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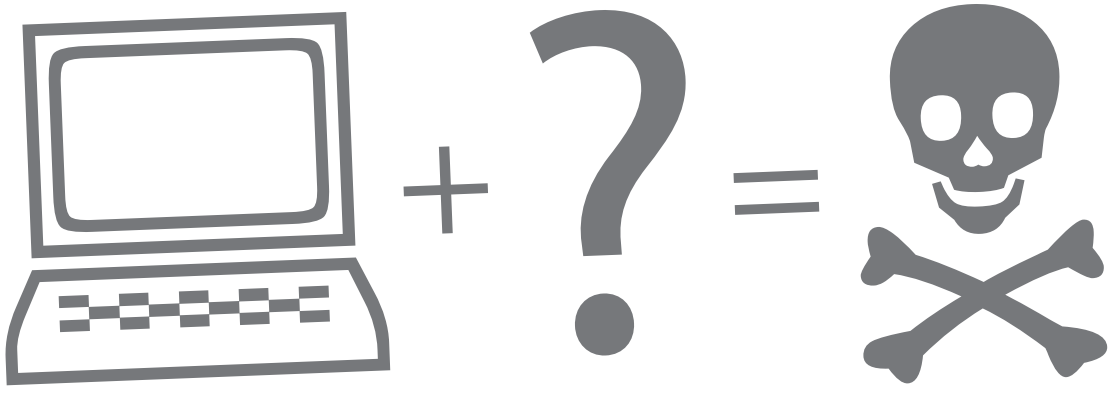

Would you know if you've been hacked?

A few basic steps can help prevent disaster | Tips inside

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MONTANA LAWYER

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Regular Features

New! Fastcase Legal Research Benefit from the State Bar of Montana!

As of July 1, members of the State Bar of Montana will have access to nationwide legal research through Fastcase, as a free benefit of membership.

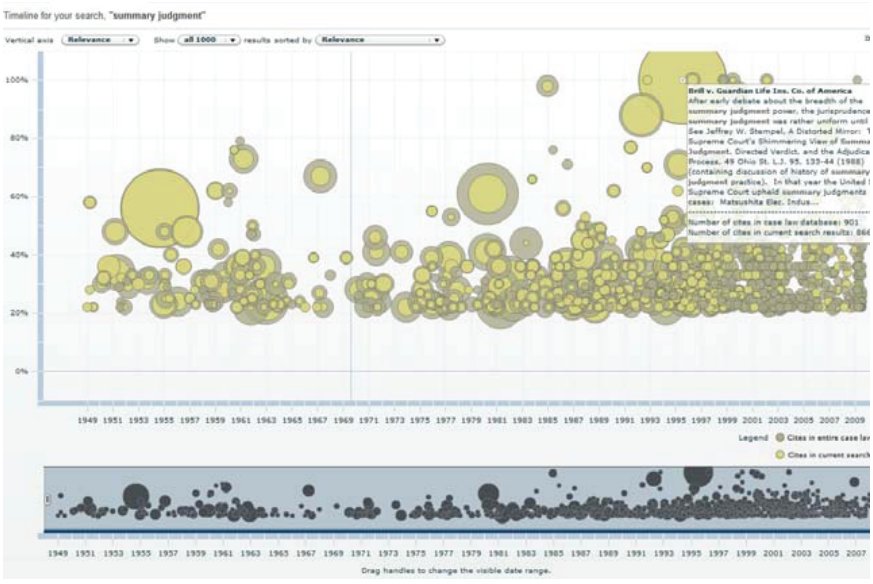
Fastcase is one of the nation's most popular legal research services. Twenty-five state bar associations have subscribed to Fastcase, as well as scores of the nation's largest law firms. The service costs $995 per year for an individual subscriber, but the service will be included for free in the cost of dues for members of the State Bar of Montana.

To log in to this free benefit after July 1, visit the State Bar of Montana web page at www.montanabar.org and log in with your bar user name and password. (If you don't have your login, you can contact members services at: pnowakowski@montanabar.org. 406-447-2200. Once you're logged in, you'll see the link to Fastcase; when you click the link you'll be logged in to Fastcase automatically.

The Fastcase service includes nationwide coverage from state and federal courts, state statutes and administrative regulations, as well as court rules, constitutions, and other valuable libraries. You can access the scope of coverage on the Web at www.fastcase.com/coverage.

In addition to powerful search tools and extensive law libraries, Fastcase also includes several unique features that will be a benefit to members.

Mobile sync. The ABA's 2013 Tech Survey showed that Fastcase's legal research apps for iPhone, iPad, and Android devices are by far the most popular smartphone apps for iPhone, iPad, and Android devices are by far the most popular smartphone apps for lawyers. When you sync your app with your new member benefit on the desktop, you can save documents on your app to print later from the desktop, share research history across your devices, or create mobile trial notebooks for tablet devices. (You can find more information about Fastcase Mobile Sync at www.fastcase.com/mobile-sync.)



Above
Visualize Your Search Results with The Fastcase Interactive Timeline.

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These are just a few of the great features that have made Fastcase America's most popular legal research member benefit, with more than 700,000 subscribers and more member benefit deals than any other provider. The Fastcase service, which ordinarily costs $995 per year, is now free as a part of your bar membership.

To log in to Fastcase after July 1, visit www.montanabar.org, log in, and click Fastcase.

Happy searching!

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Founders' struggles provide perspective on today's issues

May 30, 1806, Merriweather Lewis, at Fort Camp Chopunnish, Kamiah, Idaho – waiting for the spring runoff to recede and the snow to clear in order to re-cross the Lolo pass for home

Shannon and Collins . . . in landing on the opposite shore the canoe was driven broad side with the full forse of a very strong current against some standing trees and instantly filled with water and sunk. they lost three blankets a blanket coat and their pittance of merchandize. in our bear state of clootheing this was a serious loss. I sent Sergt. Pryor and a party over with the indian canoe in order to raise and secure ours but the debth of the water and the strength of the current baffled every effort. I fear that we have also lost our canoe.

Not the best day. Tired, wet, mostly out of supplies and stuck a couple weeks near Kamiah, Idaho, waiting for raging rivers to subside and the winter snows to melt. All while hunting to feed and clothe the corps. I'm reminded of our early nation's struggle to get started – a fact I'd too easily forgotten until sneaking a few minutes into the National Archives when in D.C. for ABA Days.

We all remember the Constitutional Convention, the brilliant compromises creating separation of powers, even while we lament on Washington gridlock today. (Nothing, compared to their downtown traffic.) But I'd forgotten the struggles getting the Constitution ratified. Nine of thirteen states had to ratify – much of the debate between 1787 and 1789 wasn't friendly. Anti-federalists then hadn't even thought of the Affordable Care Act. Interestingly, James Madison wrote in Federalist No. 51 that government officials will be ambitions and try to expand their power.

The "anti-federalists" were concerned about individual rights. Delegate Charles Pinckney submitted proposed certain liberties to the Committee on Detail in August, 1787, but none were sent to the floor. The full convention debated a Bill of Rights in September 1787 but rejected it. One of the fears was that the enumerated powers of government caused sufficient controversy – they didn't also need debate on individual rights. Patrick Henry openly wrote and campaigned against the Constitution. Rhode Island was so opposed that civil war nearly broke out. Four states voted conditionally for ratification, but only if enumerated individual rights were attached.

James Madison, once skeptical of a listing of rights, recognized that without enumerated rights, acceptance was unlikely. Back to the drawing board, Madison compiled over 100 enumerated rights from various sources, including the Virginia Declaration of Rights, the English Bill of Rights (written 100 years earlier), the French Declaration of Rights of Man and the Citizen (following their revolution) – even the Magna Carta. He reduced these into twelve, enumerated rights which went before the 1st session of Congress under the Constitution in June 1789. Even here, some were rejected, including extension of free speech protections to the states or unanimous jury verdicts in federal cases. There was shouting and politics.

If you haven't felt proud of your profession in a while, take a trip back in time and re-read the struggles our early nation endured.

We struggle today over control of health care, Keystone Pipeline, or local water rights. Whatever your difficult case today, you've got good company. We at least have a legislature and licensed colleagues to argue them. If you haven't felt proud of your profession in a while, take a trip back in time and re-read the struggles our early nation endured. Whether they lost a canoe and their shirt exploring a river or bargained for basic rights in founding documents, we inherit a legislature and judiciary we often take for granted. Tired of pro se or standing masters? Read some world headlines. Then go visit our nation's capital for a reminder what we've achieved. Even out West, it makes you pretty dang proud to be a lawyer.

Yer Chief Deputy
Randy Snyder

Notes From the Trail: March to April

Dear Folks at Home,

What a pleasure it is to drive dry roads & see daylight after 5:00 p.m. At least I can see the deer I'm dodging. And if we hit one, well, now we can load it on the wagon! These last few weeks make some long hours in the saddle. Here are some tidbits.

Western States Bar Conference, Palm Desert California March 27-29

So begins the national conference schedule. Travel is fun, but the schedule could choke a horse. The conference fired up at 7:30 the first day. Here's some highlights:

Colorado and Washington each reported on their new recreational marijuana legalization. The actual statutes significantly differ from media treatment. Most of the discussion centered on conflicts between state law (legalizing) and federal law in which it's a crime. This in turn creates ethical dilemmas for counsel advising clients who want to do business within a state where the law isn't clear. Colorado and Washington Bar officers claimed their new legislation would eliminate black market distribution, support schools and addiction treatment and solve climate change. (Colorado now has more marijuana shops than McDonald's. Kinda gives new meaning to supersize.) They claimed it is a concept coming to every state, although they were not aware of Montana's wonderful experiment with medical marijuana.

Roll Call of the States. This is one of the more relevant and enjoyable events. Limited to five minutes each, we learn what other Bar Associations face and their efforts (good and bad) to solve issues. Our sister states: the Dakotas, Washington, Idaho and Oregon have each recently overhauled their Bars' long range plans. They're addressing "rural practice" needs, mentorship and access to justice in innovative ways. Some concepts transport – others can't. Our Montana folk are pretty impressive too and some of our programs still shine. Our Lawyer Assistance Program, road shows, relationship with our Court and emphasis on meeting and helping the individual lawyer are unique and admired. Your Chief Deputy received the award for *Best Damn Presentation*.

ABA Days, Washington D.C. April 8-10

For this conference, fellow delegates Bob Carlson (Chair, ABA House of Delegates), Jock Schulte, ABA Board of Governors and yer Chief Deputy hit the hallowed halls in the ABA's once per year meeting in the Capitol. The ABA selects a couple topics on which to lobby. Each state makes appointments to personally visit the Congressmen and Senators. This year we supported full funding for Legal Services Corporation (a proposed, slight increase over last year). Our second issue was opposing a section of the current tax reform act which would require professional offices earning more than $10 million to pay taxes on an accrual basis. This work is one of the ABA's highest priorities and they spare no effort.

Morning coffee with Montana's Congressional Delegation.

Gettin' Started

Tuesday, April 8 began with a reception, with awards to Bar officers nation-wide for Access to Justice efforts. We were dazzled by the opulence of our location – top floor and rooftop of a large, D.C. firm overlooking the Capitol. They wouldn't let me photograph the marble lined restroom, but awful dang pretty.

Off to the Hill

Wednesday morning and the coach left for Capitol Hill left at 7 a.m. The ABA served a first class breakfast in the Canon House Office building, with last minute instructions and encouragement. I left a tad early and headed to the Montana Delegations' morning coffee meeting in the Dirkson Office Building. This event, started by Max Baucus is a weekly informal coffee, donuts and meet & greet with Senators Walsh, Tester and Representative Daines, mixing with the Montana folk in town. A nice event, if not a bit crowded.

Throughout the day, we made our appointed meetings with Senator's Walsh and Tester and Representative Daines. We more met with staff, but the big guys did spend quality time with us. They listened and visited and I can truly say none have forgotten their Montana roots. Not much commitment on issues, but we learned a bit about Washington politics. They thanked us mightily for our effort and invited us to stay in touch on any issue. We were treated very courteously by all their staff.

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In between Meetings

Security on the hill is pretty thorough. Car barricades, officers everywhere, limited access and the real fun: screening at every building. Wandering from building to building allows you to half undress & empty pockets till it's old habit. A slight bit easier than TSA, but leave the belt buckle and cowboy boots at home.

The ABA tracks our work and asks for reports. Back in the breakfast (now lunch) room in Canon 346, there's an app for your phone, laptops and online reporting or pen & paper forms for check-in. Montana was pretty easy compared to California or other large population states. This was a first class operation.

International Institute of Peace

We rushed back to the hotel – half a mile as the crow flies and nearly a half hour by car, threw on our best dress ups and caught the group bus to the evening banquet. I wasn't prepared for this facility. Words can't describe it, so gander at the pictures. We shared notes of the day's work with fellow delegates and were treated to a first class dinner and awards to Congressmen and Senators for work on equal justice. We continued making friends amongst the nation's Bar officers. I'm already lamenting that in six months at my term's end, those meetings and contacts will be in my past.

Final Day

Thursday, April 10 and we're nearly done. ABA Day chair Linda Klein and ABA President Jim Silkanet (an impressive leader) again led the morning charge and breakfast, this time in the Dirksen Office building. Harriet Myers, former chief legal counsel to President George H. Bush was guest speaker. Some might better remember her failed nomination to the Supreme Court. But her background with the Texas State Bar, the ABA and Access to Justice are extensive and impressive.

Reflections

Every Bar President calendars this event. Pretty unique: a personal visit to your Congressmen; promoting access to justice in legislation & sharing what your Association does back home. Montana Legal Services Association, our own Supreme Court and many others in Montana gave valuable backup. What's it worth? I can't claim I made a difference. But every state's organized presence, all dedicated to the same theme gets attention. I'm proud to have participated.

Thanks for your support. Keep the fire lit & the coffee warm.

Yer chief deputy,
Randall A. Snyder

State Bar News

New Lawyers Workshop and Road Show

Friday, June 13 in Helena at the Great Northern. New Format for both New Lawyers Workshop and Road Show. NLW is 4.5 hours of ethics CLE. Road Show is 3 hours of ethics. Topics include: Cybersecurity, inadvertent disclosure of privileged information, social media, representing challenging clients and excellent fee agreements. NLW is by invite only. RSVP for Road Show: roadshow@montanabar.org.

Bar seeks award nominations

Nomination forms for the William J. Jameson Award, George L. Bousliman Professionalism Award, Karla M. Gray Equal Justice Award, and the Neil Haight Pro Bono Award are available at www.montanabar.org. Information and criteria are listed on the individual awards.

Member and Montana News

Danno continues practice with new firm


Danno

Evan F. Danno opened the DANNO LAW FIRM, P.C., at 725 South Main Street, in Kalispell, on February 15, 2014. Evan will continue his practice primarily in the areas of personal injury, insurance, probate, domestic relations, and general litigation. Evan graduated with the UM Law School's class of 1991, with honors, and has been in private practice in Montana for over 22 years. He was formerly associated with Conklin, Nybo, LeVeque & Murphy, in Great Falls, was a partner of Henning & Keedy, P.L.L.C., in Kalispell, and recently retired from the Lerner Law Firm, in Kalispell. He is a member of the State Bar of Montana, MTLA, the Northwest Montana Bar Association, and is admitted to practice before the U.S. District Court for Montana, the Ninth Circuit Court of Appeals, and the Blackfeet and Confederated Salish and Kootenai Tribal Courts. Mr. Danno can be reached at (406)-755-4100 or evan@dannolawfirm.com.

Wagenhals named MLSA pro bono coordinator


Wagenhals

MLSA is pleased to announce that Angie Wagenhals is Montana Legal Services Association's (MLSA) new full-time pro bono coordinator.

Angie has worked with MLSA since 2011 as a program assistant with part-time pro bono coordination duties. In her new position, Angie will dedicate all her time to support and expand MLSA's pro bono efforts, including expanding pro bono legal clinics for pro se litigants and coordinating CLE trainings for pro bono attorneys. Angie can be contacted at 406/543-8343 extension 207 or awagenha@mtlsa.org.

Join SCORE today and serve Montana's local small business community

Montana SCORE and the US Small Business Administration (SBA) Region VIII, are launching an initiative to attract additional volunteer mentors with business experience to expand confidential small business counseling and training throughout Montana.

"For 50 years, SCORE mentors have helped millions of new small businesses start and grow", said Matt Varilek, Region VIII SBA Administrator. "We strongly encourage more Montanans, of any age, to join SCORE and help the state's small business community prosper."

Volunteering as a SCORE mentor means joining an active national community of 11,000 volunteers who are committed to helping small business owners succeed. SCORE volunteers come from a many different sectors and professions including entrepreneurship, large corporations, military communities and higher education.

"SCORE volunteers enjoy a variety of personal and professional benefits," said Michelle Johnston, State SCORE Director. "You will enjoy the satisfaction of contributing to the success of others, many of them young people with a dream to thrive as an entrepreneur."

In Montana, SCORE has over 70 members and chapters in Helena, Great Falls, Bozeman, Kalispell, and Billings serving over 600 individuals annually. All SCORE mentoring is done on a no-fee basis.

Since its inception in 1964, SCORE chapters have been serving the small business community with a combination of confidential mentoring and workshops covering a wide range of business topics. In response to the demands of the marketplace and the increasing complexity of running a small business, a select number of chapters have increased their services to include workshop series geared toward start-ups as well as existing businesses.

For more information on how to become a SCORE mentor, please visit http://www.score.org/volunteer or call the following local SCORE Chapters. In Gallatin and surrounding counties call Karen Vinton at 406-586-5421; in Lewis & Clark and surrounding counties call Chick Rolling at 406-442-4986; in Flathead and surrounding counties call Liz Scholten at 406-756-5271; in Cascade and surrounding counties call Patty Schlaeger at 406-856-5421; and Yellowstone and surround counties call Mike Keene at 406-656-8574. For counties not listed please call Michelle Johnston at the State SCORE Office at 406-442-4986.

Modest Means

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.* You can also call us at 442-7660.

Benefits to adolescents who perform community service:

A perspective from adolescent health researchers

Gary Hopkins, Duane C. McBride, Brent C. Featherston, Peter C. Gleason, Jacqueline Moreno

INTRODUCTION AND PURPOSE

Sentencing individuals to community service in the modern legal environment began in 1966 in Alameda County, California. Judges there began imposing work assignments as an alternative to jail for offenders who could not pay traffic fines. Eventually they extended use of the sanction to other low-level non-violent offenders as well.[1]

The practice spread across the America by the late 1970s, as the federal Law Enforcement Assistance Administration (LEAA) provided funding to encourage it. LEAA concluded that incarceration for many non-violent offenders may increase recidivism by placing low level offenders in prisons with violent career criminals and further that formal conviction and incarceration severely limited future economic activities.[2] As Anderson noted:

> "Sentencing offenders to unpaid labor inspired some judges' creativity as they combined community service with jail or a fine or both. Offenders did low-level maintenance work for public agencies--clearing litter from playgrounds, sweeping up around public buildings or housing projects, cutting grass and raking leaves in parks, washing cars in an agency motor pool. Others did clerical work or answered phones. Thousands more were sent off to help out at hospitals, nursing homes, social service centers, and other nonprofit organizations."[1]

Experimental studies have shown that community service as a part of a restitution rather than incarceration approach relates to lower rates of recidivism.[3]

Organized community service in the primary and secondary educational system began in the early 1970's with the introduction of what is referred today as *service learning*. Much earlier, educator Arthur Dunn promoted community service in the community as a part of his civics class in Indianapolis around 1900[4] and eventually the act of service was combined with a curriculum to form service learning.

Defined, service learning "is a process of involving students in community service activities combined with facilitated means for applying the experience to their academic and personal development. It is a form of experiential education aimed at enhancing and enriching student learning in course material. When compared to other forms of experiential learning like internships and cooperative education, it is similar in that it is student-centered, hands-on and directly applicable to the curriculum."[5] An example of service learning might be to take grade school students to a nursing home to visit elderly people. During the visit students might find that residents of the nursing home were born in the 1920's. In order to make this a service learning experience and not simply community service (which in itself is valuable) the student would go back to school and learn who the presidents were in the 1920's and what cars looked like in the 1920's in order to link the visitation experience with the elderly to their school curriculum.

In the arenas of health, social scientists have learned over the past two decades that engagement in community service among adolescents often result in valuable outcomes. In other words, the persons being served are not the only ones benefiting from the experience, the providers of the service benefit as well.

The purpose of this paper is to share with the legal community some of what we as social science researchers have learned from our research and also learned from the research of others in both health and education regarding benefits of community service among adolescents. We also will share with the readers what we have learned about structuring a successful community service and/or service learning program or process.

BENEFITS OF COMMUNITY SERVICE TO THE PROVIDER OF THE SERVICE; COMMUNITY SERVICE, RISKY SEXUAL BEHAVIOR AND TEEN PREGNANCY

Researchers have exhaustively examined evaluations of teen pregnancy programs and reported what they refer to as "best practices." Examining best practices in preventing teen pregnancy lists often reveal very similar findings. One item emerges over and over again and this is that youngsters who engage in

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service learning/community service are less likely to be involved in a teen pregnancy.[6] The statement regarding this item from our reference states, "service learning connects meaningful community service with academic learning, civic responsibility, and personal growth. It enables young people to study community issues in-depth, plan and initiate community action, and make a difference in their community."[6]

The issues related to sexual behavior among the young are extensive. Risky sexual behaviors primarily include unprotected sex, multiple partners, and unfamiliarity with partners.[7] The United States has one of the highest rates of teen pregnancy among developed countries.[8] The number of births to mothers aged 15-19 years was 41.5 per 1,000 women in this age group According to a Centers for Disease Control and Prevention (CDC) report from 2009.[9]

It has been estimated that the cost of teen pregnancy is $9 billion per year in the United States.[9] In addition to the huge societal cost of teen pregnancy in the USA, teen pregnancy may also be a marker of sexual behavior that increases the risk of contracting sexually transmitted infections, such as human immunodeficiency virus (HIV).[10] The CDC[11] reported that the total number of new HIV cases decreased from 2001 to 2005; however, there was increase in new cases for people aged 15-29 years.

In 1997, an article[10] was published which described the impact of the Teen Outreach program, which focused on reducing teen pregnancy as well as reducing academic failure. The study investigated the impact of the program on 342 students in grade 9-12 and compared the participants to a control group who did not participate in the program. Teen Outreach consisted of three elements: 20 hours of supervised community service, classroom-based discussions of the students' service experiences, and classroom-based discussions and activities that were related to the social-developmental tasks of adolescents.[10] The community service component allowed for the students to select their own supervised site within the community, and the students worked in settings such as hospitals and nursing homes, and also worked as tutors, participated in walk-a-thons, and other activities. The classroom component included discussions, role plays and guest speakers, and engaged the students regarding their experiences. Topics and themes were self-confidence, social skills, and self-discipline, values, how to deal with family stress, development and the transition from adolescence to adulthood.

In the Teen Outreach study, participants in the program had less than half the risk (42%) of school suspension compared to the control group, and course failure was only 39% as large as the control group.[10] Teen pregnancy was only 41% as large in the Teen Outreach group. Each of these results was statistically significantly, even after adjusting for sociodemographics and baseline levels of these behaviors, and potential biases in self-reporting.[10]

Another study of importance to service-learning as a preventive method for risky sexual behavior was a retrospective study of over 9,000 adult women in the San Diego area was conducted in the early 1990s.[12] This study analyzed for Adverse Childhood Experiences (ACE) score (emotional, physical, or sexual abuse; exposure to domestic violence, substance abusing, mentally ill or criminal household member; or separated/divorced parent) among patients and sought to explain characteristics in individuals who were once pregnant as teens. The study suggested that engagement in early, unprotected sex leading to adolescent pregnancy may be indicative of an attempt for interpersonal connectedness and support that may have been missing in childhood among these women.[12] The investigators suggested that youth development programs focused on building competence and confidence through relationships with peers and mentors, promoting education, enhancing decision-making and autonomy and offering community service opportunities for at-risk youth who may be exposed to these "ACE" characteristics.[12]

Doug Kirby[13-16] is at the forefront of reviewing programs for effectiveness in delaying the initiation of sexual activity and identifying features related to successful and unsuccessful interventions. He reports that service learning programs among young people are effective in reducing adolescent unprotected sex, pregnancy and childbearing.

Other researchers confirm Kirby's findings. Melchior evaluated the Learn and Serve programs throughout the United States.[17] Students in these programs spent an average of 77 hours providing various community services. Pregnancy rates among participants during the year in which they participated were lower than among non-participants.

O'Donnell and colleagues evaluated the Reach for Health community youth service learning program. Student participants in the service learning program delayed initiation of sexual intercourse, reduced the frequency of sexual intercourse, increased condom use and increased the use of contraception. Those with suicidal thoughts were more likely to talk to an adult than were nonparticipants.[18]

Although it is not clear why service learning has such positive effects, Kirby speculates that it may be because participants develop sustained relationships with program facilitators, which may encourage resilience or an enhanced feelings of competency and greater autonomy, along with the positive feeling that they are making a difference in the lives of others. Participating in service activities also reduces the opportunity to engage in problem behavior, especially during after-school hours.[15]

Preventing teen pregnancy is an important part of delinquency and crime prevention. In summating a wide variety of research, Sigle-Rushton and McLanahan[19] noted that the children of teen mothers and absent fathers had significant higher odds of using illicit drugs, engaging in delinquent and criminal activity and being in prison. Whatever strengthens the family and reduces teen pregnancy is important for the criminal justice system.

COMMUNITY SERVICE, CRIMINAL, SUBSTANCE ABUSE AND OTHER HEALTH RISK BEHAVIORS

Scales and Benson[20] in their manuscript on social capital and prosocial orientation among youth reported that prosocial orientation was inversely correlated with all risk behavior patterns

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measured in their research including delinquency. Coefficients ranged from low to moderate (-.14 to -.25) between helping others and problem alcohol use, use of illicit drugs, use of tobacco, gambling, anti-social behavior, violence, school problems, and sexual behavior risk. Only for depression/suicide was the correlation negligible, although in the predicted direction.

Eccles and colleagues[21] reported similar findings describing that pro-social activities in their study consisted of community service involvement, school clubs/programs, performing arts, and team sport. Their results indicated that participation in community service in particular was associated with lower rates of underage drinking and illicit drug use. Another study by Klein and colleagues[22] concluded that adolescents involved in community service are likely to show an increase in basic social and decision-making skills and a decrease in violent criminal behavior and risky sexual behavior.

In our[23] analysis of data from Alaska high school students between the ages of 12 through 18 years from the CDC's 2009 Youth Risk Behavior Survey (YRBS), we found that students who engaged in volunteer activities for at least one hour per week were less likely to have been sexually experienced, been involved in binge drinking, ever used marijuana or ever used prescription drugs that were not prescribe for them by a physician.

SERVICE LEARNING/COMMUNITY SERVICE AND ACADEMIC PERFORMANCE

One of the benefits of engaging in service by youth is on academic performance. Children and teens who engage in service tend to earn better grades, have more cognitive skills, and are better at decision-making skills and problem-solving.[24] There seems to also be a reciprocal relationship between academic performance and service in that those with better grades tend to also be more involved in service activities.

In a nationally representative study involving more than 4000 high school students, Schmidt and colleagues[24] found that those participating in any type of service improved their academic performance. Students' grades increased by 12% and their civic knowledge increased by 16%. Although 27% of the students performed service as a requirement and the number of hours spent in service varied, the results remained significant. Furthermore, those relating directly with individuals in need had higher grades compared to those who performed other types of services.

A report from the National Service Knowledge Network cites many examples of how service engagement by youth has been related to benefits including higher grades in school.[25] Two of these examples include reports from alternative schools: In Michigan Laird and Black[26] reported that students who participated in Literacy Corps, a service-learning option in one alternative school, scored higher than their nonparticipating peers on the Michigan state assessment and in Kansas Kraft and Wheeler[27] found that alternative school students who participated in service-learning showed strong gains over time on measures of attitude toward school, on writing scores on a six-trait writing assessment, and in grade-point averages. In our analysis of the previously noted YRBS Alaska data, we found that those who engaged in one hour or more of community service per week they were 50% less likely to earn D's and F's in school if they participated in volunteer activities in their community.

Academic performance is of high interest to the justice system. In a classic meta-analysis, Maguin and Loeber[28] found consistent inverse relationships across studies between academic performance and delinquent behavior. These relationships were stronger for males and whites, but they tended to hold in all groups regardless of socio-economic status. Academic performance is strongly related to future opportunities and a stake in conformity that reduces decisions to violet the law. By possibly improving academic performance, community service programs potentially directly, positively, impact community criminal behavior.

DISCUSSION AND RECOMMENDATIONS

The information and data presented here demonstrates clearly that the benefits of serving others are not only related to those being served but also to the person(s) providing the service. Research data show that community service can be an effective part of recidivism prevention and a part of broader community delinquency prevention programs. The "how to" part of this according to work by Doug Kirby importantly includes adults who perform these service activities with the service providing youth with structured time for preparation and reflection before, during and after the service.[23]

We suggest that when the courts impose community service activities on young people, (whether this might have application to adults we are not certain) that they engage high quality, caring adults to work with the courts and to engage in the service with the youth. In doing so we suggest the three step process of first meeting with the youngsters and talk about what you are going to do. The second step would then be to go with them to perform the service and lastly to reflect with them and talk about what they did and their feelings about these activities.

We would discourage the courts from sending young people out to do service without the engagement of an adult. We would encourage the court to order the community service be performed between the hours of 3:00 and 6:00 in the afternoon, which are the hours that the highest rates of drug use, sexual behavior and delinquency occur.[29]

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Lisa Mecklenberg Jackson

I am very delighted to announce that the State Law Library has expanded its library services with **legal eBooks** available for download to anyone who has a state law library card. You can check out and download these eBooks 24/7 from any computer or mobile device. There are close to 100 eBooks to choose from including such legal necessities as "Corbin on Contracts," "Larson's Workers Compensation Law," "Moore's Federal Practice and Procedure," and "Nichols on Eminent Domain." Check out our new eBook collection at http://mtlawlib.law.overdrive.com/. Stop in the law library to get your library card or call 444-3660 with questions.

Now, CLEs though the state law library are free! Previously, there was a charge of $15 to check out one of our CLE audio or video tapes eligible for attorneys' five recorded allowable CLE credits. But effective March 25, 2014, there is no longer any charge to you to use these tapes. We're a library, right? Shouldn't our materials be free? We think so. We've also been adding some new items to the CLE collection which you can find here. http://courts.mt.gov/library/cle.mcpx. The CLE deadline for the Montana State Bar is now June 1, 2014. The CLE commission recently extended the deadline for this year, so you have plenty of time to earn those last few credits. In addition, we're especially excited that we are now starting to offer **free CLEs online**. http://courts.mt.gov/library/cle/videos/default.mcpx Right now, there are five free CLEs on our Website and we're looking to add many more! You can watch them from the comfort of your own office. All for free.

Searching our law library collection just got easier. We recently implemented a new interface for our Law Library online catalog at http://courts.mt.gov/library/. Searching is even easier and if you find a book or resource in the catalog that looks good, you can place a hold on it yourself to ensure it will be at the law library when you come to pick it up. We'll have your selection waiting for you at the front desk. Come to the law library and pick up your library card to try it for yourself. We have great resources at the state law library and we're doing all we can to make your access to those resources smoother and easier.

Did you know that the oral arguments of the Montana Supreme Court are streamed online in real time? The Web stream can be accessed by going to http://courts.mt.gov/supreme/webstream.mcpx.

Upcoming arguments include:

DA 13-0610 TINA MALCOMSON, Petitioner and Appellee, v. LIBERTY NORTHWEST, Respondent and Appellant. ORAL ARGUMENT has been set for Tuesday, May 6, 2014, at 10:00 a.m. at the Auditorium of the Library/Auditorium Building, Montana Tech of the University of Montana, Butte, Montana, with an introduction to the oral argument beginning at 9:30 a.m. Section 39-71-604(3), MCA, allows a workers compensation insurer to communicate privately with an injured worker's health care providers in relation to the worker's claim for benefits, without prior notice to the injured worker. In this case, injured worker Tina Malcomson convinced the Workers' Compensation Court the communication allowed under that statute violated her constitutional rights to privacy and due process of law.

The issues presented on appeal are whether, in declaring § 39-71-604(3), MCA, unconstitutional as applied in Malcomson's case, the Workers' Compensation Court (1) failed to apply the proper two-part test for determining whether Malcomson had a constitutionally-protected privacy interest and (2) failed to require Malcomson to prove unconstitutionality beyond a reasonable doubt and to look to every possible legitimate legislative purpose that would support the statute's constitutionality.

DA 12-0638 STATE OF MONTANA, Plaintiff and Appellee, v. KARLYLE STEVEN LEE PLOUFFE, Defendant and Appellant. ORAL ARGUMENT has been set for Wednesday, May 14, 2014, at 9:30 a.m. in the courtroom of the Montana Supreme Court.

Since 2005, Montana has used drug treatment courts to assist participants with ending their addictions to drugs and ceasing criminal behavior associated with drug use and addiction. This case concerns the extent to which information revealed in a drug treatment court setting may be used in bringing new criminal charges against a participant.

DA 12-0742 STATE OF MONTANA, Plaintiff and Appellee, v. JAMES PILLER, Defendant and Appellant. ORAL ARGUMENT has been set for Wednesday, May 28, 2014, at 9:30 a.m. in the courtroom of the Montana Supreme Court.

Audio files of past Montana Supreme Court oral arguments are available at http://courts.mt.gov/arguments/oral_audios.mcpx. We will continue to post audio files of the arguments and will now being posting video files as well.

Lisa Mecklenberg Jackson *is the state law librarian and director of the State Law Library of Montana.*

The Mother's Day column:

Parent-child evidentiary privilege in Montana?

By Cynthia Ford

This month's column is short, even if not sweet: There is no parent-child evidentiary privilege in Montana or the federal courts. Mothers can be called to the stand to testify against their children, and vice versa.

Game, set, match. See you next month…

A little Explanation for the intellectually curious with time on their hands

As discussed in my previous column, there is a well-recognized and often-used spousal communication privilege in Montana. Married persons who speak to each other in confidence need not fear hearing that spouse recount the communication in court, willingly or unwillingly. M.C.A. 26-1-802. Indeed, this is the very first substantive statute in Title 26, Chapter 1, Part 8, entitled "Privileges." In the last column, I discussed several of the many Montana cases which recognize the public policy in favor of marriage, and which in turn recognize the ability to confide in one's spouse as an important component of marriage.

Many assume that there is a corollary for intergenerational family communications but there is not. Thus, as a technical matter, a party can subpoena a parent to testify against a child or a child to testify against her parent, even if the communication was meant to be and has been kept confidential, and even though that parent could not testify against his wife.

This is true not only in Montana state courts, but also in the federal court system and the vast majority of other states. A famous example comes from the Lewinsky-Clinton scandal. Special prosecutor Ken Starr subpoenaed an unwilling Marcia Lewis, Monica Lewinsky's mother and confidante, to testify before the grand jury. She was forced to give two full days of testimony about what she knew and, more importantly, what her daughter had told her about the relationship with President Clinton.

Montana: Not on the list of privileges

The quickest and easiest explanation for this un-privilege in Montana is that Montana privilege law is statutory[1], and strictly construed. M.C.A. 26-1-801 clearly limits evidentiary privileges to those on the list established by the legislature:

> There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in **the cases enumerated in this part**. [Emphasis added].

The Montana Supreme Court is also clear: "¶ 16 Initially, we observe that testimonial privileges must be strictly construed because they contravene the fundamental principle that the public has the right to everyone's evidence. *See MacKinnon*, ¶ 21 (citing *Trammel v. United States* (1980), 445 U.S. 40, 50, 100 S.Ct. 906, 912, 63 L.Ed.2d 186, 195)." *State v. Gooding*, 1999 MT 249, 296 Mont. 234, 238, 989 P.2d 304, 307.

The Montana Code Chapter on Privileges lists only thirteen types of relationships in which confidential communications are privileged:

- Spouses (26-1-802)
- Attorney and client (26-1-803)
- Member of the clergy and confessor (26-1-804; the subject of the next "Evidence Corner")
- Doctor and patient (26-1-805)
- Speech-language pathologist or audiologist and patient (26-1-806)
- Psychologist and patient (26-1-807)
- Psychology teacher/researcher and observed child (26-1-808)
- Student to teacher (26-1-808)
- "Official confidences" to public officer (26-1-809)
- Victim to domestic violence or sexual assault advocate (26-1-810)
- Mediation communications (26-1-813)
- In medical malpractice cases, apology made to the family (26-1-814)
- Media member and source (26-1-902)

This is the entire list, and conspicuously does NOT mention the parent-child relationship. Equally telling, I could not find a single Montana case in which a Montana state court was faced with a claim of evidentiary privilege for a communication between a child and his parent. So, this is another good place to stop reading: for sure, there is no parent-child evidentiary privilege in Montana state courts and there won't be one unless the legislature decides to add this category to the list of relationships which outweigh the public interest in obtaining all the information possible for the factfinder's decision.

Montana's failure to recognize a parent-child privilege in

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1 This is a distinct difference from the federal law of privilege, which is entirely judge-made, per Congress' instructions in F.R.E. 501, more fully discussed in the previous "Evidence Corner."

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any form is consistent with the vast majority of other states and the federal courts[2]. Because I, and most of my readers, concentrate on Montana evidence law, this article will not go any further into the law of other states although I will discuss the 9th Circuit decisions below.

Federal Courts: A parent-child privilege was not on the original unenacted list of federal privileges, and only a few lower federal courts have since recognized it by common law

The drafters of the original Federal Rules of Evidence drafted, and the Supreme Court transmitted to Congress, a robust Article V on "Privileges." There were specific rules for specified privileges, akin to the Montana statutory approach to privilege law. This list contained a spousal privilege rule, but no provision for a parent-child privilege (either communications or testimonial). However, Congress rejected the proposed Article V in its entirety, and substituted therefor a single rule, F.R.E. 501, assigning to the courts full responsibility for developing privileges for federal proceedings[3]:

> The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:
>
> - the United States Constitution;
> - a federal statute; or
> - rules prescribed by the Supreme Court.

Since the adoption of Rule 501, federal courts have faced multiple assertions that they should recognize a privilege for communications between parents and their children. No federal circuit court has taken the bait so far, although a few district courts have. The U.S. Supreme Court has not found any such privilege.

Wright and Miller's treatise contains a fairly succinct status report on the issue:

> The last decade has seen a sudden flurry of interest in the development of some form of parent-child privilege. A number of scholars, lawyers, and law students produced articles advocating the creation of such a privilege and a few judges have seen fit to create one by judicial decision. Minnesota and Idaho have enacted parent-child privilege statutes and New York has proposed the codification of its common law privilege. Recently a committee of the American Bar Association has drafted a model statute that would recognize both a witness and a communications privilege for parents and children. It is too early to say how this will come out; the judicial decisions have been overwhelmingly hostile. Nonetheless, it may be helpful to sketch the arguments for and against the creation of a broader family privilege to aid courts and legislators who have yet to consider such a privilege and to assist those who are in the process of developing a common law or statutory privilege for parents and children.
>
> § 5572 Policy of the Privileges, 25 Fed. Prac. & Proc. Evid. § 5572 (1st ed.) (Footnotes omitted).

Ninth Circuit Jurisprudence

A. The Ninth Circuit cases

The 9th Circuit has never recognized a parent-child evidentiary privilege, although it has discussed the issue in two cases in the last twenty years. The more recent was in 1993. Nancy Alba and her husband were held in contempt for refusing to testify against Nancy's father before the grand jury. On appeal, the 9th Circuit rejected the Albas' claim that it should recognize a "family privilege:"

> We have previously held that **"there is no judicially or legislatively recognized general 'family' privilege**." *United States v. Penn,* 647 F.2d 876, 885 (9th Cir.) (en banc), *cert. denied,* 449 U.S. 903 (1980). Six other circuits have also rejected the concept of a family privilege. *See Grand Jury Proceedings of John Doe v. United States,* 842 F.2d 244, 247 (10th Cir.1988); *United States v. Ismail,* 756 F.2d 1253, 1258 (6th Cir.1985); *United States v. Davies,* 768 F.2d 893, 896-98 (7th Cir.1984), *cert. denied,* 474 U.S. 1008 (1985); *In Re Grand Jury Subpoena of Dominic Santarelli,* 740 F.2d 816, 817 (11th Cir.1984) (per curiam); *In Re Grand Jury Subpoena Issued to Lawrence Mathews,* 714 F.2d 223, 224-25 (2d Cir.1983); and *United States v. Jones,* 683 F.2d 817, 818-19 (4th Cir.1982). (Emphasis added).

In re Grand Jury Proceedings (Alba), 12 F.3d 1106 (9th Cir. 1993). The Court concluded:

> **There is no general family privilege that would prohibit the government from compelling the Albas to testify against Richichi**. …The Albas have failed to show that the district court abused its discretion by declining to recognize such a privilege. (Emphasis added).

12 F.3d at 1106. Although this opinion is "unpublished,"

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2 "Similar to the federal courts, a substantial majority of state legislatures and courts do not recognize a parent-child privilege. No state supreme court has recognized the privilege, and only five states--Idaho, Connecticut, Washington, Minnesota, and Massachusetts--explicitly recognize some limited form of the parent-child privilege in their statutory schemes. Only one state, New York, recognizes a relatively broad parent-child privilege under case law. The legislatures of a handful of states, including California, Florida, New Jersey, and Illinois, have expressed interest in a state parent-child privilege, but nothing has come of this interest." Catherine Chiantella Stern, Don't Tell Mom the Babysitter's Dead: Arguments for A Federal Parent-Child Privilege and A Proposal to Amend Article V, 99 Geo. L.J. 605, 617-18 (2011). Because I am only concerned with Montana here, I have not updated this list.

3 Note, however, that the last sentence of F.R.E. 501 explicitly commands use of state privilege law in diversity cases: "But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision."

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it is both quite clear and the most recent statement from the Circuit.

The single published opinion from the Ninth Circuit is similarly clear in its rejection of a parent-child privilege, and the fact that the U.S. Supreme Court denied cert indicates that it is not ready to implement such a privilege either. In *U.S. v. Penn*, 647 F.2d 876 (1980), cert. denied 449 U.S. 903, the defendant mother was accused of dealing heroin. An important part of the government's evidence was the jar of heroin which the Washington state police found buried in Ms. Penn's backyard after a two-year investigation, enlisting the help of her small son:

> Officers conducting the search found a quantity of cocaine in the Penn home. After a half hour of looking they had found no heroin. At that point, Reggie, the youngest of Clara Penn's children (age 5), asked to go to the bathroom. A police officer took him. While in the bathroom with the child the policeman asked Reggie (as an "afterthought," according to the officer's testimony) if Reggie knew where the little balloons (of heroin) were hidden. Reggie nodded in the affirmative to the officer's question, indicating that he knew where the heroin could be found….
>
> Because of a commotion outside the bathroom door, the officer did not pursue his conversation with Reggie. But 10 minutes later, when the commotion had ended, the officer spoke with Reggie again, this time in the kitchen. The officer asked Reggie if Reggie would take him out to where the heroin was located. Reggie answered yes, then hesitated. The officer then offered to give Reggie five dollars if Reggie would show him the location of the cache. The boy thereupon walked out to the backyard and pointed to some soft sod. Under the sod the police discovered a glass jar containing 132.9 grams of heroin. Police later found in the yard, but without Reggie's assistance, a second jar containing 14.6 grams of heroin. (Because of the hostility of Reggie's brothers, the officer was unable to give Reggie the five dollars.)

647 F.2d at 879. The State first prosecuted Ms. Penn, but lost a motion to suppress evidence.

The United States then prosecuted her for federal offenses, and also lost a suppression motion at the trial level.

The prosecution sought to introduce the state-suppressed evidence taken from the yard. On motion by the defense, the district court suppressed the jar of heroin that had been found with Reggie's help, on the ground that the police conduct violated the due process clause of the Fifth Amendment. According to the court's memorandum:

> The bribery of a child of tender age by a policeman in order to obtain evidence to be used against a parent represents police conduct which is shocking to the conscience and is, in the opinion of this Court, so violative of the decencies of civilized conduct to be a deprivation of due process. Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952). (Footnote omitted).

Id. On appeal, a majority of the 9th Circuit en banc reversed the Due Process holding, although it stated that it "disapproved" of the police tactic. The Court observed:

> Moreover, we think that there is general agreement that the combination of any two of these factors would not violate due process. A very young child may be given money in exchange for information about a non-family member; an adult son (or brother, or spouse) may be paid to inform against his mother, etc.; and a **very young son may freely inform or testify against his mother.** (Emphasis added).

647 F.2d at 880. After dispensing with the defendant's other constitutional arguments, the majority went on to discuss more specifically her parent-child evidentiary privilege claim[4]:

> Federal Rule of Evidence 501 declares that the existence and extent of privileges "shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience."
>
> **There is no judicially or legislatively recognized general "family" privilege**, cf. Trammel v. United States, 445 U.S. 40, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980) (spouse may testify against her mate over his objection); United States v. Lefkowitz, 618 F.2d 1313 (9th Cir. 1980) (spouse may provide information to police for use in search directed against her mate), **and we decline to create one here**. (Emphasis added).
>
> 647 F.2d 884-85.[5]

B. Anomalous District Courts in the 9th Circuit

Despite these Circuit Court opinions, a couple of District Courts in the 9th Circuit have held that a parent-child privilege should exist, and applied it in the cases before them. Although these cases are not likely to become the law circuit-wide any time soon, their reasoning illustrates some of the arguments[6] for such a privilege.

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4 Arguably, this quotation is dicta. Whether that is true or not, it has not been disapproved in any subsequent 9th Circuit ruling, and it is **extremely** clear.

5 Four (Judges Goodwin, Kennedy, Hug and Tang) of the nine en banc judges dissented sharply on constitutional Fourth Amendment grounds, citing the importance of the family unit as one consideration, but did not discuss the parent-child privilege per se. The Circuit also split on the petition for rehearing, but the majority denied the request for rehearing by the full court.

6 There are several good law review articles which elaborate on these arguments. E.g., Stern, *Don't tell Mom the Babysitter's Dead: Arguments for a Federal Parent--Child Privilege and a Proposal to Amend Article V* (Note), 99 Geo. L.J. 605 (2011); Watts, *The Parent-Child Privileges: Hardly a New or Revolutionary Concept,* 28 Wm. & Mary L. Rev. 583 (1987); Coburn, *Parent-Child Communications: Spare the Privilege and Spoil the Child,* 74 Dickinson L.Rev. 599, (1969–70); Comment, *The Child-Parent Privilege: A Proposal,* 47 Fordham L.Rev. 771 at 772 (1978–79).

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In *In re Grand Jury Proceedings, Unemancipated Minor Child*, 949 F.Supp. 1487 (E.D. Wash., 1996), the government subpoenaed a 17-year-old son to testify before a grand jury investigating charges against both his parents. He moved to quash the subpoena on the grounds of parent-child privilege. Although the motion was denied, the district judge specifically considered the application of such a privilege to the son's testimony. The Court found no constitutional basis for a parent-child privilege, but went on to consider the public policy arguments in favor of common-law adoption of this familial protection:

> Thus, mindful of the presumption against recognizing new privileges and guided by "reason and experience," the Court must analyze whether a parent-child privilege should be recognized because there is a "public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth," which also serves public ends…. The Court finds it does.
>
> 949 F. Supp. at 1494.

In reaching this decision, the Court surveyed state and federal cases across the country, and acknowledged that

> What case law exists does not reveal a groundswell in favor of recognizing a broad privilege. To the contrary, the vast majority of states that have considered this issue have declined to recognize a parent-child privilege, or some variation thereof, on the facts presented to them.

949 F. Supp. at 1495. Nonetheless, the Court compared the relationship of the parent and child to the types of relationships protected by existing privileges, concluding that law should support the family unit, and confidential communications between family members would help do so:

> In this Court's experience—as a judge, parent, child, and spouse—there is no meaningful distinction between the policy reasons behind the marital communications privilege and those behind a parent-child privilege. The same needs that are met by confessing to a priest, divulging fears and wrongdoings to a psychotherapist, or confiding in a spouse are present—and should be encouraged to be fulfilled—in the context of parent-child relationships….
>
> Likewise, children should not be dissuaded from seeking guidance and support from parents during difficult times. Parents should not be discouraged from participating in their children's lives by sharing their joys and providing firm direction when that is needed. As many parents know, supervision of a child takes on many forms. At times it may include honest and forthright discussion. At other times it may take the form of cross-examination to discover, punish, or correct wrongdoing by the child. Especially in light of this society's increasing concern with the weakening of the family structure, such communication and parental guidance should be encouraged, not discouraged, by the judiciary.

Id. The *Unemancipated Minor* case ultimately held that a parent-child privilege might apply in the questioning of the son before the grand jury[7], but that its exact parameters and application should be decided on a question-by-question basis.[8]

The District of Nevada also ruled in favor of a parent-child privilege *In re Agosto*, 553 F. Supp. 1298 (D. Nev., 1983). Joseph Agosto was the target of a grand jury investigation in Las Vegas. His adult son, Charles, was subpoenaed to testify against him. In support of his motion to quash the subpoena, Charles submitted an affidavit showing that this was the third time in 18 months that federal prosecutors and a grand jury in the same district had subpoenaed children to testify against their parents, who were targets of an investigation.

The trial judge commented:

> Because the issues presented to the Court are of such an interesting and important nature, and because the law in this area is relatively undeveloped at the present time, this Court will endeavor to examine the requested motion in depth both as to law and policy.
>
> For analysis, Movant's argument can be divided into three categories of "harm" which he urges the Government's subpoena, if enforced, would perpetrate upon him. First, Movant urges that the harm done to him as an individual, both physically and emotionally, renders the Government's actions an impermissible invasion upon his personal autonomy and religious [Catholic] beliefs. Second, Movant argues that the implications to his family from such a coercion are permanently detrimental. And finally, Movant argues that the damage to society as a whole should such a practice be permitted far outweighs any goal that the government is trying to reach by requiring such testimony by family members against one another.
>
> 553 F. Supp. at 1299-300.

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7 District Judge Whaley also discussed the two 9th Circuit cases which appear to reject a parent-child privilege, but distinguished them: "The Court is not dissuaded from recognizing a parent-child privilege by either of the Ninth Circuit cases that have discussed similar issues. *See, e.g., In re Grand Jury Proceedings (Alba),* No. 93–17014, 1993 WL 501539 (9th Cir. Dec. 2, 1993) (unpublished); *Penn,* 647 F.2d 876." *In re Grand Jury Proceedings, Unemancipated Minor Child*, 949 F. Supp. at 1496. The judge found *Penn*'s statement declining to recognize the privilege to be dicta. He observed that *Alba* was distinguishable both on its facts and because it was an unpublished opinion.

8 There is no reported history of the subsequent proceedings in this case, or, indeed, whether the U.S. did actually call the son to testify after all. There is no 9th Circuit appeal of the district court ruling, and I could find no indirect comment from the Circuit either.

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The son in *Agosto* argued that society's need to protect the parent-child relationship was even greater than for the husband-wife relationship, because spouses can divorce. Interestingly, some courts have found that the inability to dissolve the parent-child legal relationship is precisely why that bond does not need to added protection of an evidentiary privilege. In that view, parents and children talk intimately all the time, even though there is no privilege, so there is no need which offsets the public's right to know. Furthermore, the bond is so strong naturally that contrary testimony is unlikely to destroy it: a mother will love her son even if he testifies against her, at least under compulsion.

The *Agosto* judge discussed the 9th Circuit's *Penn* decision at length, and concluded that the Penn majority limited its holding on the constitutional issues because it felt that the situation was unique, leaving a door open for a different determination if a pattern of violation of familial relationships became clear. 553 F.Supp. at 1320. He echoed this with regard to the privilege holding, too:

> And the court concluded, again specifically limiting their conclusion to the facts before them, that "[t]here is no judicially or legislatively recognized general 'family' privilege ... and we decline to create one here." *Id.* at 885.

Id, at 1321. (Later in the opinion, the judge also distinguished the Penn case on its facts). After a lengthy and useful review of the history of the F.R.E. privilege provisions, the judge stated:

> The expansive posture taken by Congress, in enacting Federal Rule of Evidence 501, allows this Court to analyze case law, scholarly opinion, and political and social policy issues in considering Movant's claim of a parent-child privilege. As a case-by-case development of the law of privileges is indicated in the legislative history of Rule 501, this Court is free to extend the present law of privileges to deal with those situations encountered in which constitutional protection is deemed essential.
>
> *Id* at 1325.

The judge did quash the subpoena issued to the son, finding both parent-child testimonial and confidential communications privileges, even for adult children:

> There can be little doubt that the confidence and privacy inherent in the parent-child relationship must be protected and sedulously fostered by the courts. While the government has an important goal in presenting all relevant evidence before the court in each proceeding, this goal does not outweigh an individual's right of privacy in his communications within the family unit, nor does it outweigh the family's interests in its integrity and inviolability, which spring from the rights of privacy inherent in the family relationship itself. There is no reasonable basis for extending a testimonial privilege for confidential communications to spouses, who enjoy a dissoluble legal contract, while yet denying a parent or child the right to claim such a privilege to protect communications made within an indissoluble family unit, bonded by blood, affection, loyalty and tradition. And further, if the rationale behind the privilege of a witness-spouse to refuse to testify adversely against his or her spouse in a criminal proceeding serves to prevent the invasion of the harmony and privacy of the marriage relationship itself, then affording the same protection to the parent-child relationship is even more compelling….
>
> Charles Agosto may claim the parent-child privilege not only for confidential communications which transpired between his father and himself, but he may likewise claim the privilege for protection against being compelled to be a witness and testify adversely against his father in any criminal proceeding. The parent-child privilege, then, is based not only on the confidential nature of specific communications between parent and child, but also upon the privacy which is a constitutionally protectable interest of the family in American society.

Id. at 1325. Thus, despite the 9th Circuit's holding in Penn, the District Court for the District of Nevada adopted the most expansive possible version of a parent-child evidentiary privilege, covering both generations, even after the child has become an adult living a separate life in a separate house.

Although these two trial court opinions within the 9th Circuit illustrate the possibility that the federal courts could conceivably recognize some form of a parent-child privilege in the future, the probability remains quite remote. In 2010, a judge in the District of Oregon assessed the vitality of *Agosto*:

> As the court in *United States v. Red Elk noted,* however,
>
> *Agosto* has never been followed by the Eighth Circuit and has been rejected by virtually every other federal court that has been called upon to recognize and apply a parent-child/family privilege. … *United States v. Penn,* 647 F.2d 876, 885 (9th Cir.) (*en banc*), *cert. denied,* 449 U.S. 903, 101 S.Ct. 276, 66 L.Ed.2d 134 (1980) [citations from other circuits omitted]…

955 F.Supp. 1170, 1178 (D.S.D.1997). In *Penn* the Ninth Circuit noted in *dicta* that "[t]here is no judicially or legislatively recognized general 'family' privilege." 647 F.2d at 885. Thus, it does not appear the Ninth Circuit would likely adopt the privilege set out in *Agosto.*

U.S. v. Krstic, 708 F.Supp.2d 1134, 1149 (D.Or. 2010).

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Practical Considerations: "Can" is not "Should"

The law on parent-child privilege is about as clear as law gets: there is no privilege, and either parent or child can be compelled to testify against the other. If the subpoenaed witness refuses to do so, she can be held in contempt of court and actually jailed until she relents and dimes her little boy.

So, what would June Cleaver do if called to testify against the Beaver[9]? The *Agosto* judge did not think she (or Beaver, if he were called to incriminate his mother) would tell the truth:

> [C]oercing testimony from a parent against his child would, in point of fact, place parties in a posture of committing perjury to protect one another… requiring or yet coercing testimony within the realm of the family in all possibility could be a complete exercise in futility. …
>
> [T]here is "the gravest temptation to perjury by the holder of the secret. This is apparently why in the legal thought of a number of European countries, emphasis is placed upon the moral importance of refraining from coercion of witnesses as matters of conscience. Such coercion, in the face of conflicting concepts of loyalty and duty, is considered to be productive of perjury." Louisell, *The Psychologist in Today's Legal World: Part II,* 41 Minn.L.Rev. 731 at 750 (1957). Louisell also noted that the benefits in the administration of justice were "overbalanced by: (1) the inducement to perjury inherent in such attempts, and (2) the harm to the human personality, and hence, to freedom, in governmental forcing of a serious conflict of conscience." *Id.* Ascertainment of the truth, then, while an important goal, is not the only important goal. And indeed, if a parent-child privilege is foreclosed, the truth may yet remain elusive and even just as unattainable, in light of the perjury which could take place if such testimony is coerced….
>
> The practical effect of allowing the government to coerce testimony by parent and child against one another is that individuals totally uninvolved in and innocent of the alleged wrongdoing will be jailed for contempt, solely because of a strong sense of family loyalty. The government, then, is essentially in a position of actively punishing selflessness and loyalty which are inculcated into the child by family, church, and even the state itself. It is inconsistent with a free society to place a child in the position of choosing between loyalty to his parent and loyalty to his state. In this instance, a child is delivered into a psychological double-bind in which he is scorned and branded as disloyal if he does testify and jailed if he does not. The child is required, then, to have a contingent loyalty to the family which reared him and taught him the basic values of honesty, integrity, and respect for authority.
>
> *In re Agosto*, 553 F. Supp. at 1309-1310, 1326.

When we discuss this privilege in my Evidence class every year, I ask the students to raise their hands if they think their mothers would lie on the stand to protect them. Consistent with the quotation above, most students, perhaps 95%, do raise their hands; only 2 or 3 every year say they expect their mothers would tell the truth in court, even if that truth resulted in the conviction and incarceration of the students. That small minority reports that their mothers have a deep commitment to the truth and strongly believe in their children accepting consequences for bad decisions. For this group of parents, the act of testifying is actual consistent with their parenting responsibilities. If any sort of parent-child privilege were developed, the legislature or court enunciating its boundaries could protect both categories of parents by vesting the privilege in the parent, rather than in the child.[10]

Even without a formal privilege, in my observation and reading, it is a fact that parties do not often call their opponents' parents (or children) to give testimony adverse to their children (or parents). There are several probable practical reasons for this rarity. As with my class and the *Agosto* court, most lawyers may not believe they would get the truth anyway. Even if the parent does testify, juries (grand or petit) observing a parent's compelled testimony may discount that evidence, assuming that the parent is not likely to jeopardize her child. It might even be that a juror would be so offended by the proponent's insistence on placing the parent-witness into an untenable position, and actively determine to find against that party as a result. The proponent lawyer herself might simply be offended by the prospect. Lastly, the lawyer might be reluctant to instigate a judicial review or legislative action which could result in institution of a system-wide parent-child privilege for the first time. As a result of all these factors, most of the lawyers and judges reading this article won't have to face this issue.

In the unlikely event that the prosecutor or civil opponent of The Beaver did subpoena Mrs. Cleaver to testify against her

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9 I know for a fact that all the readers of my mature age recognize this reference. I also know, from my experience of 24 years teaching law students, that there are many readers younger than we who won't. Here is what that excellent source, Wikipedia, says: "***Leave It to Beaver*** is an American television situation comedy about an inquisitive and often naive boy named Theodore "The Beaver" Cleaver (portrayed by Jerry Mathers) and his adventures at home, in school, and around his suburban neighborhood. The show also starred Barbara Billingsley and Hugh Beaumont as Beaver's parents, June and Ward Cleaver, and Tony Dow as Beaver's brother Wally. The show has attained an iconic status in the US, with the Cleavers exemplifying the idealized suburban family of the mid-20th century."

10 The U.S. Supreme Court did a similar thing when it announced that the federal spousal testimonial privilege henceforth belongs to the witness-spouse rather than to the defendant-spouse. The Court cited the witness' un/willingness to testify as a rationale barometer of the health of the marriage, observing that it did not make judicial sense to forego relevant information if there was no viable marriage to preserve via the privilege. See, *Trammel v. U.S.* 445 U.S. 40 (1980).

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own son[11], she has several options:

- She could flat-out refuse to testify, attempt to assert a privilege, and be ordered to testify or go to jail until she does;
- She could testify and tell the truth, maybe sending The Beaver to Pine Hills or Deer Lodge;
- She could testify and lie, now committing a crime of her own; or She could take refuge in a totally-mom device, forgetfulness: "I don't remember anything at all about that." Isn't this the most likely, and the most believable? And how could the proponent disprove this, and/or prove perjury? "You do too so remember, don't you?" is not going to get the desired testimony.

Don't get me wrong: I am totally committed to prevention of, and would never suborn, perjury. I would never advise anyone who consulted me in such a situation to say she does not remember, if in fact she does remember and just doesn't want to say. As the Preamble to the Montana Rules of Professional Conduct says in its very first provision: "(1) A lawyer shall always pursue the truth." Part (6) of the Preamble also applies:

> A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

Rule 3.3 provides:

> If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Rule 3.4 states:

> A lawyer shall not:
> (a) unlawfully obstruct another party's access to evidence, unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;
>
> (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

These authorities, as well as my own moral compass, tell me that if I do represent a parent or child called to testify, I should advise her that she can try to raise a claim of privilege, but would almost surely lose that under the current law. I would then counsel her that she only has two defensible choices: refuse to testify and bear the consequences, including possible coercive jailing for contempt, or tell the truth. To preclude a standoff in court, I would call the attorney who subpoenaed my client and inform that lawyer that the client would rather go to jail than testify. In the perfect world, that call would cause the lawyer to rethink his trial strategy and revoke the subpoena.

All in all, privilege or not, most lawyers won't call their opponents' parents or children. If they do, the harsh reality is that they are not likely to gain usable evidence if they do, and may stand to alienate the juror they are trying to woo. In this landscape, the need for a formal privilege to protect the parent-child relationship has not been compelling to most legislatures (including Montana) or to most courts (including the Montana Supreme Court, the 9th Circuit, or the U.S. Supreme Court).

Conclusion: It's a long way to Tipperary

I don't think I will live long enough to see a parent-child privilege in Montana, in the federal courts, or in the majority (actually, even a substantial minority) of other states. I also don't think I will see many cases in which a party calls a resistant child or parent to the stand and gets usable information. The parent-child privilege debate may be a tempest in a teapot, after all. The best advice clearly is: Don't do anything which would make your mother have to tell on you. And, if you are my child, remember: there is still time to buy a present.[12]

Happy Mothers' Day.

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11 I think this would have been a very interesting episode. There probably is a "Law and Order" episode raising this issue, but I couldn't find one easily. If you do, please send me the link; thanks.

12 How about a bike ride on the Trail of the Coeur D'Alenes?

Court summaries: Aug. 13-20, 2013

Editor's note: *Summaries, courtesy of Beth Brennan, are also available online at http://brennanlawandmediation.com/mt-supreme-court-summaries.*

PUSKAS V. PINE HILLS

Keywords: 5-0 panel, Affirmed, Bench trial, Hostile work environment, Sexual discrimination

***Puskas v. Pine Hills,* 2013 MT 223 (Aug. 13, 2013) (5-0) (Morris, J.)**

Issue: (1) Whether substantial credible evidence supports the district court's determination that Pine Hills held open an offer for Puskas to transfer units from June 2009 until Puskas quit in 2010; (2) whether the district court correctly determined that Pine Hills reasonably and promptly offered a solution to end AH's harassment of Puskas; and (3) whether the district court correctly dismissed Puskas' retaliation claim.

Short Answer: (1) Yes; (2) yes; and (3) yes.

Affirmed

Facts: Cassie Puskas was a correctional officer at Pine Hills, a youth correctional facility for males up to age 18, from December 2006 to January 2010. She worked in the sex offender unit for most of her time there. All parties agree she was a quality employee.

Puskas had difficulties with AH, an inmate at Pine Hills. AH was reported for multiple violations between December 2008 and January 2010, including masturbating, threatening staff, assaulting other inmates, sexually assaulting staff, and other threatening behaviors. Puskas reported at least 14 of these incidents.

AH would follow Puskas around the sex offender unit. In June 2009, Pine Hills temporarily assigned Puskas to the maximum security unit to get her away from AH. In January 2010, Puskas saw AH standing at his door window, masturbating. She ordered him away from the door, and he threatened to kill her.

The next day, Puskas met with the director of care and custody to discuss her concerns about AH's behavior. Young offered to transfer Puskas to another unit, but Puskas wanted AH to be transferred to the maximum security unit. Pine Hills deemed AH an inappropriate candidate for permanent placement there for several reasons.

Puskas quit her job after her meeting with the director. She filed an action against Pine Hills for sexual harassment, hostile work environment, and retaliation.

Procedural Posture & Holding: Both parties moved for summary judgment, and the district court denied both motions. After a bench trial, the district court entered judgment for Pine Hills on all claims, noting that AH's behavior improved considerably after AH left her employment. Puskas appeals, and the Supreme Court affirms.

Reasoning: (1) The district court determined that Pine Hills had given Puskas the option of transferring to another unit. Substantial credible evidence supports that finding.

(2) The district court determined that Pine HIlls should not be held liable for AH's actions as either sexual harassment of a hostile work environment because corrective measures were reasonably calculated to end the harassment and were undertaken promptly. Substantial credible evidence supported the district court's determination that Pine Hills' offer to transfer Puskas to a different unit was the only reasonable option available to remedy AH's harassment, and its finding that Pine Hills acted reasonably and promptly when it became aware that AH's behavior had become sufficiently severe to alter the conditions of Puskas' employment conditions.

(3) The district court further determined that Puskas failed to establish that she had been subjected to an adverse employment action based on her complaint against AH. The Supreme Court agrees that Pine Hills had a legitimate, non-discriminatory reason to transfer Puskas to another Pine Hills unit.

STATE V. ROGERS

Keywords: 7-0 panel, Admissibility of evidence, Partner-family member assault, Reversed, Sexual assault

***State v. Rogers,* 2013 MT 221 (Aug. 13, 2013) (7-0) (Baker, J.)**

Issue: (1) Whether the district court violated Rogers' constitutional rights by requiring him to testify to his defense of justifiable use of force prior to cross-examining the victim about her prior acts of violence against him, and (2) whether the district court erred by allowing the state to question Rogers about his prior criminal history once he testified about the victim's prior acts of violence against him.

Short Answer: (1) No, as Rogers failed to preserve this issue for appeal, and (2) yes, this trial error was not harmless.

Reversed & remanded for a new trial

Facts: At about 3:30 one morning in April 2011, S.M. heard banging at her door. Her sometime-boyfriend, Rogers, called S.M. and asked her to let him into the house. When she refused, Rogers broke in and made it clear he wanted to have sex. S.M. described Rogers as very intoxicated. After she asked Rogers to leave, he hit her in the jaw and prevented her from calling 911. At that point, S.M. stopped resisting Rogers' advances because she was afraid he would kill her.

Rogers "basically held [S.M.] hostage from 3:00 a.m. to 7:00 a.m." He assaulted her numerous times. S.M. tried to get him to leave by telling him her daughter was coming to the house, but Rogers replied that he should stay so he could have sex with her and hurt both of them.

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As soon as Rogers left, S.M. called 911. Deputy King reported S.M. had a split lip and bruising on her face. S.M. reported that Rogers had sexually and physically assaulted her that morning, and in November 2010.

Rogers was arrested and taken to the sheriff's office. He denied breaking into S.M.'s house and told the deputy that sex was consensual. When the deputy noticed blood on Rogers' hand, Rogers admitted slapping S.M. in the face, saying he did so after she made comments about his brother's sexual offender status. The deputy filled out a 72-hour-no-contact order and gave it to Rogers. Rogers admitted he violated the order several times by calling S.M. from the jail.

Rogers was charged with sexual intercourse without consent, two counts of partner or family member assault, unlawful restraint, and four counts of violating a no-contact order. Rogers pled not guilty.

Procedural Posture & Holding: Several months before trial, Rogers gave notice he would assert a justifiable use of force defense by introducing evidence that S.M. had been charged with criminal endangerment and PFMA after allegedly biting Rogers while he was driving. The state moved in limine to prohibit such evidence without testimony from Rogers about his personal knowledge of S.M.'s past acts of violence. Rogers' counsel indicated he would make an offer of proof outside the presence of the jury, and did not identify any constitutional implications or offer other legal argument. The state asserted that Rogers must offer his testimony to the jury, and the district court agreed. The court further held that Rogers' testimony about S.M.'s prior violent acts toward him would open the door to Rogers' prior criminal history. Rogers objected, and took the stand. After Rogers testified about previous times S.M. had attacked him, the prosecutor asked Rogers a series of questions about his criminal history. The jury convicted Rogers on all eight counts, and Rogers appeals. The Supreme Court reverses for a new trial on all charges.

Reasoning: (1) Rogers argues that he was forced to choose between two constitutional rights — the right to confront witnesses against him, and the right not to testify. The Court agrees with the state that Rogers failed to preserve this issue by not raising any constitutional concerns at the trial court.
(2) As a general rule, evidence of other crimes must be excluded because it is highly prejudicial. The state argues that Rogers did not object to specific questions asked by the prosecutor, and that the evidence was admissible for impeachment because Rogers testified he had not been in trouble for the past 12 years. The Court disagrees. Evidence of Rogers' entire criminal history was not admissible under Rule 404(b) as it was likely to be used to support an inference of character or propensity and was not shown to be admissible for another purpose. The Court analyzes whether the trial error was prejudicial, using a two-step analysis from Van Kirk. Rogers' criminal history was not used to prove an element of the offense and was not an admissible fact for the jury's consideration. The Court concludes that there is a reasonable possibility the tainted evidence influenced Rogers' conviction, and holds the error was not harmless.

STATE V. BROTHERS

Keywords: 5-0 panel, Montana Supreme Court summaries, Remand to correct written judgment, Restitution, Reversed

***State v. Brothers,* 2013 MT 222 (Aug. 13, 2013) (5-0) (Wheat, J.)**

Issue: Whether the district court erred by ordering Brothers to pay restitution to the state.

Short Answer: Yes.

Reversed & remanded to amend judgment

Facts: Brothers was charged with sexual assault, incest, and indecent exposure in September 2010. He was arrested in New Mexico in January 2011, and pled guilty to one count of sexual assault in February 2012 as part of a plea agreement. The state recommended a 15-year prison sentence with 10 years suspended, and allowed Brothers to withdraw his plea if the court imposed a different sentence.

Procedural Posture & Holding: At the sentencing hearing, the state asked that Brothers pay $1069 in restitution for the cost of extraditing Brothers from New Mexico. No affidavit or testimony was proffered in support. Brothers objected. The Court ordered the restitution and imposed a sentence of 20 years with 10 years suspended. Brothers withdrew his plea, and the state and Brothers filed a joint motion to amend the judgment and sentence. The Court resentenced Brothers to 15 years with 10 suspended, and ordered him again to pay restitution. Brothers appeals the restitution order, and the Supreme Court reverses.

Reasoning: The restitution statute requires a sentencing judge to require payment of restitution to a victim who has sustained a pecuniary loss. Both the state and Brothers agree the district court lacked authority to impose restitution without any evidence of the loss. While neither party argues the lower court lacked authority because the state is not a victim, the Court reverses on that basis.

ESTATE OF QUIRIN

Keywords: 5-0 panel, Affirmed, Probate, Substitution of judge

***Estate of Quirin,* 2013 MT 231 (Aug. 20, 2013) (5-0) (Cotter, J.)**

Issue: Whether the district court correctly denied Quirin's daughter's motion for substitution of judge as untimely.

Short Answer: Yes. The 30-day period began to run when Speiser petitioned for supervised administration of her mother's estate.

Affirmed

Facts: Violet Quirin died in January 2011. Her will, executed on June 23, 2010, acknowledged her daughters but made no provision for them. It appointed Kristine Fankell as PR and revoked all prior wills. Fankell filed for informal probate on Jan., 18, 2011, and was appointed PR. On Jan. 24, 2011, Fankell served a Notice and Information to Heirs and Devisees via mail to Quirin's daughters, Cathie Schmiedeke and Marcy Speiser.

On May 2, 2011, Speiser filed a petition for formal probate and appointment of a PR, attaching a March 2007 will

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that divided Quirin's estate evenly between her two daughters. Speiser argued her mother was not competent at the time she executed the June 2010 will.

Schmeideke appeared on Oct. 19, 2012, by filing an objection to the informal probate application, a petition to remove Fankell as PR, and a motion to substitute the judge. Fankell moved to strike Schmeideke's pleadings, arguing she was not a party and had not moved to intervene.

Procedural Posture & Holding: The district court denied Schmeideke's motion to substitute as untimely, determining she had 30 days from service of the Notice and Information to Heirs and Devisees to move for substitution of the judge. The court granted Fankell's motion to strike because Schmeideke failed to timely move to intervene and her interests were adequately represented by Speiser. Schmeideke appeals the denial of her motion to substitute, and the Supreme Court affirms.

Reasoning: Section 3-1-804(1)(a), MCA governs the right of parties in a civil action to move for substitution of the district judge. A motion for substitution must be filed within 30 calendar days after the first summons is properly filed or an adverse party has appeared. Untimely motions are void and must be denied. An informal probate is a non-adjudicative proceeding to which the Montana Rules of Civil Procedure do not apply, while a formal probate is conducted before a judge and the Rules do apply.

The Court recently held that the 30-day timeline for substituting a district judge is triggered when an interested person files a petition that converts an informal probate into a court-supervised administration. Here, Speiser's petition for supervised administration triggered the 30-day deadline. As it was filed on May 2, 2011, Schmeideke's motion filed on Oct. 19, 2012, was untimely. Once the deadline passes for the original parties, subsequently joined parties have no right to move for substitution.

ESTATE OF BENNETT

Keywords: 7-0 panel, Probate, Standing, Writ of supervisory control, Wrongful death

***Estate of Bennett,* 2013 MT 230 (Aug. 20, 2013) (7-0) (Rice, J.)**

Issue: Whether the Court should issue a writ of supervisory control over the lower court's order holding that the Bennetts are not entitled to damages from the wrongful death of their adult son.

Short Answer: Yes. Wrongful death damages are personal to the survivors, and are not controlled by intestate succession statutes.

Writ granted

Facts: Jeremiah Bennett died intestate from injuries sustained in a car accident on Sept. 8, 2012. He is survived by two minor children and his parents, Abel and Judy Bennett. Sabrina, the mother of his children and his ex-wife, is the guardian and conservator for the children. This Court affirmed her appointment as PR in an interlocutory appeal. 2013 MT 228.

Sabrina petitioned the district court for a declaration that the Bennetts lack standing to claim wrongful death damages. Bennetts moved to intervene, conceding that they did not have a claim for lack of consortium under Hern v. Safeco, but arguing they could claim damages for grief, sorrow and mental anguish and that Sabrina, as the PR, had a fiduciary duty to advance those claims on their behalf.

Procedural Posture & Holding: The district court held that the minor children are the sole heirs of the estate and therefore have priority over any wrongful death claims. The court granted Sabrina's petition and denied Bennetts' motion to intervene. Bennetts petitioned for supervisory control, and Sabrina responded. The Court grants Bennetts' petition.

Reasoning: The Court first determines that supervisory control is warranted. Bennetts may not appeal the denial of their motion to intervene until after final judgment is entered. The parties are involved in complex settlement negotiations, from which Bennetts are excluded, and an appeal in Bennetts' favor could invalidate the settlement.

Bennetts argue there is no requirement that a claimant for wrongful death damages be an heir. Montana does not statutorily define wrongful death claimants, but through the common law has identified survivors who may claim wrongful death damages, as well as the parameters of recovery. While a survival action belongs to the decedent's estate, a wrongful death action seeks damages for the personal loss of the survivors. The distribution of such damages is not controlled by the decedent's will or by the intestacy statutes. The PR brings the wrongful death action as well as any survival action under the one-action rule, and holds the proceeds of any damage award as trustee for the persons entitled to damages. If the action proceeds to trial and damages are awarded, the district court will apportion the wrongful death damages among the claimants.

KANANEN V. SOUTH

Keywords: 5-0 panel, Affirmed & reversed, Attorneys' fees, Dissolution - property division, Fraud, Motion to dismiss, Statute of limitations

***Kananen v. South,* 2013 MT 232 (Aug. 20, 2013) (5-0) (Wheat, J.)**

Issue: (1) Whether the district court properly dismissed Kananen's fraud claim on the basis of the statute of limitations; (2) whether the district court erred by not conducting a hearing on the motion to dismiss; and (3) whether the district court properly awarded attorney fees and costs.

Short Answer: (1) Yes; (2) no; and (3) no. The award of attorney fees and costs under § 40-4-110, MCA, is reversed.

Affirmed and reversed

Facts: Carl Kananen and Karen South married in November 1993. In January 1995, South made Kananen a co-owner of property South had owned and lived on prior to the marriage. In October 2007 a quit claim deed transferring Kananen's interest back to South was recorded.

The marriage ended in 2009. At the hearing, testimony revealed that the property increased in value by $100,000 between 1993 and 2009. The parties disputed whether that increase was part of the marital estate. The district court concluded that South owned the property and that the increase in value

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was due to market forces, not to any contributions made by Kananen. The court granted $8,000 to Kananen for his minimal contributions.

In June 2012, Kananen filed a complaint alleging that South forged his signature on the quit claim deed, and that Alta Marie Pallett notarized the forged signature. Pallett's surety was also a named defendant.

Procedural Posture & Holding: Defendants moved to dismiss on the basis of statute of limitations, collateral estoppel and lack of damages. The district court granted the motion, reasoning that the two-year statute for fraud claims had run, and awarded attorney fees and costs to the defendants pursuant to § 40-4-110. Kananen appeals, and the Supreme Court affirms the dismissal and reverses the award of attorney fees and costs.

Reasoning: (1) The parties dispute when the two-year statute began to run on Kananen's fraud claim. The Court affirms the district court's holding that the statute began to run at the time of the dissolution hearing in November 2009, as he was put on notice then that he was no longer a co-owner of the property.

Rule 12 provides that a motion to dismiss shall be heard and determined before trial if a party moves for a hearing. No party did so here. Kananen's due process rights were not violated by the district court's failure to hold a hearing prior to granting the motion to dismiss.

(3) Kananen argues, and the Supreme Court agrees, that § 40-4-110, MCA, does not apply to an action for fraud. The district court determined that Kananen's complaint attempted to relitigate the property division made in the final decree, and granted attorney fees and costs on that basis. TheSupreme Court holds that the two causes of action were separate, and the award of attorney fees and costs was in error.

ALLEN V. LAKESIDE NEIGHBORHOOD PLANNING COMMITTEE

Keywords: 5-0 panel, Affirmed, Open meeting laws, Remedy

***Allen v. Lakeside Neighborhood Planning Committee,* 2013 MT 237 (Aug. 20. 2013) (5-0) (Cotter, J.)**

Issue: (1) Whether the district court erred when it declined to void the 2010 Lakeside Neighborhood Plan and determined that Plaintiffs could obtain no relief on their claims for violations of Montana's open meeting laws; and (2) whether the district court erred in determining that a public meeting could not be held via a Yahoo email group.

Short Answer: (1) No, and (2) no.

Affirmed

Facts: In 2007, Flathead County adopted a growth policy, which acknowledged the vitality of existing neighborhood plan as well as the possibility that some plans would have to be revised. The Flathead County Planning Board determined that the 1995 Lakeside Neighborhood Plan required revisions, and authorized the rewriting of the plan. The Lakeside Community Council created the Lakeside Neighborhood Planning Committee to assist with updating the 1995 plan.

The planning committee held numerous meeting in 2007-2008, most in private homes without adequate notice or invitation to the public. The committee also created a password-protected Yahoo Group website for the exclusive use of committee members. A separate public website was created, but contained limited information and materials. After people complained, the Flathead county attorney advised the committee it was subject to Montana's open meeting laws. After October 13, 2008, all committee meetings were properly noticed and held at the Lakeside library.

In June 2009, 19 individuals filed a lawsuit against the committee and Flathead County, claiming the committee had violated Montana's open meeting laws. In May 2010, the parties stipulated to staying the case until the commissioners either approved or rejected the recommended plan.

In September 2010, the Flathead County Planning Board approved the revised Lakeside Neighborhood Plan as submitted by the planning committee, and forwarded it to the county commissioners. The commissioners adopted the plan in December 2010. Once adopted, the complaint was revived in district court. The district court enjoined implementation of the plan in March 2011, pending the final outcome of this lawsuit.

Procedural Posture & Holding: All parties moved for summary judgment on Plaintiffs' claims that the committee had violated the open meeting laws and unlawfully destroyed public records by deleting files that had been posted on the private Yahoo website. The Plaintiffs sought to have the Plan declared void, but the district court concluded this was not an appropriate remedy for the offenses. The court further held that "meetings" could not be held on Yahoo Group. Plaintiffs appeal, and the Supreme Court affirms.

Reasoning: (1) The district court determined that the planning committee was a public or governmental body required to hold open meetings, and that it had violated that obligation. It further held that the committee was not an "agency" and that voiding the entire plan was not an available remedy. The court noted that Plaintiffs' original complaint did not challenge the county's adoption of the plan and did not seek to void the plan. Because the earliest drafts of the plan were revised after the committee opened its meetings to the public, the court reasoned that voiding early versions of the plan would be an idle act. The Supreme Court agrees, distinguishing Bryan v. Yellowstone County on its facts.

As for the claims against the county commissioners, Plaintiffs have not identified any wrong committed by the county. The Supreme Court agrees that voiding the commissioners' adoption of the plan is not an appropriate remedy.

Finally, the Court agrees that the Lakeside planning committee is not an "agency" under §§ 2-3-114 and -213, MCA. An agency decision reached in violation of open meeting laws may be voided, but the planning committee is an advisory committee, not an agency. The committee took steps to provide notice of and access to its meetings after October 2008, and the public had an opportunity to participate in dozens of meetings. The Court concludes that vacating the plan and starting the process over is not an appropriate remedy.

(2) While meetings convened by electronic equipment must comply with open meeting laws, the technical limitations of the

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Yahoo Group at the time prohibited a quorum from convening. The Court declines to state that a meeting could never be convened by way of a Yahoo email group, and cautions public officers that conducting public business via email potentially exposes them to claims of having violated open meeting laws.

LIVINGSTON V. PARK CONSERVATION DISTRICT

Keywords: 5-0 panel, Affirmed, Natural Streambed & Land Preservation Act

***Livingston v. Park Conservation District,* 2013 MT 234 (Aug. 20, 2013) (5-0) (McGrath, C.J.)**

Issue: Whether the district court erred in upholding the conservation district's decision that a certain channel adjacent to the Yellowstone River is part of the natural watercourse of the river, subject to the Natural Streambed and Land Preservation Act, § 75-7-101, MCA.

Short Answer: No.

Affirmed

Facts: The disputed channel is adjacent to the Yellowstone River near Livingston, and has been used since the 19th century to obtain water from the river to satisfy water rights owned by Hart K Ranch, the intervenor. Heart K has no headgate on the river, and has to remove rocks, gravel and other material to allow the river to flow into the side channel in times of lower flows.

The city of Livingston owns land adjacent to the channel and claims Heart K's activities have harmed the city's property. The Park Conservation District reviewed and permitted Heart K's maintenance of the channel pursuant to the Natural Streambed and Land Preservation Act of 1975. The city contends the channel is an irrigation ditch not covered by the Act and that the district therefore has no authority to permit Heart K's activities.

The city petitioned the conservation district for a declaratory ruling under ¶ 75-7-125, MCA. The district accepted the petition on the narrow issue of whether the channel is subject to the Act or is an irrigation ditch, and appointed a hearing officer. The parties as well as FWP submitted information, and there was a public hearing in September 2011. The hearing officer ultimately issued findings of fact and a recommended decision.

Procedural Posture & Holding: The district issued a declaratory ruling in December 2011 that the channel is a flood channel, high water channel or side channel of the Yellowstone River, and is therefore subject to the Act. The city petitioned the district court for judicial review, and the district court upheld the district/ The city appeals, and the Supreme Court affirms.

Reasoning: A conservation district, when considering whether a portion of a river falls under the Act, must base its decision on the totality of the circumstances. The Yellowstone River is a stream under the Act. The disputed channel is contiguous to the river, and portions of the river's water flow naturally through the channel in times of higher water. These facts make the channel part of the bed of the Yellowstone under DNRC rules, and make it a channel of the river under Park Conservation District rules.

The fact that water rights claimants and others may have referred to a ditch or to points of diversion has marginal relevance to whether this channel comes under the Act. The actual physical characteristics of the channel show it is natural, and not a man-made ditch. Although evidence in the record could support a different result, this is not enough to meet the city's burden to show the decision was arbitrary or capricious.

MARRIAGE OF ANDERSON

Keywords: 5-0 panel, Affirmed, Dissolution - property division, Final disclosure of assets, Unconscionability

***Marriage of Anderson,* 2013 MT 238 (Aug. 20, 2013) (5-0) (Morris, J.)**

Issue: (1) Whether the district court abused its discretion in denying Viola's Rule 59(e) and 60(b) motions, and (2) whether the district court abused its discretion in determining that the property settlement agreement was valid without a disclosure of assets.

Short Answer: (1) No, and (2) no.

Affirmed

Facts: Viola and Gary Anderson decided to divorce after 35 years of marriage, and entered into a mediate property settlement. They owned a trailer court in Lewistown and rental property in Ulm, as well as a ranch, guest ranch, and outfitting business on the Smith River. The parties did not complete an assessment of the value of the ranch or guest ranch business before mediation, and stipulated that the final disclosure requirements had either been met or waived. Viola had been the bookkeeper for the ranch and guest ranch business for several years.

Both parties were represented by counsel at the mediation. Pursuant to the settlement, Viola received a lump sum payment, the Ulm property, a lifetime monthly payment from Gary, and up to $2,500 in attorney fees. She also remained the named beneficiary of Gary's life insurance policy, and received the right to recreate on the Smith River property for the rest of her life. Gary received the Smith River ranch, guest ranch and outfitting business, as well as the equipment and livestock. No value was assigned to these assets. Gary also accepted the debt on these businesses, which he estimated at about $500,000.

Viola actively participated in the mediation, and agreed to sign the settlement without reading it after her counsel and the mediator explained the terms of the proposed agreement to her.

The settlement was approved by the district court, which entered a decree of dissolution on August 22, 2012. Viola did not attend the hearing. She obtained new counsel shortly after the mediation, and filed Rule 59(e) and 60(b) motions on Sept. 18, 2012, claiming she expected to receive a lump sum payment of $3 million, not $300,000.

Procedural Posture & Holding: Viola sought relief from the judgment on the grounds that the settlement agreement was unconscionable and failed to disclose assets, as required by § 40-4-254, MCA. The district court denied Viola's motions, and she appeals. The Supreme Court affirms.

Reasoning: (1) Viola did not argue at the dissolution hearing that the settlement agreement was unconscionable. The district

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How attorneys get hacked
(and what you can do about it)

By Sherri E. Davidoff

"We hacked your web site and got client data," Brett said. It was the phone call no attorney wants to receive. The good news for this firm was that we were penetration testers, hackers for hire, and our job was to find vulnerabilities *before* the attackers did.

In this case, our client was one of the biggest law firms in the world. Brett found that with an attack on the firm's web portal, he could download client billing information, confidential case notes, usernames and passwords for every client in their database—and so could any attacker in the world.

Attorneys are increasingly targeted by cyber attackers. However, "few law firms will admit publicly to a breach," reports Jennifer Smith of the Wall Street Journal[1]. "Thefts of confidential information strike at the core of the legal profession's obligation to safeguard clients' secrets, and can do considerable harm to a firm's reputation."

In 2013, Bleeker Street Law did a forensic audit of their firm's computers—and discovered that they had been hacked. "A set of aspiring criminals had broken our security and were making everything they stole available *by subscription*," wrote David Collier-Brown[2]. "Several foreign firms and at least one government had subscribed to us. . . ."

Think you're too small to be hacked? Think again. According to Verizon's Data Breach Investigations Report[3], 75% of hacks aren't targeted at all. "Some organizations will be a target regardless of what they do, but most become a target *because* of what they do," reports the VBIR. Breaches occur because an employee clicked on a link in a phishing email, downloaded an infected software utility, or took some other action that gave hackers an easy opportunity. From there, hackers can take over your firm's computers, gather confidential information, and then resell it to buyers around the world.

Financial information is especially targeted. In 2013, an Ontario law firm lost a six-figure sum from a trust account when a bookkeeper clicked on a link in a phishing email. Hackers monitored her keystrokes and captured the firm's online banking username and password as she logged on. "The virus copied bank account passwords as she typed them," reported Law Times[4]. In fact, similar thefts happen all the time—but few make the news, as law firms are understandably reticent to disclose.

Attorneys have a duty to protect not only your own confidential information and accounts, but also those of clients—and a breach can be disastrous.

How can small firms and solo practitioners defend against cybercriminal gangs and sophisticated organized crime groups? The good news is that you can dramatically reduce your risk by staying organized and taking a few simple precautions.

A smart first step is to get a cyber risk and security breach liability insurance policy. You can't secure your network overnight, but you CAN get coverage to protect you in the event of a privacy breach, regulatory violation, or similar cyber incident. Check out ALPS' cyber risk and security breach liability insurance at protectionplus.alpsnet.com/cyber.

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Cybersecurity checklist

LMG Security has put together a 14-Step Cyber Security Checklist for Attorneys, available at www.lmgsecurity.com. Each month, we'll dive into one item on our checklist. Here's the road ahead:

1. Use Strong Policies and Procedures
2. Know Where Your Data is Stored
3. Deploy Effective Antivirus
4. Protect Against Spam
5. Update Your Software
6. Backup
7. Encrypt, Encrypt, Encrypt
8. Limit Your Staff Members' Privileges
9. Train Your Staff
10. Vet Vendors and Third Parties
11. Respond Quickly and Appropriately
12. Keep Your Eye on the Clouds
13. Get Insurance
14. Test Your Security

ATTACKS, from previous page

What ever happened to our client with the hacked web site? Within an hour, the flaw was fixed, and our client had locked up their customers' information. They also reviewed their logs and verified that no one had previously accessed it.

In cybersecurity, as in any industry, an ounce of prevention is worth a pound of cure. You can protect yourself, and your clients, by taking proactive steps to defend against cybersecurity breaches. Stay tuned in the coming months as we walk through the 14-Step Cyber Security Checklist!

Sherri Davidoff *has over a decade of experience as an information security professional, specializing in penetration testing, forensics, social engineering testing and web application assessments. She has consulted for a wide variety of industries, including banking, insurance, health care, transportation, manufacturing, academia, and government institutions. Sherri is the founder of LMG Security and co-author of "Network Forensics: Tracking Hackers Through Cyberspace" (Prentice Hall, 2012). She is a GIAC-certified forensic examiner (GCFA) and penetration tester (GPEN), and holds her degree in Computer Science and Electrical Engineering from MIT. LMG Security has partnered with ALPS insurance for internal training as well as CLE seminars through ALPS Educational Services.*

ENDNOTES

1 "Lawyers Get Vigilant on Cybersecurity," Jennifer Smith, The Wall Street Journal, www.wsj.com, June 26, 2012

2 "Thank Goodness for the NSA! – a Fable," David Collier-Brown, www.slaw.ca/2014/01/02/thank-goodness-for-the-nsa-a-fable/, January 2, 2014

3 "2013 Data Breach Investigations Report," www.verizonenterprise.com/DBIR/2013/

4 "Law firm's trust account hacked, 'large six figure' taken," Yamri Taddee, Law Times, www.lawtimesnews.com/201301072127/headline-news/law-firms-trust-account-hacked-large-six-figure-taken, January 7, 2013

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court held that the property division was equitable, which meets the lower threshold of being "not unconscionable." Gary received more assets than Viola, but he also accepted the risk and the debt associated with those assets.

(2) Section 40-4-254, MCA, states that "[a]bsent good cause, the court may not enter judgment with respect to the parties' property rights" unless the parties have provided a full disclosure of assets. Gary and Viola did not have an appraisal of the ranch, guest ranch or outfitting business prior to the court's decree of dissolution, and Viola argues this is reversible error. Viola admits that she believes that the marital estate was worth about $8 million. She also admits she accepted a settlement that provided her with less than $4 million. These admissions undermine her claim that she was prejudiced by Gary's failure to provide a final disclosure of assets. Viola was familiar with the marital property and its approximate value, and a final disclosure would not have materially affected the parties' understanding of the value of the marital estate.

WATTS V. HSBC BANK

Keywords: 5-0 panel, Assignment, Lien priority, Reversed

***Watts v. HSBC Bank,* 2013 MT 233 (Aug. 20, 2013) (5-0) (Cotter, J.)**

Issue: Whether the district court erred in determining that the Marion debt to PrimeLending was no longer in the first priority lien position because the debt had been assigned to HSBC.

Short Answer: Yes.

Reversed

Facts: In Nove,ber 2006, Timothy Watts sold real property in Eureka to the Marions, who financed the purchase with a $248,000 loan from PrimeLending and a second loan from Watts for $62,000. Watts signed a warranty deed, a trust indenture to secure his loan to the Marions, and a subordination agreement, in which he agreed to subordinate his loan to the PrimeLending loan.

In May 2009, the Marions defaulted on the PrimeLending loan. PrimeLending assigned its interest to HSBC in August 2009, which executed a notice of trustee sale in October 2009. The HSBC trustee mailed the notice to Watts by certified mail. The post office attempted service twice, unsuccessfully. The trustee then published the notice for three consecutive weeks and posted the notice at the property. Watts, who was living in New Mexico, claims he never received any notice of the default or the sale.

The sale was held in February 2010 and HSBC bought it for $260,00. It recorded a trustee's deed the next day.

Marions also defaulted on their loan to Watts, who recorded a notice of successor trustee in January 2010, and executed a notice of trustee's sale in May 2010. Watts provided notice of his foreclosure proceeding to HSBC, which did not respond. In September 2010 Watts held a trustee's sale and was purchaser of record. He recorded a trustee's deed naming himself as owner of the property.

Procedural Posture & Holding: In March 2011, after discovering HSBC claimed to own the property, Watts filed a complaint seeking to quiet title, or alternatively, for damages. HSBC answered and counterclaimed to quiet title. The district court entered default judgment against the Marions. The district court denied HSBC's motion for summary judgment and granted Watts'. HSBC appeals, the Supreme Court reverses.

Reasoning: Watts argued, and the district court agreed, that when PrimeLending assigned its interest in the deed of trust and promissory note to HSBC, HSBC lost its priority over Watts' lien. The court further found that HSBC was not an intended beneficiary of the subordination agreement; PrimeLending was. However, under Montana law, the assignee of a mortgage obtains all rights held by the original mortgage holder. This is an issue of first impression in Montana. Other jurisdictions have held that assigning a mortgage does not affect its priority, and Montana adopts their rationale.

Case briefs courtesy of Beth Brennan, *who practices in Missoula with Brennan Law & Mediation, PLLC. http://brennanlawandmediation.com/*

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Whitefish, MT Stuart, FL

Open Letter to Montana's Lawyers

Although I know a few of you, I have not had the pleasure of meeting or working with the vast majority of you. I would like to take this opportunity to introduce myself as a full-time dispute resolution professional, offering mediation and arbitration services throughout Montana.

Fifteen years ago my wife and I visited and fell in love with the great state of Montana. In 2001, twenty-five years after graduating from law school, I sat for and passed the Bar Exam in Montana and have been a member of the Montana Bar since that time. I have continued to offer my dispute resolution services, full-time, in the state of Florida. However, I am pleased to announce that I will be expanding my geographic area of practice to include all jurisdictions in Montana, commencing in the summer of 2014. Let me explain a little about myself and why I believe I have something of value to offer you and your clients in the areas of mediation, arbitration and Special Master services.

After serving two years as a paratrooper in the 82nd Airborne Division in Fort Bragg, North Carolina, I graduated from law school, with the assistance of the G. I. Bill, in 1976. I am a Florida Bar Board Certified Civil Trial Lawyer, Emeritus, and a Florida Certified Circuit Civil, Family, and Appellate Mediator. As a trial lawyer I represented private and public sector clients in hundreds of millions of dollars of disputes in complex construction, commercial, real estate, and probate matters throughout the state of Florida. Since 1991, I have mediated thousands of disputes, served as an arbitrator on single and multi-member panels and served as a Court Appointed Special Master on many occasions. In 2001, I left the active practice of law, transitioning into a full-time dispute resolution practice and continuing my focus on complex, multiparty disputes.

During the summer of 2014, I have blocked out five weeks of time available for mediation and arbitration matters in the state of Montana. I will be offering my professional services at discounted half and full day rates throughout the state, with no charge for travel time – only a mileage charge from Whitefish. It is my goal to earn your trust and eventually increase the amount of time I can designate for dispute resolution services in Montana. I hope to have the opportunity to work with each of you in your respective areas of practice in the future. I am proud to be a Member of the AAA's Roster of Neutrals, in both Mediation and Arbitration, and a charter member of the National Academy of Distinguished Neutrals. I will gladly provide references, if desired. More detailed contact information and my c.v. are available on my website, at **www.hunstonadr.com**.

I look forward to meeting and working with you this summer, as your needs may require.

Sincerely,

No more affidavits? How do I report my CLEs?

The Montana Commission of Continuing Legal Education has adopted a new method of tracking CLE activities that will reduce paperwork and help attorneys comply with the CLE requirement. The end-of-year reporting by affidavit that was used in prior years is being replaced by an official MCLE transcript that will be maintained by the MCLE Commission throughout the year.

Individual transcripts will be sent to active attorneys on **May 1, 2014**. They will clearly indicate whether the attorney is in compliance with the MCLE requirements or if more credits are needed. No further action is required of members whose transcript indicates compliance.

If more credits are needed, they can be reported by sending attendance certificates or other documentation to cle@montanabar.org. There is no need to return the transcript to the CLE Commission. Additional information on how to report CLE attendance, as well as information on the recent ethics rule change, can be found at: www.mtcle.org/lawyer/Frequently_Asked_Questions.asp.

Update for May - June ...

- Transcripts mailed May 1.
- Because of some technical issues with the new CLE website/ database the reporting deadline has been extended to June 1.
- CLE Commission is allowing Montana attorneys to take and report CLE until **June 1 with no penalty.**
- These are temporary, fluid dates and will revert to the standard schedule in the 2014-2015 reporting year.

What's Changing…

- Notarized affidavits will no longer be required at year-end.
- Official transcripts of reported CLE activities will be sent to all attorneys.
- Transcripts need not be returned to the MCLE Commission.

What's Staying the Same…

- The reporting year still runs from April 1 to March 31
- The grace period for attending and reporting programs ends May 15.
- A $50.00 penalty fee will be assessed to all attorneys who have not earned and reported CLE activities by May 15.
- Noncompliant attorneys will be transferred to inactive status July 1.

What You Should Do Now…

- Report CLE credits by sending attendance certificates or other documentation *as you earn them* to the MCLE Commission at PO Box 577, Helena, 59624, or to cle@montanabar.org
- Remember to include your Member Number.
- Read through the Frequently Asked Questions at mtcle.org/ lawyer/Frequently_Asked_Questions.asp.

Recent changes CLE rules for ethics

Recent changes to the Montana Supreme Court Rules for Continuing Legal Education will require that Montana attorneys earn a minimum of two ethics credits each year, beginning with the current reporting cycle that ends March 31, 2014. The amendment replaces the previous requirement of five ethics credits every three years. In addition, the requirement for substance abuse/mental impairment, or SAMI, education has been eliminated. While SAMI credits will no longer be mandatory they will continue to qualify as ethics credits in fulfillment of the yearly requirement.

The amendments came about in response to the confusion surrounding the tracking of ethics credits over staggered three-year reporting cycles. All active Montana attorneys will begin the 2013-2014 reporting year with a clean slate in terms of ethics credits. No ethics credits may be carried over from the previous year. Any ethics credits earned prior to this year were applied to the attorney's previous 3-year ethics cycle.

Ethics credits may be earned from live programs or by self-study methods. Beginning with the 2014-2015 reporting year, excess ethics credits earned from live or "interactive" methods may be carried forward to the next two reporting years. Excess ethics credits earned by self-study methods such as on-demand internet programs or audio or video recordings may not be carried forward.

Other changes to the CLE rules will eliminate the use of the notarized affidavit form to determine individual CLE compliance. Year-round reporting of CLE attendance will establish an up-to-date electronic record of each attorney's CLE compliance which will be verified at the end of each reporting cycle.

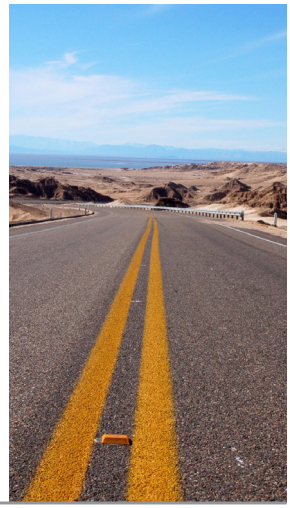
3 Easy Steps to CLE Compliance

1. Always obtain an attendance certificate when participating in CLE programs. These are issued by the program sponsor for both live and online programs.

2. Send copies of all certificates to the Montana Commission of CLE at: cle@montanabar.org.

3. Remember to include your State Bar of Montana member number to assure proper credit.

ROADSHOW



Helena
June 13
2-5 p.m.

Best Western Premier Great Northern Hotel

The Road Show qualifies for 3 ethics credits:

Conflicts, waivers & checklists | Technology, confidentiality & fee agreements

This is a free program offered through the State Bar of Montana. Space is limited and spots fill quickly, so please RSVP early if you're interested. Send RSVPs to roadshow@montanabar.org.

For more information about upcoming State Bar CLE, please call *Gino Dunfee at* ***(406) 447-2206.*** You can also find more info and **register at *www.montanabar.org***, just click the CLE link in the Member Tools box on the upper-right 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.

May

May 9 - Employment Law: Colonial Inn, Helena. 7 CLE credits, including 1 ethics. The morning session will cover Unemployment Appeals Process, conflicts in Private and Public Legal Employment; Workers' Compensation Court Update, Equal Pay Task Force Update and Employment Discrimination. The afternoon session will cover Counseling Clients with Possible Employment Claims; Avoiding and Defending Employment Claims and Federal Medical Leave Act (FMLA) and Americans w/ Disabilities Act (ADA) updates.

May 30 - All You Should Know About Medicare and Medicaid Fraud: A free in-person at Billings Clinic in Billings. 2 CLE. Former US Attorney Bill Mercer will give a two-hour overview of civil and criminal statutory authority for health care fraud and overpayment cases pursued by the government. This brown bag two hour event is sponsored by the Health Care Law Division of the Montana Bar and the Billings Clinic. Attendees will want to bring a lunch or plan to buy lunch at the Clinic before the program starts at noon as lunch will not be served. The event is open to attorneys, physicians and hospital staff. Mercer will discuss significant fraud cases and the anatomy of an investigation, including how to respond if an investigation seems probable. He will point out triggers and trip wires, which signal when providers should consider an internal investigation. Finally, he will discuss best practices to avoid civil and criminal investigations and present a persuasive case for leniency if investigated. A robust compliance plan with appropriate implementation and evaluation is key, according to Mercer. You are invited to attend this session to learn about obvious red flags that may lead to an investigation. Pre-Registration required and may be accomplished online at http://goo.gl/KV0Tch. Registration is open until full or no later than May 28, whichever occurs first. Space is limited, please register early.

June

June 20 - Current Family Law Issues for Today's Changing World - Red Lion, Kalispell. 7.5 CLE, including 1.5 ethics. The morning session will cover cybersecurity and apps for iPad and Android, as well as complex asset distributions.
The afternoon will cover domestic violence issues in settlement conferences, witness and client interviewing techniques, cutting edge parenting issues and premarital/same sex/cohabitation agreements.

June 20 - Cybersleuth's Guide to the Internet: Holiday Inn, 200 S. Pattee, Missoula. 6 CLE, including 2 ethics. Back by popular demand, Carole Levitt and Mark Rosch, internationally recognized internet trainers and authors of seven ABA Internet research books, will show you how to be a Cybersleuth to unearth information for FREE (or at low cost) on the Net. Each attendee will receive a copy of their book, The Cybersleuth's Guide to the Internet, 12 Ed., revised 2014, -- a $65 value.

CLASSIFIEDS POLICY | All ads have a minimum charge of $60. Limited space may dictate additional charges over 75 words. Ads that are published at the charges above in The Montana Lawyer magazine run free of charge at www.montanalawer.com. Ads running only on the website will be charged at the magazine rate. The ads will run through one issue of the Montana Lawyer, unless we are notified that the ad should run for more issues. A billing address must accompany all ads. Email Pete Nowakowski at pnowakowski@montanabar.org or call him at (406) 447-2200.

ATTORNEY POSITIONS

ASSOCIATE ATTORNEY: Small business/tax/transactional firm in Helena, Montana, has an opening for a full-time tax attorney desiring to work and grow in a rapidly expanding practice. We are seeking an associate with excellent communication, teamwork and people skills, with an emphasis on customer service. Applicants must be admitted in Montana. Starting salary D.O.E. Cover letter, references, resume and writing sample should be transmitted to sandy@mttaxlaw.com.

ATTORNEY: Mid-size Bozeman firm seeking experienced attorney for our growing general litigation and transactional team. Compensation depends on capabilities and production. Achieve balance, and do well while doing good. Send letter, resume, and writing sample to pearce@law-advisor.com.

DEPUTY COUNTY ATTORNEY: The Glacier County Attorney's Office is seeking a full-time deputy county attorney. Applicants must be licensed to practice law in the State of Montana (in good standing), and have experience in criminal law and trials. Experience advising county or city government is also preferred. This position requires knowledge of criminal law and procedure, rules of evidence, civil procedure, and familiarity with computerized legal research and word processing. Successful applicant will prosecute misdemeanor and felony matters, youth court matters, child abuse and neglect cases, as well as mental health commitments. Duties for other prosecutorial, civil litigation and local government legal issues may be assigned by the County Attorney as needed. Some on-call time to assist and advise law enforcement agencies or county departments. A more detailed announcement can be obtained by contacting gca@bresnan.net. Deputy County Attorney generally works in an office setting but some evening meetings may be required. On occasion, employee may be required to lift up to 30 pounds. Requires occasional travel within Montana. Salary $50,000 DOE, plus benefits. Submit a letter of interest, resume, writing sample, law school transcript and two (2) recent letters of recommendation to: Carolyn Berkram, Glacier County Attorney, 1210 East Main Street, P.O. Box 428, Cut Bank, Montana 59427. Open until filled.

ATTORNEY -- MINOT, ND: Entrepreneurial Attorney wanted to join a mature, successful practice in the middle of the Bakken oil boom with the following qualifications: at least 5 years experience in estate planning; experience in farm and business transition planning; preference given to those with some tax background. Practice is located in Minot, ND. Send resume to attorney.resume@yahoo.com. Please indicate salary requirements. Salary will be commensurate with experience.

ASSOCIATE ATTORNEY: Immediate Opening. Halverson & Mahlen, P.C., an established Billings, Montana insurance defense firm, seeks applications for an associate attorney position. Ideal candidates will have 1-3 years of experience in pretrial practice and trial work in a civil firm or similar setting. Current and former judicial law clerks with experience in administration of civil cases are strongly encouraged to apply. Graduates must be licensed to practice in Montana, and all applicants must have strong research and writing skills. Starting salary range D.O.E. Generous benefit/incentive package. All applications confidential. Please send cover letter, writing sample, transcript and resume to Hiring Partner, P.O. Box 80470, Billings, MT 59108-0470, or in electronic format to tmahlen@hglaw.net. Please learn more at www.hglaw.net.

PROFESSIONAL POSITIONS

MANAGER OF FUND ADMINISTRATION: Responsible for the administration and coordination of all funds established at University of Montana Foundation. Drafts gift agreements articulating donor intent and scholarship criteria. Must have knowledge of tax laws, strong organizational and writing skills. Excellent benefits package. For more information go to: http://www.supportum.org/aboutus/employmentopportunities/default.php

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