

Telehealth services are delivered through a widening array of technologies. Synchronous technology ("real time") means the use of health information and telecommunications technology that, at a minimum, possesses two-way, real-time audio and video capabilities allowing interactive communication between the patient and his/her health-care provider. Video conferencing is an instance of synchronous, real-time technology that facilitates remote consultations where the patient and his/her health-care provider can see and hear each other in real time. Asynchronous technology ("store and forward") is the use of health information and telecommunications technology that allows a patient's medical information to be stored and/or sent to his/her health-care provider for review at a later time



when the patient is no longer present. Well-known examples of store and forward technology are PACS (picture archiving and communication systems) systems that store and send X-rays, electrocardiograms, CT scans and video and photographic images. Remote monitoring devices include pacemakers and other cardiac monitors that enable a patient's ongoing health data (e.g., heart rate) to be captured and transmitted to the patient's health-care provider(s) via both land and wireless telecommunication technology.

## Important legal Issues to Consider

A survey of the important legal issues surrounding telehealth services quickly results in a long list of issues that should be considered when representing a telehealth services institution or provider. Depending on the client and the context, this list includes: provider reimbursement; interstate licensing requirements of out-of-state health-care providers; credentialing and privileging requirements, HIPAA privacy and security concerns; Joint Commission accreditation requirements; U.S. Fraud and Abuse laws; corporate practice of medicine; medical malpractice liability; equipment/connectivity funding opportunities; Food and Drug Administration laws; and equipment/technology concerns.

Due to space limitations, however, this article focuses only on three issues that commonly arise when advising a telehealth services client: provider reimbursement, provider licensing requirements, and credentialing and privileging requirements.

## Provider Reimbursement

**Medicare reimbursement** – The Medicare program does reimburse the use of telecommunications systems as a substitute for in-person encounters for professional consultations, office visits, office psychiatry services and a limited number of other physician fee schedule (PFS) services. Distant site physicians/practitioners receive a fee equal to the current fee schedule amount applicable for the service or care provided by the physician/practitioner. Payments made to the physician/practitioner may not be shared with the referring physician/practitioner or telepresenter. The originating site will be reimbursed a facility fee that is updated by the Medicare Economic Index on an annual basis.<sup>6</sup>

In order for physicians/practitioners to receive Medicare Part B reimbursement of telehealth services the following conditions must be met<sup>7</sup>.

- The distant site physician/practitioner is licensed to furnish the service under the originating site's state law.
- The distant site practitioner is one of the following: physician, physician assistant, nurse practitioner, clinical nurse specialist, nurse-midwife, clinical psychologist, clinical social worker, registered dietitian or nutrition professional.
- The originating site is located at one of the following: a physician/practitioner office, critical access hospital, rural health clinic, federally qualified health center, hospital, hospital-based/critical access hospital-based renal dialysis center, a skilled nursing facility, or a community mental health center.
- The originating site is located in a rural Health Professional Shortage Area (HPSA) or in a county that is not

included in a Metropolitan Statistical Area.

- The medical examination of the patient is under the control of the distant site physician/practitioner.

Other considerations and limitations regarding Medicare Part B reimbursement for telehealth services include:

- Reimbursement is not conditioned on the location of the distant site physician/practitioner.
- A telepresenter does not have to be at the originating site unless the distant site physician/practitioner has determined it is medically necessary.
- Typically, the Federal Centers for Medicare and Medicaid Services ("CMS") requires that telehealth services mimic the normal interactions between patients and their health-care providers. For example, video consultations must be synchronous interactions that substitute for the normal face-to-face consultations between patients and their health-care providers. Store and forward applications, such as teleradiology and remote EKG applications, are reimbursed by Medicare because those services don't usually involve real time interactions with patients.
- Clinical psychologists and social workers may bill and receive payment for individual psychotherapy via a telecommunications system, but may not seek payment for medical evaluation and management services.

- Physician visits required by 42 CFR §483.40(c) for long-term-care patients may not be furnished as telehealth services.

- CMS adds or deletes to the list of reimbursable telehealth services through the annual physician fee schedule rulemaking process. Telehealth itself is not reimbursable. Rather, CMS determines that a covered service may appropriately be performed by telehealth technology and then will pay for the underlying service so provided.

**Medicaid Reimbursement** – Although the federal Medicaid statute does not recognize telemedicine as a distinct service, it does allow states to choose to cover telemedicine services as a cost-effective alternative to the typical face-to-face interactions between patients and their providers.<sup>8</sup> With this in mind, reimbursement under Medicaid involves the following requirements and considerations:

- Telehealth physicians/practitioners must practice within the scope of their State Practice Acts.
- Telehealth physicians/practitioners must comply with federal requirements of efficiency, economy and quality of care.
- States may implement innovative payment methodologies for telehealth services. For example, distant-site physicians/practitioners may be reimbursed for their professional services and the originating site may be paid a facility fee. States may also reimburse for technology-related costs as long as they are linked to a covered Medicaid service.
- The general Medicaid requirements of comparability, statewideness and freedom of choice do not apply to telemedicine services. So, states may determine: (a) what types of telehealth services to cover, (b) where to cover those services, (c) how those services are provided and covered, (d) which Medicaid-recognized and qualified physicians/practitioners may be covered and reimbursed and (e) how much to reimburse for telemedicine services, within limits.

- If a state doesn't cover specific types of telehealth physicians/practitioners or decides to limit its geographic coverage of telehealth services, then the state must assure access and face-to-face visits by the "recognized" practitioners in the state's non-covered areas.

- As long as a state reimburses telehealth services in the same way and amount that it pays for face-to-face services, the state is not required to submit a separate State Plan of Agreement for coverage or reimbursement of telehealth services.

*Private Payer Reimbursement* – Although regulations regarding payment for telehealth services by private payers varies from state to state and among payers, 19 states (including Montana) and the District of Columbia have now passed parity laws for private insurance coverage of telemedicine.<sup>9</sup> Montana is included in that group and its parity law became effective on Jan. 1, 2014, and requires telehealth services coverage by private health-care services insurers to be equivalent to the coverage for services that are provided in person by a health-care provider or health-care facility.<sup>10</sup>

## Provider Licensure

All states require practitioners to be licensed in the state in which their patients are located. However, how telehealth providers and telehealth activities are regulated varies considerably from state to state. Because the variation among the states in telehealth regulations impedes the growth of telehealth services across the country, the Federation of State Medical Boards, a national nonprofit representing the 70 medical and osteopathic boards of the United States and its territories, is currently developing an Interstate Medical Licensure Compact, which would provide an alternative way for qualified physicians to gain expedited licensure in all states that agree to the Compact.<sup>11</sup>

In Montana, telemedicine is specifically defined in MCA §37-3-342 and the Board of Medical Examiners issues a special telemedicine license that entitles physicians located outside the state to provide telemedicine services to patients located in Montana.<sup>12</sup> A physician practicing telemedicine in Montana without a telemedicine license is guilty of a misdemeanor and upon conviction can, for each daily failure to comply with Montana's licensing requirements, be fined up to \$1,000, imprisoned for up to a year, or both.<sup>13</sup>

## Credentialing, Privileging of Telehealth Providers

CMS Hospital Conditions of Participation for Medicare require that, when telemedicine services are provided to an originating site hospital's patients by providers from a distant-site hospital or a distant-site telemedicine entity, the agreement between the originating-site hospital and the distant-site hospital or telemedicine entity must be written and require the hospital's governing body and medical staff to follow certain requirements in the credentialing and privileging of the physicians/practitioners who will be providing telemedicine services to the originating site hospital's patients.<sup>14</sup> Similar requirements are imposed on the governing bodies and medical staffs

of critical access hospitals.<sup>15</sup> If the parties to such an agreement meet certain conditions, the originating-site hospital/critical-access hospital can choose to rely on the credentialing and privileging recommendations of the distant-site hospital/telemedicine entity.

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As telehealth services continue to expand across Montana and the U.S., Montana lawyers have a tremendous opportunity to help their health-care clients use telehealth technology to reach more patients with better services at a lower cost. For lawyers who want to take advantage of this opportunity and learn more about telehealth services and related legal issues, the following websites are a great place to start: (a) The Center for Telehealth and e-Health Law ([www.ctel.org](http://www.ctel.org)); (b) The American Telemedicine Association ([www.americantelemed.org](http://www.americantelemed.org)); (c) The Centers for Medicare and Medicaid Services ([www.cms.gov](http://www.cms.gov) and [www.medicaid.gov](http://www.medicaid.gov)); and (d) the Telehealth Resource Centers (<http://www.telehealthresourcecenter.org/legal-regulatory>).

**Steve Kreitner is Associate General Counsel for the Kalispell Regional Healthcare System in Kalispell and a member of the State Bar's Health Care Law Section.**

## Endnotes

- 1 American Telemed Association, <http://www.americantelemed.org/about-telemedicine/faqs#.U8hkfMIg-Ch>
- 2 Northwest Regional Telehealth Resource Center - <http://www.nrtrc.org/about-us>
- 3 (1) Eastern Montana Telemedicine Network in Billings; (2) Partners in Health Telemedicine Network in Billings; and (3) REACH-Montana Telehealth Network in Great Falls
- 4 Western Montana Telemedicine Network in Kalispell
- 5 Medicare & Medicaid Research Review Journal, 2013: Volume 3, Number 4
- 6 42 CFR §414.65
- 7 42 CFR § 410.78
- 8 <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Telemedicine.html>.
- 9 <http://www.americantelemed.org/policy/state-telemedicine-policy#.U87LK8lg-Cg>
- 10 MCA §33-22-138
- 11 <http://cms.fsmb.org/state-medical-boards/advocacy-policy/interstate-model-proposed-medical-lic>
- 12 MCA §37-3-301; §37-3.342
- 13 MCA §37-3-325
- 14 42 CFR §482.12 and 42 CFR §482.22
- 15 42 CFR §485.616 and 42 CFR §485.641

# Proposal on class action suit rules would improve access to justice

By Amy Sings

On June 25, the Montana Access to Justice Commission submitted a proposed amendment to Rule 23 of the Montana Rules of Civil Procedure, regarding the disposition of residual funds in class action cases. The Court signed an Order on July 1 beginning the 60-day comment period.

Class actions make access to justice a reality for those who would otherwise not be able to obtain the protections of our justice system. The proposed amendment recognizes that the Montana Justice Foundation exists for precisely the same reason. Residual funds have provided funding for innovative legal aid and access to justice programs over the past several years; however, this has not been accomplished in a systematic way.

The purpose of the proposed amendment is to ensure that, to the extent practicable, residual funds in class action cases in the Montana courts are distributed to legal aid and public interest law organizations that improve access to justice for less fortunate residents of Montana. The amendment would establish a presumption that residual funds in class actions go to organizations that improve access to justice for low-income Montana residents. The rule would provide that where the claims process has been exhausted and residual funds remain, at least 50 percent of the residual funds would be disbursed to the Montana Justice Foundation to support activities and programs that promote access to the Montana civil justice system. Courts would retain full discretion to award remaining funds to other organizations that serve the objectives of the underlying litigation or that otherwise promote the substantive or procedural interests of members of the certified class.

A comprehensive study released in 2010, "2010 Montana Legal Needs Survey" (available at: <http://bit.ly/MTA2JNeeds>), found that over the course of a year, thousands of low-income Montanans were unable to obtain necessary legal assistance that often was critical to their safety and independence, and tens of thousands more attempted to solve often complicated legal problems on their own.

The Montana residents who are effectively shut out of our state's justice system today include working poor families victimized by mortgage fraud, elderly victims of predatory lending and other consumer fraud, women and children struggling with domestic violence, and veterans wrongfully denied health care benefits that have been promised to them. This is a crisis for our justice system and for all Montana residents.

The recent work of the Montana Access to Justice Commission — along with enhanced efforts by the legal community to increase pro bono work and voluntary financial contributions to the Montana Justice Foundation — have made it possible for thousands more to obtain necessary legal assistance. However, there remains a huge gap in access to our justice system for our most vulnerable residents.

The proposed amendment is a critical step toward advancing a cause that is consistent with the purposes of class actions in Montana and complements other efforts to increase funding for legal assistance for low-income Montanans.

Residual funds in class actions are a perfect match for this purpose, as the underlying premise for all class actions is to make access to justice a reality for Montana residents who otherwise would not be able to obtain the protections of our justice system.

The proposed amendment would give the courts and counsel in class action cases a ready tool for resolving the question of how to deal with funds that are not disbursed in the claims settlement process.

The amendment has the support of the Montana Access to Justice Commission and the State Bar of Montana Justice Initiatives Committee, which include both plaintiff and defendant class litigation counsel and judges from throughout the state.

For more information about the proposed amendment, contact Amy Sings In The Timber of The Montana Justice Foundation at 406-523-3920 or [asings@mtjustice.org](mailto:asings@mtjustice.org).

**Amy Sings** is the executive director of the Montana Justice Foundation.

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of the kids said to him, 'Wow, mister, you live in a castle,' " Robin said. "Duke's response was, 'At the common law, every man's house is his castle.' "

"The kid's jaw dropped," Doug Ammons said. "He didn't know he was getting this great legal lesson from the master."

## Early career

After graduating from the UM law school in 1950 and completing an LL.M. in Taxation, Crowley was an assistant attorney general for Montana from 1952 to 1961. He was deputy county attorney for Lewis and Clark County while also maintaining a private practice from 1961-1966.

According to Ammons, Crowley always considered himself a prosecutor. He said the reason he became a prosecutor was because he wanted "to keep the bad guys from hurting anybody else." When referring to notorious bad guys, he would often say, "We put him so far away, they had to shoot sunlight to him with a cannon."

In 1966, Robert Sullivan, who was dean of the UM law school at the time, approached Crowley about becoming a law professor. Crowley initially didn't want the job, according to Ed Eck, who was a law professor at UM with Crowley and eventually became dean himself.

"Duke was reluctant. If he were to teach he would do so on one condition. Only to the extent it would help lawyers serve their clients. (Sullivan) was pleased to accept the condition.

"(Duke) was really student focused. He was more than a storyteller. He really wanted to prepare students to serve their clients. If he could see no practical application, he wouldn't waste their time."

## Personal heartbreaks

Along with his tremendous accomplishments, Duke also knew tremendous heartache, not only from growing up in poverty, but also from personal tragedies in his adult life, though friends and colleagues say he didn't often open up about his personal life.

For many years Elaine was confined to her bed, but Duke would cheerfully say when she called out for him, "That's my summons from the Command Center!"

"He cared for her every day, walking home from the law school at noon and night to help, always hoping she would get better," Ammons said.

The older of Duke's two sons also lived at the family home. Paul passed away a few years after Duke's wife, and these deaths were a deep source of pain for him.

## Cherished relationships

According to Ammons, Crowley treasured his close relationships with colleagues like Judge Molloy and Judge Ed McLean, longtime law school professor and close friend Dave Patterson and many others.

The feeling was mutual.

McLean, like Molloy, became close with

## MEMORIAL PLANNED FOR FALL

The University of Montana School of Law is planning a memorial service celebrating the legacy of Professor Crowley. The service will be held in the early fall at a date to be announced later. Look for details at [montanabar.org](http://montanabar.org) and in future issues of Montana Lawyer. Gifts in Duke Crowley's memory can be made to the University of Montana Foundation for the William F. "Duke" Crowley Endowment and mailed to The UM Foundation, P.O. Box 7159, Missoula, MT 59807-7159.

Crowley after rising to the bench. But McLean said he became a fan of Crowley's when he started working for the Missoula County Attorney's Office in 1973 and gained an appreciation for his work on the Montana Criminal Code.

"It was a great breakthrough," McLean said. "I was just a young attorney back then. It so greatly simplified things."

"Duke was one of the most influential people in Montana law," McLean said. "I can't think of anyone who had more influence. Look at the reorganization of state government and how it's held the test of its day."

Molloy said the last time he saw Duke was on his 91st birthday in January, along with McLean, U.S. District Judge Dana Christensen and others. They each had a piece of chocolate cake.

"It was fitting to see the Duke there," Molloy said. "He seemed in good spirits."

Professor Cynthia Ford, who took over teaching evidence for Crowley in 1999 and still teaches, also had great affection for him. She said when she was hired, she wasn't sure she would be able to do the job.

"There's no link between teaching ability and getting hired," she said. "I really needed a lot of direction. He was someone I could always go to."

Ford said Crowley taught her his famed grid grading system, which she used for years, and passed on the importance of using his own casebooks. Although she found the task of keeping up all her own casebooks too daunting, she still incorporates Montana law in her casebooks to this day.

Robin Ammons said Crowley hoped to continue to influence his beloved UM School of Law even after his death. He wanted his ashes spread on Mount Sentinel, "so he could keep his eye on the law school."

She said Duke deeply appreciated his students and if he were to have a send-off to Montana lawyers it would likely be like what he recently wrote to Missoula County Attorney Fred Van Valkenburg: "We go back a long way and I've relished the acquaintanceship ever since we shared a classroom from both sides of the podium."

The law school is planning a memorial service celebrating the legacy of Professor Crowley. The service will be held in the early fall at a date to be announced later. Gifts in Duke Crowley's memory can be made to the University of Montana Foundation for the William F. "Duke" Crowley Endowment and mailed to The UM Foundation, P.O. Box 7159, Missoula, MT 59807-7159.

*Joe Menden* is editor of Montana Lawyer magazine.



# Montana defense attorneys published in national legal journal The Champion

John Rhodes of Missoula and Daniel Donovan of Great Falls have co-authored the cover story published in the latest (May) edition of The Champion, the magazine of the National Association of Criminal Defense Lawyers.

NACDL, headquartered in Washington, D.C., was founded in 1958, has nearly 9,000 direct members and 90 state, local and international affiliate criminal defense lawyer organizations with a total of about 40,000 members. The Association's stated mission is to "Ensure justice and due process for persons accused of crime. Foster the integrity, independence and expertise of the criminal defense profession. Promote the proper and fair administration of criminal justice."

The article, titled *Branded for Life by the Modern Scarlet Letters: Do Convicted Sex Offenders Have Rights While On Parole, Probation, or Supervised Release?*, addresses some of the problems faced by those who are convicted of sex-related crimes primarily in the federal courts.

Often, so-called sex offenders have been completely restricted from being in the presence of minor children or from stepping foot in a public place where a minor may possibly be present. However, the article asserts that such restrictions have constitutional limitations. For example, courts have held that a parent has a fundamental liberty interest in companionship with his or her child. If the offense was not committed against one's own child and if the offender does not pose a danger to his or her own child, courts may not prohibit the individual from having a meaningful relationship with his or her child.

Commonly, at the end of a sentencing hearing, criminal defense lawyers do not listen closely or carefully as the judge announces the standard and special



conditions of supervised release or probation. As a result, lawyers frequently do not object to any special conditions. Donovan and Rhodes believe that the time is ripe to object to, and litigate, special conditions that may infringe on basic constitutional rights. Some courts have limited or rejected certain special conditions, such as the

prohibition of the use of a computer for a crime that did not involve a computer. In the article, Donovan and Rhodes provide tips that will help criminal defense lawyers prevent unreasonable and unconstitutional conditions.

The article may be accessed at the NACDL website, [www.nacdl.org](http://www.nacdl.org).

# Clinics make the work go 'round

By Elizabeth Weaver

It is June 18 and the clock reads ten minutes to five. As most attorneys and staff are heading out of a local firm in Missoula, the WMBA Pro Bono Coordinator walks in and starts to unload a box full of pro se paperwork, clipboards, pens, and notepads. It is the third Wednesday of the month and in the Fourth Judicial District, that means the Family Law Advice Clinic is gearing up for a night of appointments. Each month, the coordinator organizes the clinic-scheduling clients for a half-hour advice timeslot and lining up attorneys to donate their time. The clinic runs from 5-7 p.m. and can accommodate ten clients and four volunteer attorneys. By the second week of the month, this clinic is usually full.

Missoula is not the only town in Montana supporting legal advice clinics. In November, Bozeman added a monthly Family Law Legal Advice Clinic to Gallatin County's pro bono program and it has been a huge success. From 10 a.m. to 2 p.m. on the third Thursday of each month, pro bono attorneys fill the offices of a local firm as they meet with scheduled clients. The clinic is unique in that it offers an on-site mentoring system that pairs veteran family law attorneys with attorneys new to that area of law. Like most clinics, participants are screened for financial eligibility by Montana Legal Services Association (MLSA). This ensures that clinics are helping those who truly cannot afford to pay for legal help.

For Bozeman, the implementation of a clinic has had a positive effect on those residents who have to represent themselves in District Court. Since the clinic's inception, local pro bono attorneys have served over 60 low income Montanans. And it's not just statistical. The impact of the clinic has helped countless clients effectively represent themselves by answering questions on court procedure and assisting in preparation of documents.

Like Gallatin County, the First Judicial District Pro Bono Program hosts a legal advice clinic. The State Law Library hosts the clinic over the lunchtime hours. So far they have served clients with family law cases but are able to advise on other civil legal issues depending on the backgrounds of the volunteer attorneys. For attorneys willing to volunteer, the First Judicial District Pro Bono Program offers a mentorship program. For each advice session an attorney new to the clinic is paired with a veteran clinic attorney so each client has two lawyers sitting in

the advice session.

In Central Montana, a strong Court operated clinic is helping to meet the legal needs of Lewistown residents. "Our attorneys are very good at being engaged and we get good reviews from the persons that come in" notes attorney and clinic volunteer, Craig Buehler. Set for every Wednesday morning, the Clerk of Court schedules appointments, manages the list of clients attending, and keeps record of the attorney volunteers. All attorneys in the Tenth Judicial District are expected to take a shift.

Last but not least, the Yellowstone Area Bar Association (YABA) has run a clinic through its Family Law Project for over three years. Different from others in the state, the YABA clinic is held bi-weekly at the Montana Legal Services office in Billings. Held during the day, each clinic is staffed with two volunteer attorneys who see up to eight clients during the course of the clinic. That means that over thirty people are served through the clinic each month in Billings. Seen another way, the clinics have allowed Billings attorneys to contribute their time to advise one pro se litigant per day.

So why are clinics so successful? They are the perfect combination of length and accessibility. "Clinics allow attorneys with hectic schedules to have direct contact with clients in dire need of assistance and provide those clients with potential solutions in a one-on-one setting in real time," says clinic volunteer attorney and WMBA Pro Bono Committee President, Ali Garab. "While there will always be a need for attorneys to take on full pro bono cases, the clinics offer attorneys an opportunity to help multiple clients in a short time span. It also benefits the clients—they often leave the clinic feeling empowered to move their case forward on their own when they might otherwise have been left frustrated with the legal system or uncertain of what steps to take next." Clinics provide direction to clients who are likely to proceed pro se because they cannot afford the services of an attorney. Since all clinic clients are screened for financial need, organizers know that without help from a pro bono attorney or advice from a clinic volunteer these individuals could not afford representation.

While MLSA can help to serve many low-income Montanans, it simply doesn't have the resources to address the

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wine-tastings<sup>15</sup> or regaling them about his and Theresa's travels through the wine country of Italy or bike tours through New England. One friend describes him as either having had, or looking forward to, his former/next life as a sommelier.<sup>16</sup> His

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<sup>15</sup> A boomer's version of their college-day drinking game of Pass-Out.

<sup>16</sup> Ever the word enthusiast, Randy may already know that the word *sommelier* may have its roots in the old French *saumalier*, or pack animal driver, an apt, or at least a half-apt, description.

tennis back-hand could stand some improvement, and he says his vertical leap on the basketball court has suffered with his accumulated years. He reportedly dislikes dogs; but not little kids — don't get him started on his grandson unless you've got time.

What isn't lost, and for which we are thankful, are the countless hours, the fierce pride and commitment, and the contribution Randy has given the practicing bar and the people of Montana.

**Attorney Michael Anderson** is a member with Anderson & Liechty, PC, in Billings.

# Montana Law Student Pro Bono Service Award

This award is a collaborative effort between the University of Montana Law School, private firms and attorneys, Montana Legal Services Association, and the local judiciary to recognize the outstanding volunteer work of law students. The award is given annually in October during National Pro Bono week to a 3L student who has demonstrated extraordinary commitment to public service-in particular the field of pro bono legal work. For this award, pro bono is defined as: *work taken voluntarily, without payment, and done as a public service.*

Eligibility criteria for the award are:

- 1) The student has demonstrated a passion for public service, his or her community and the law, especially in terms of providing legal services to under-served populations. These include, but are not limited to low-income residents, veterans, handicapped, children or Native populations.
- 2) The student has performed meaningful pro bono legal work which has met a need or extended services to underserved segments of the community. This work can include but is not limited to projects at major firms that benefit an underserved population, work at the public defender's office, for veterans or native organizations, CASA, legal aid/services or the Housing Authority.
- 3) The student has participated in other public service oriented activities or groups such as an official student group, a religious institution, or a nonprofit. Community service activities will also be considered. These activities can include but are not limited to Kiwanis, legal aid or advice clinics, tax preparation clinics, Veterans Stand Down, Project Homeless Connect, or volunteering at soup kitchen/food pantry or as shelter advocates.
- 4) A total of at least 50 hours of completed legal pro bono work is suggested. Hours completed for course credit or mandatory clinicals may *not* be counted, but any hours over the course work requirement will count. Example: student completed 20 hours of pro bono for the Professional Responsibility class. The 4 hours mandated for the class may not be included, but the student can count the remaining 16 hours.

Students can either apply for the award or be nominated by a third party. For self-applicants, please provide two references along with this application. For nominations, see below criteria.

On a separate sheet of paper, please describe the candidate's involvement in the community and identify the ways in which they have met the eligibility criteria in narrative form. Supplemental supporting documents such as volunteer logs, letters of support, news articles or the student's resume may also be included in the nomination packet.

All nominations must be received by **Friday, October 3<sup>rd</sup>**. Send to:

Montana Law Student Pro Bono Award Committee  
c/o Montana Legal Services Association  
211 N. Higgins Avenue Suite 401  
Missoula, MT 59802

Electronic submissions can be emailed to: [eweaver@mtlsa.org](mailto:eweaver@mtlsa.org)

Nominee Name \_\_\_\_\_

Nominee phone \_\_\_\_\_ Nominee email \_\_\_\_\_

Your name \_\_\_\_\_ Your phone or email \_\_\_\_\_



### Commission forwards candidates for work comp judge to governor

The Judicial Nomination Commission met by conference call on July 29 to review the applications for judge for the Workers' Compensation Court. The commission also reviewed comments from the public regarding the applicants. Members unanimously voted to submit the names of William Dean Blackaby of Helena, Kay Lynn Lee of Kalispell and David Michael Sandler of Kalispell to Gov. Steve Bullock for his consideration. A fourth applicant, William O. Bronson (Great Falls), withdrew his application.

The candidates are vying to fill the position that has been

vacant since the appointment of Justice James Shea to the Montana Supreme Court in May.

The governor has 30 days from receipt of the list of nominees to fill the position. The governor's appointee is subject to Senate confirmation. If confirmed, the appointee will serve for the remainder of the vacated term, which expires in September 2017, and is eligible for reappointment to a full six-year term. The annual salary for the position is \$117,600.

Judicial Nomination Commission members are District Judge Richard Simonton of Glendive; Shirley Ball of Nashua; Mona Charles of Kalispell; Patrick Kelly of Miles City; Lane Larson of Billings; Ryan Rusche of Columbia Falls; and Nancy Zadick of Great Falls.

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**You don't have to take the case:** If you are unable, or not interested in taking a case, just let the prospective client know. The LRIS can refer the client to another attorney.

**You pick your areas of law:** The LRIS will only refer prospective clients in the areas of law that you register for. No cold calls from prospective clients seeking help in areas that you do not handle.

**It's easy to join:** Membership of the LRIS is open to any active member of the State Bar of Montana in good standing who maintains a lawyers' professional liability insurance policy. To join the service simply fill out the Membership Application at [www.montanabar.org](http://www.montanabar.org) -> For Our Members -> Lawyer Referral Service (<http://bit.ly/yXI6SB>) and forward to the State Bar office. You pay the registration fee and the LRIS will handle the rest. **If you have questions or would like more information, call Kathie Lynch at (406) 447-2210 or email [klynch@montanabar.org](mailto:klynch@montanabar.org).** Kathie is happy to better explain the program and answer any questions you may have. We'd also be happy to come speak to your office staff, local Bar or organization about LRIS or the Modest Means Program.



## Continuing Legal Education

For more information about upcoming State Bar CLE, please call Tawna Meldrum at 406-447-2206. You can also find more info and register at [www.montanabar.org](http://www.montanabar.org). Just click the calendar in the upper left side of the home page. We do mail out fliers for all multi-credit CLE sessions, but not for 1-hour phone CLE or webinars. The best way to register for all CLE is online.

### August

**Antitrust Issues in Health Care Law** — This program will provide insight into the antitrust issues that will affect hospitals and doctors in light of this changing legal environment. Speakers include David A. Ettinger, lead counsel for one of the successful plaintiffs, Saint Alphonsus, and Christi J. Braun, special deputy counsel and senior advisor to Shands Teaching Hospital in Gainesville, Florida. Tony Patterson, chief administrative officer and general counsel at Kalispell Regional Healthcare, will moderate the session.

### September

**Annual Bankruptcy Section CLE (Missoula)**—Sept. 4-5—10.5 CLE, including 1.0 Ethics. CLE is in conjunction with Grizzly Football Game against Central Washington. CLE will start around 1 p.m., Thursday, September 4, at the Holiday Inn Downtown. CLE topics will be Stern

v. Marshall Progeny; Executive Benefits Insurance Agency v. Arkison; Bankruptcy 101—a Primer for New Bankruptcy Practitioners; §1305 Claims-Tax Compliance in Active Chapter 13; Extensions for Tax Filings; Setoff and Recoupment, the Automatic Stay, and the use of 363 Sales to Cut Off Successor Liability; Credit Reporting: Issues Impacting Consumers and Bankruptcy; Fair Debt Collection Practice Issues; 15 Dischargeability Litigation: The Challenges of the New Defalcation Standard; Limited Scope Representation; and a Judges Panel Hon. Frank R. Alley, III, Hon. Rosemary Gambardella and Hon. Ralph Kirscher. Registration available soon.

**State Bar of Montana Annual Meeting (Big Sky)** – Sept. 25-26 - 10.25 CLE credits, including 2.0 Ethics. The State Bar of Montana celebrates 40 years. CLE topics include Lessons from the Bakken: Impact on Practitioners; Protecting Your Clients' Data; Hot Topics in Health Care Law for the General Practitioner; The Five Best Fastcase Features; 30 Tech Tips in 60 Minutes; and Montana Supreme Court Oral Arguments on Masters Group International Inc. v. Comerica Bank.

### October

**Annual Construction Law Institute CLE (Bozeman)** – Oct. 10 Details available soon.

**Estate Planning CLE (Missoula)** – Oct. 16. Details available soon..

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**BAKKEN**, from page 17

— regardless of their location — has to grow their client base. She believes that it's just a little more difficult here because of the location.

"I think part of it here is the landscape. Eastern Montana has always been the lesser cousin to western Montana, and there's a remoteness to it," she said. "People think there isn't anything to do (socially) but they're not taking the time to become part of the community. Frankly, sometimes I have nights that there's too many things to do."

There's another wrinkle, Hoversland notes. People in small communities, who have lived there all their lives, can be wary of newcomers, especially those from other states who may bring different values. They don't know it's rude not to give a nod and the two-finger salute when passing a vehicle on a road. They may not understand the importance of seasons to ranchers and farmers, or why you don't ask someone how many acres they own.

"People are somewhat cliquish, but in the long run you can live comfortably here," Hoversland adds. Those in the legal profession in northeastern Montana believe new attorneys would readily find mentors. Bidegaray already is doing that in a sense — she rents rooms to two people in her office, just to give them a roof over their heads at a reasonable rate.

"In the community where I live, housing is outrageously expensive," said Bidegaray, a Richland County native. "I think attorneys can make good money here because they can charge competitive rates with what's being charged elsewhere in Montana, but there's no houses available even if you make good money. And if you're fresh out of law school, you will have to work for a while to be able to afford a place, and there's nowhere to live in the meantime."

Both Bidegaray and Christoffersen would like to see the University of Montana School of Law encourage graduates to set up shop in eastern Montana, and give them the tools to do that.

Lori Freeman, who does outreach for the University of Montana School of Law, said encouraging students to consider working in eastern Montana and other rural communities is something they discuss often. But it's difficult for the many nontraditional students, many with families and significant student loans, to move to make that leap.

"They're a little hesitant to start their own practice because of the student loans; I think it was much easier to do so 20 years ago," Freeman said.

She tries to recruit student from eastern Montana and small, rural communities knowing they'll be more inclined to return to those types of areas once they graduate. But that involves building relationships with colleges across the state, and since Freeman's only been at the law school for three years, she's only starting to make inroads there.

"In my first year with admissions and career services, I didn't travel much in-state or out of state recruiting, but I'm trying to reach out more," she said.

And while the law school hasn't worked on any kind of mentoring project, it's something she would like to try.

"If students were to come to me and say 'I would like to go to a rural place' I would be on the phone in an instant contacting attorneys or even the State Bar," Freeman said. "We have had several discussions with the State Bar regarding the problem of lawyers retiring in rural communities and hope to take a road trip with a busload of students to rural communities where they could meet the judges and attorneys. We haven't done that yet but are throwing it around as an idea."

***Eve Byron** is an award winning freelance journalist, who worked at newspapers in Colorado and Montana from 1987 to 2014.*

questions and goals that my own mid-sized Montana firm has faced or will likely face when dealing with online legal research solutions moving forward.

I want to be clear that I don't feel I can share with the legal community any great knowledge on how online research tools are used. I can only share with readers that from an administrator's point of view it is important that the attorneys doing the research have the resources they need to get their work done efficiently and correctly, with the most up-to-date information possible. My involvement with online research companies is to negotiate pricing, make sure attorneys have the resources through that company that they need, report on research and bill as necessary while constantly keeping the client's best interests in mind.

As most attorneys know, there is a trend occurring with regard to the billing of legal research. Where firms used to pass the online research expense to clients as a cost to be reimbursed to the firm, they are now finding that there isn't just pushback from insurance companies for online research charges; clients of all types are now starting to question the cost associated with legal research, and refusing to pay it. This huge expense lands back on law firms, which have to absorb them as their own cost. Larger firms might be able to work this expense into their budgets by cutting costs elsewhere, but it seems out of reach for small firms or solo practitioners to budget the ever-increasing price of online legal research within their plans.

Through discussions with committee members, it was also brought to my attention that judges are becoming more and more critical of attorneys who do not present up-to-date case law, which is most often found by using Westlaw or Lexis tools. If this is true, then the expectation has become that attorneys need to figure out how to get better online resources and manage it within their budgets. How is this possible for the solo practitioner or small firm when costs for legal research solutions seem unreasonable even for larger firms?

This question is what led the State Bar to examine the options for its membership to utilize, hoping that there would be a solution for bar membership to utilize as part of an added benefit. After exploring several companies, determining member priorities and realizing that what members need is a legal research tool that is up-to-date, accurate and proves to be on the cutting edge of legal research and technology, the solution was a partnership with Fastcase.

How does Fastcase compare to Westlaw and Lexis products? Not only is its platform less expensive while still being user friendly, but the website is fresh, utilizing visual images to illustrate its case information. And best of all, Fastcase's library is constantly growing. The visual display of data found in its Interactive Timeline is new to the online research world and allows attorneys to quickly find key cases and determine case

relevance without blindly researching case law. Fastcase also uses a flag system that maps out good law and bad law. Its software is able to anticipate searches by giving researchers an opportunity to view relevant cases that may not have been found with the key words used. This smart system called "Forecite" gives Fastcase a leg up on its competition. This small company has a national presence, works with a number of state bars around the country, and is eager to work with our state bar to add local materials to its research libraries. CLE materials, deskbooks, Ebooks, tribal court documents, local magazine and newspaper articles, etc. can all be uploaded for member use. The best part is that Fastcase will be accessible to all bar active attorney members as part of their annual membership fee. From a billing standpoint, it's even a better option for firms, large or small that struggle to bill online research – no more hassle generating monthly reports to track online research expenses that are passed on to the clients and then rejected for firms to wind up paying anyway. Fastcase is just plain free.

The big question though, is whether larger firms of the State Bar membership will utilize the Fastcase tool and eliminate the

use of their current online research solution. I would say probably not. Everyone knows how difficult it is to sell "change" to a group of people, especially to attorneys. There would be serious push-back if I tried to move the attorneys in my firm to a new online legal research platform from our existing company. However, what I do plan to do is use these next two years under our existing contract as a training period for Fastcase and find some early adopters. I want to make some comparisons, create a report of benefits and drawbacks, and host a few brownbag lunches so my users can attend training sessions showing them the opportunities available to them through Fastcase. Then, when I go to the table to negotiate the next contract period with our existing company, we have a lot more

options and can make some educated decisions about how we move forward.

Maybe the tools provided by Fastcase through the State Bar will be enough for our firm to eliminate all other online research expenses we currently purchase. Or, maybe we will be able to pare down the package that we currently purchase and utilize the components of Fastcase offered as part of the membership we already pay through the State Bar. By having FastCase as an additional option for members, the State Bar has provided an alternative arrangement for large firms that currently lack bargaining power, and most importantly they have provided an inexpensive, practical online legal research solution for small firms and solo practitioners around Montana. Through tools like Fastcase, Montana becomes more successful at practicing law. With Fastcase, Montana lawyers can do what they do best – provide other honest, hard-working Montanans the sound, quality legal advice that they all deserve. Welcome to the neighborhood, Fastcase.

Maybe the tools provided by Fastcase through the State Bar will be enough for our firm to eliminate all other online research expenses we currently purchase. Or, maybe we will be able to pare down the package that we currently purchase.

incurable and irreversible condition that would lead to death without treatment.

**Nonprobate Transfers.**

(MT199509HR) (2011) Describes the various forms of ownership that allow the deceased's property to bypass probate and transfer directly to beneficiaries.

**Personal Representative.**

(MT199008HR) (2012)

Explains Montana law covering personal representatives in settling estates (often called "executor" in other states).

**Power of Attorney.**

(MT199001HR) (2013) Explains how to give another person authority to make financial decisions for you through a legal document known as a power of attorney. Information about the Montana Uniform Power of Attorney Act that was passed by the 2011 Montana Legislature is provided. Features of the new Statutory Power of Attorney form are also explained.

**Probate in Montana.** (MT199006HR) (2012) Provides guidelines and costs for the process of settling the estate of a deceased person.

**Provider Orders for Life-Sustaining Treatment (POLST).** (MT201112HR) (2011) Gives control over medical treatments near the end of life. Once signed by you and your physician, nurse practitioner, or physician assistant, the POLST form is recognized as an actual medical order that will be honored by all Montana health care providers.

**Revocable Living**

**Trusts.** (MT199612HR) (2010)

Defines and explains the benefits, shortfalls, costs and tax consequences of living trusts, including how it may affect nursing home care costs.

**Settling an Estate: What Do I Need to Know.** (MT201004HR)

(2010) Designed to help survivors start the process of settling an estate and ease the burden following the death of a loved one. It discusses tasks in the order they are commonly completed.

**Transferring Your Farm or Ranch to the Next Generation.** (EB 149)

(2014) Includes sections on starting a conversation with family members who are in denial or reluctant to discuss the situation; how to pinpoint your own and family members' expectations;

identifying what is important to each generation; and options for ownership. Several worksheets are included to help both parents and adult children identify their goals and expectations.

**What Are Your Rights Over Your remains?** (MT200918HR) (2011) The 2009 legislature passed the Montana Right of Disposition Act that allows a person to provide instructions for disposing of his or her remains or to designate an agent with authority to make such decisions.

**Who Gets Grandma's Yellow Pie Plate? Transferring Non-Titled Property.** (MT199701HR) (2011)

Explains how to deal with some of the issues that may arise with the transfer of non-titled property such as photographs and other family heirlooms among family members.

**Wills.** (MT198906HR) (2012) Outlines why and how to construct a will, including costs, restrictions and changes after its completion.

**Understanding Mineral Rights** (MT201207HR) (2012) Designed to help land and mineral owners understand mineral rights. Understanding what mineral property is,

development and its effects on land that you may own or have an interest in.

There are additional MontGuides available on the subjects of Retirement Savings and Inheriting Indian Lands. A complete list of MontGuides is available at: [http://www.msuextension.org/health/msu\\_montguides.html](http://www.msuextension.org/health/msu_montguides.html).

MontGuides are not the only educational methods Dr. Goetting utilizes. She also gives hundreds of presentations throughout the state, including one at the Governor's Conference in May 2013 in which she combined her passion for wildflower photography and obsession about estate planning into "Wildflower Reflections: Families, Legacies and Estate Planning." To see this presentation in 2014, visit Dr. Goetting's speaking schedule at: <http://www.montana.edu/extensionecon/countypresentations.html>. For more information on the MSU Extension and the many services it provides to Montanans, visit [www.msuextension.org/](http://www.msuextension.org/).

*Twyla Sketchley received her J.D. from University of Montana Jameson School of Law. She is licensed in Montana and Florida and is the current Chair of the Montana Bar Elderly Assistance Committee.*

**Mark your calendars!**  
The University of Montana School of Law invites you to participate in the

**Fall 2014**

**On-Campus Interview Weekend**

Interview 2nd and 3rd year students for intern, law clerk, and associate positions during our semi-annual on-campus interview program.

**Friday • Saturday  
Sept. 12 • 13**



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<http://www.umt.edu/law/careerservices/employers.php>

**LOG ONTO SYMPPLICITY:**  
<https://law-umt-csm.symplicity.com>

**EMAIL:**

[jennifer.ford@umontana.edu](mailto:jennifer.ford@umontana.edu)  
or

**CALL:**

406.243.5598

**VISIT US ONLINE  
WWW.MONTANABAR.ORG**



## Would you like to boost your income while serving low- and moderate-income Montanans?

**We invite you to participate in the Modest Means program** {which the State Bar sponsors}.

If you aren't familiar with Modest Means, it's a reduced-fee civil representation program. When Montana Legal Services is unable to serve a client due to a conflict of interest, a lack of available assistance, or if client income is slightly above Montana Legal Services Association guidelines, they refer that person to the State Bar. We will then refer them to attorneys like you.

## What are the benefits of joining Modest Means?

**While you are not required to accept a particular case, there are certainly benefits!**

You are covered by the Montana Legal Services malpractice insurance, will receive recognition in the Montana Lawyer and, when you spend 50 hours on Modest Means and / or Pro Bono work, you will receive a free CLE certificate entitling you to attend any State Bar sponsored CLE. State Bar Bookstore Law Manuals are available to you at a discount and attorney mentors can be provided. If you're unfamiliar with a particular type of case, Modest Means can provide you with an experienced attorney mentor to help you expand your knowledge.

## Questions?

**Please email:** Kathie Lynch at [klynch@montanabar.org](mailto:klynch@montanabar.org) or Janice Doggett at [jdoggett@montanabar.org](mailto:jdoggett@montanabar.org)

You can also call us at 442-7660.



## Are You Interested in Joining The Modest Means Program?

To get started, please fill in your contact info and mail to: *Modest Means, State Bar of Montana, PO Box 577, Helena, MT 59624.*

You can also email your contact info to Kathie Lynch -- [klynch@montanabar.org](mailto:klynch@montanabar.org)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

Email: \_\_\_\_\_



### Cheryl 'Cheri' Ann Butts

Cheryl "Cheri" Ann Butts, 67, of Miles City passed away on Monday, July 14, 2014 at Saint Vincent Hospital in Billings.

Cheri was born on March 6, 1947 in Champaign, Illinois, the daughter of Frank Dean and Virginia Kathleen (Brown) Garland. She attended the University of Maryland where she received a Bachelor of Science degree. She was a paralegal in Miles City for the Judicial Branch of the State of Montana until retiring in 2013.



Butts

She married Ernest "Sonny" Butts in 1990. They remained in Miles City until the time of her death.

Cheri is survived by her husband, Ernest "Sonny" Butts of Miles City; a daughter, Abbie Phillips Jesfeld of North Carolina; a son, Matthew Phillips of Montana; a stepdaughter,

Joli Schroeder of Oregon; three sisters: Carol Chew of Georgia; Michele "Micki" Avery of Texas; and Deborah "Debbi" Garland of Texas; and eight grandchildren: Brigg, Brody and Maci Phillips of Montana; Alex and Zoe Jesfeld of North Carolina; Dylan Plympton of Montana, Emileigh Brandt of Montana, and Jiali Schroeder of Oregon.

She was preceded in death by her parents, Dean and Virginia Garland, and a grandson, George Richard Jesfeld in 2006. Cheri was known as Gabbie to all of her grandchildren whom she adored.

She enjoyed the holidays, shopping, cooking, crafting, sewing and the company of friends. She enjoyed making others happy and putting her special touch on special occasions. She did many things for others she would not do for herself.

At Cheri's request, no services are planned, and cremation has taken place. Stevenson & Sons Funeral Home of Miles City is in charge of the arrangements.

### Robert Leslie 'Bob' Jones

Robert Leslie ("Bob") Jones was born on Nov. 26, 1925, in Evanston, Illinois, to Leslie Naney Jones and Agnes Woodward Jones. He attended Phillips Exeter Academy, Harvard University, and the University of Michigan Law School, graduating with honors in 1951. He and his first wife, Lilius Wagner, then moved to Billings, where he climbed mountains and practiced law under a variety of interesting conditions until 1959. The family then relocated to a suburb of Chicago, where Bob worked at the Sidley & Austin law firm, primarily on railroad and utility cases. The couple had four children, divorcing in 1966.

He married Gertrude "Trudy" Rankenburg Smith and they moved to Moscow, Idaho, and had a child in 1968. Bob taught at the University of Idaho Law School and spent summers as a ranger at Yellowstone Park, where he directed tourist traffic and posed for photos with Old Faithful geyser. He then spent a few years in Nampa, Idaho, where he was appointed circuit court judge. In 1979, he moved to Portland, Oregon, where he began working at Bonneville Power Administration, an agency of the U.S. Department of Energy. He worked on a variety of cases for the BPA, primarily in litigation, including cases concerning power line safety and nuclear power plants. He was shop steward for his union and served as an arbitrator for the region's Better Business Bureau for many years. He also served

numerous church, city, county and community organizations. He retired in 2004, driving to his new home in Springfield, Missouri, via the Western and Southern states.

Trudy passed away in 2007. He remarried to Donna Doss Eck in 2010, gaining a new family— and a dog — in his later years. He was always involved with his church and Springfield city and community boards, serving them until his death. He had a lifelong love of stamp collecting, the outdoors, music, books and ice cream. Bob had a sharp wit and a dry sense of humor.

He is survived by his wife, Donna; his sister, Carolyn Kraetsch of Walnut Creek, California; and by his children: Lilius (Larry) Jarding of Rapid City, South Dakota, Robert G. (Cherri) of Springfield, Missouri, Eric (Cindy) of St. Joseph, Missouri, Gunther of Oakland, California, Richard (Carolyn) Hood of Miller, Missouri, Mary (Mitch) George of Wentworth, Missouri, Barbara (Greg) Harrell of Springfield, Missouri, and Patricia (John) Smith of Cedarburg, Wisconsin; and by 16 grandchildren and three great-grandchildren.

A memorial service was held at 3 p.m. on Friday, June 6, at St. John's Episcopal Church, 515 E. Division St., Springfield, Missouri.

In lieu of flowers, donations may be made to St. John's Episcopal Church. See more at: <http://www.legacy.com/obituaries/news-leader/obituary.aspx?pid=171242124#sthash.AgjVt65H.dpuf>

### Clinics, from page 24

demand for services. In 2014, MLSA has already received over 7,600 calls from individuals seeking legal help. Not all of these individuals are able to be referred to the pro bono program nor will they get a pro bono attorney— the demand will always outweigh the availability. However, clinics are helping make a dent in the need. Clinics provide confidence to those folks who will have to "go it alone" in court because clients have been able

to ask questions and receive answers from an attorney, even if they aren't going to be represented by that attorney. Clinics are providing valuable legal information to a demographic that is otherwise underserved in the civil justice system. With the help of dedicated pro bono attorneys, clinics really do make the work go 'round.

**Elizabeth Weaver** is an AmeriCorps VISTA with Montana Legal Services Association.

## Job Postings and Classified Advertisements

**CLASSIFIEDS Contact** | Joe Menden at [jmenden@montanabar.org](mailto:jmenden@montanabar.org) or call him at (406) 447-2200.

### ATTORNEYS

**ADMINISTRATIVE LAW JUDGE:** The Office of Administrative Hearings at the Montana Department of Labor and Industry is seeking an experienced Unemployment Insurance Law Judge to join its professional staff. Attorneys with experience in employment law litigation may also qualify. OAH handles a wide variety of employment-related cases. More information about the position may be found at: <http://svc.mt.gov/statejobsearch/listingdetails.aspx?id=13542>

**ASSISTANT PROFESSOR:** The University of Montana School of Law, a school with a long-time emphasis on the integration of theory and practice, beautifully situated in the recreational center of Western Montana, invites applications for tenure-track, Assistant Professor of Law positions for: (1) property law and (2) Indian law/clinic supervisor. Positions are ten-month contracts, beginning fall semester 2015. Starting salary: \$72,000 - \$76,000. To view full job descriptions, minimum requirements needed, and to apply, go to <http://university-montana-hr.silkroad.com/epostings/>. ADA/EOE/AA/Veterans' Preference

**ASSOCIATE ATTORNEY:** Matovich, Keller & Murphy, P.C., is seeking an associate attorney with 2 – 4 years experience. Experience in litigation is preferred. Send letter of application, resume, references, and writing sample to Matovich, Keller & Murphy, P.C., Attn: Carey E. Matovich, P.O. Box 1098, Billings, Montana 59103-1098, or via email to [mkmfirm@mkmfirm.com](mailto:mkmfirm@mkmfirm.com). All applications will be kept confidential.

**ASSOCIATE ATTORNEY:** Lorang Law, PC, a general practice firm in Havre, MT, seeks an associate attorney. No minimum experience necessary; admission to the Montana Bar preferred however those set to take the July 2014 bar will be considered. Send resumes, writing sample and references to 410 3rd Ave, Havre, MT 59501. [www.loranglaw.com](http://www.loranglaw.com).

**ASSOCIATE ATTORNEY:** Busy Eastern Montana law office specializing in criminal defense and civil litigation seeking an Associate Attorney. Recent graduates will be considered. Send resume, cover letter and writing sample to [Assistance@MTLawOffices.com](mailto:Assistance@MTLawOffices.com).

**BOZEMAN ATTORNEY:** General practice firm in Bozeman seeking Attorney for growing litigation and transaction workload. Healthy environment and culture. Minimum 3+ year experience required. Performance-based compensation. Please send resume and writing sample. Email submissions only. Send to [classifieds@montanabar.org](mailto:classifieds@montanabar.org), with the subject line of Box 1408-1.

**EXECUTIVE DIRECTOR:** Law and science nonprofit Plains Justice seeks Executive Director in Billings, MT office to oversee litigation and outreach projects, administration, and fundraising. Law or relevant science degree preferred; nonprofit management experience highly valued. Résumé and cover letter to [info@plainsjustice.org](mailto:info@plainsjustice.org). No calls please.

**FAMILY LAW ASSOCIATE:** The Judnich Law Office in Missoula is seeking an attorney with at least 3 years experience in divorces to head a family law department. Flexible work hours, benefits offered and friendly office staff. Salary starting at \$60,000 or more DOE and client base. Send application to: [judnich@gmail.com](mailto:judnich@gmail.com)

**LITIGATION ASSOCIATE:** Church, Harris, Johnson & Williams, P.C. is seeking an attorney with five or more years of litigation experience. Successful applicant will be ambitious, able to work independently, and licensed to practice in Montana. We offer a very competitive compensation program with benefits and incentives. Please submit cover letter, resume and writing sample to Church, Harris, Johnson & Williams, P.C., Attn: Scott Rubino, P.O. Box 1645, Great Falls, MT 59403 or by e-mail to [srubino@chjw.com](mailto:srubino@chjw.com). To learn more about our firm, visit our website at [www.chjw.com](http://www.chjw.com). Deadline for submission is August 29, 2014.

**CROW LEGISLATURE:** The Crow Tribal Legislature is seeking proposals for an attorney position. Interested applicants must provide a written proposal which includes each of the following: 1) Resume (education, work history, licenses and certifications), 2) Letter of interest (2 pages or less), 3) Description of expected compensation and available time commitment, along with an indication of whether there is any preference by the applicant to work on a contract basis or as a member of staff. This position will require education and experience necessary to successfully provide legal services to the Crow Legislature which includes legal research and writing, drafting and review of proposed tribal legislation, legal assistance during legislative meetings, and legal training for the Branch. This position requires a strong understanding of federal Indian law, Crow tribal law, and parliamentary procedure. Candidates must be admitted to practice law and in good standing in Montana and must gain admission to the Crow Tribal Bar within a year of being hired. Indian and Crow tribal preference shall apply. All materials should be addressed to the Crow Legislature at the following address: Att'n – Speaker of the House, P.O. Box 309, Crow Agency, MT 59022 or via e-mail to: [employment@ctlb.org](mailto:employment@ctlb.org). Materials will be accepted until the position is filled. The Legislature is seeking to fill the position as soon as practical.

### PARALEGALS

**PARALEGAL/LEGAL ASSISTANT:** Dynamic, busy, growing Helena law firm seeks paralegal/legal assistant. Applicant must have excellent communication, clerical, organizational and personal skills and prior legal experience. Litigation experience and paralegal certification preferred, but not required. Team player a must! Very competitive salary and benefits, depending upon experience and qualifications. Send cover letter and resume to Doney Crowley P.C., P.O. Box 1185, Helena, MT 59624 or email to Melissa Hanson at [mhanson@doneylaw.com](mailto:mhanson@doneylaw.com).

**PARALEGAL:** Paralegal position at Kalispell law firm specializing in litigation with four attorneys. Salary and benefits commensurate with experience. Please submit resume to Hammer, Jacobs & Quinn, P. O. Box 7310, Kalispell, MT 59901 or toddhammer@attorneysmontana.com 755-2225.

**PARALEGAL:** Kalispell law firm looking for a qualified Paralegal with workers compensation, litigation and personal injury experience preferred. Competitive wage available. Send cover letter and resume to: alex@blivenevanslaw.com. **AVAILABLE FOR MEDIATIONS AND ARBITRATIONS:** Retired Montana attorney with over 40 years experience in personal injury and construction industry litigation. Michael Young, Great Falls, MT. 406-868-9666 or myoung@gfmtlaw.com

## ATTORNEY SUPPORT/RESEARCH/WRITING

**RESEARCH, WRITING, SUPPORT:** Experienced attorneys at Strickland & Baldwin, PLLP, offer legal research, writing, and support. We have over 25 years of combined experience representing both plaintiffs and defendants, and we use that experience to help you. Find out what other attorneys are saying about our service and contact us by visiting [www.mylegalwriting.com](http://www.mylegalwriting.com).

**COMPLICATED CASE?** I can help you sort through issues, design a strategy, and write excellent briefs, at either the trial or appellate level. 17+ years experience in state and federal courts, including 5 years teaching at UM Law School and 1 year clerking for Hon. D.W. Molloy. Let me help you help your clients. Beth Brennan, Brennan Law & Mediation, (406) 240-0145, [babrennan@gmail.com](mailto:babrennan@gmail.com).

**CONSERVE YOUR ENERGY** for your clients and opposing counsel. I draft concise, convincing trial or appellate briefs, or edit your work. Well-versed in Montana tort law; two decades of experience in bankruptcy matters; a quick study in other disciplines. UM Journalism School (honors); Boston College Law School (high honors). Negotiable hourly or flat rates. Excellent local references. [www.denevilegal.com](http://www.denevilegal.com). (406) 541-0416

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## OFFICE SPACE

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