

# MONTANA LAWYER

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ATTORNEYS NEEDED FOR MLSA PROGRAM

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IN HELENA  
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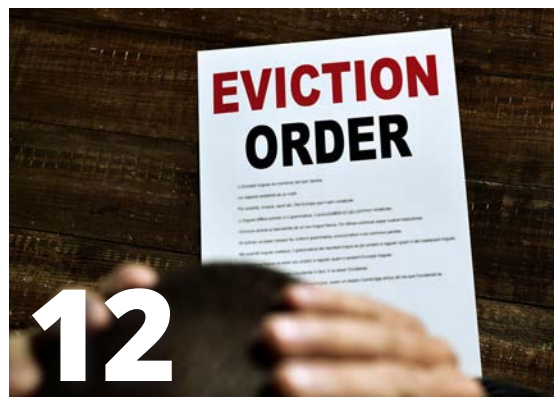
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# It is foolish to think our institutions will survive if we don't protect them

The Board of Trustees recently held its quarterly board meeting in Helena at the same time Montanans were celebrating the 50-year anniversary of the 1972 Constitutional Convention. The Convention had some amazing and dedicated people working for the citizens of Montana. The event was fantastic, and the stories of the delegates' dedication to the State of Montana were heartening. Of the 100 delegates, only a handful remain. Most of the delegates have passed on, including two within the last couple of months, and the remaining few are eager to pass the torch to a younger generation. Who will celebrate and protect Montana's unique constitution in the future was an ever present question at the celebration.

One of the panel discussions on the second day of the Constitutional Convention Celebration included three representatives for the co-equal branches of our State government. Supreme Court Justice Rice was the representative from the judicial branch. He has the unique perspective of also having been a legislator some years back. He talked about the recent challenges to the rule of law and issues Montana and our nation currently face. He had some very solid statements. One of the things he said has stuck with me more than the others. He said that he was sitting at home one night and he realized that he had assumed our institutions of government would endure no matter what. He said that the thought made him feel foolish. I would say that Justice Rice is no more foolish than the rest of us. The rest of us who also have been assuming

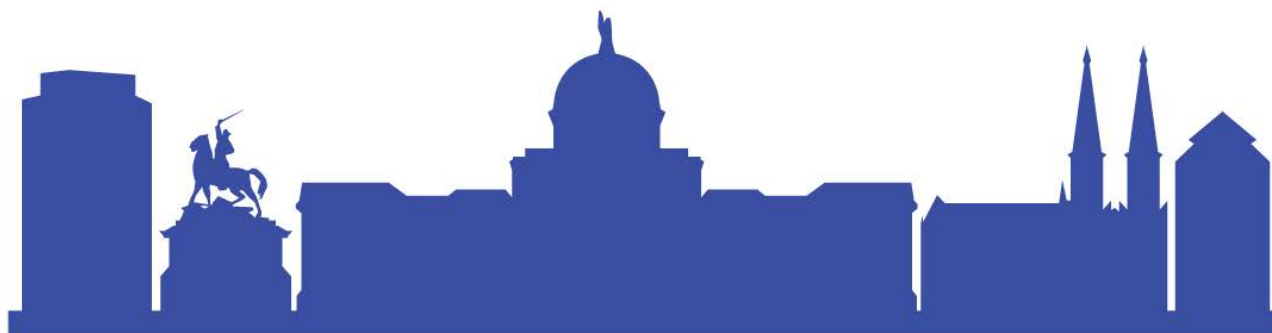
the institutions, the rule of law, our way of life, and our government will just endure without our efforts and protections. It is time that we acknowledge the foolishness and work to protect our institutions. Our society is becoming more and more divisive, and the rule of law is simply under attack. Justice Rice is correct when he says this attack on our institutions has reached the shores of Montana.

A significant portion of the State Bar of Montana's current strategic plan centers around this idea - that we need to do more to protect our institutions. The plan focuses on education and active efforts to protect the rule of law in the State of Montana. However, the plan is only as strong as the number of Bar members willing to move the efforts forward. How do we honor the 1972 delegates, protect the constitution and our institutions? We get involved. It could be as simple as judging high school mock trial. Better yet volunteer to coach a mock trial team. Get in the high schools. Get in the middle schools. Talk about the law and what it means. Volunteer for things like Law School for Legislature, Law Day, Street Law, We the People, or Citizens Law School. Write about it. Talk about it. Be active. We have a lot to lose and events in other countries around the world should give us pause...events in our own country should give us pause. But don't be foolish. Don't assume our institutions will endure these attacks. They won't without our efforts, and without our efforts we will be left wishing we defended them from the beginning.



***Brian C. Smith is a longtime criminal defense attorney from Missoula. He is currently the Public Defender Division Administrator at the Montana Office of the State Public Defender***

“ How do we honor the 1972 delegates, protect the constitution and our institutions? We get involved. ”



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HELENA

• 2022 ANNUAL MEETING •

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for program updates and registration.

# Laslovich sworn in as new US Attorney

Jesse Laslovich was sworn in as the United States Attorney for the District of Montana on June 2.

President Joe Biden nominated Laslovich on Jan. 31, and the U.S. Senate confirmed him on May 17.

Laslovich leads all federal criminal prosecutions and civil litigation in the District of Montana. The district has offices in Helena, Great Falls, Missoula, Butte and Billings.

"I am honored to serve as United States Attorney for the District of Montana," U.S. Attorney Laslovich said. "As the chief federal law enforcement officer, I look forward to working with communities across Montana and with our federal, state, local and tribal partners to improve public safety, seek justice and uphold civil rights for everyone. I am excited to join the U.S. Attorney's Office and to work with the outstanding attorneys and support staff who have devoted their careers to public service."



**Laslovich**

From 2017 until becoming the U.S. Attorney, Laslovich served as regional vice president for the SCL Health Montana-Wyoming region. From 2009 to 2016, he was chief legal counsel in the office of the Montana Commissioner of Securities and Insurance, where he prosecuted securities fraud cases. During 2011 and 2012, Laslovich also served as a special assistant U.S. attorney on securities cases in the U.S. Attorney's Office for the District of Montana. From 2007 to 2008, Laslovich was the lead consumer protection attorney in the Montana Attorney General's Office, in the Montana Department of Justice. Laslovich began his legal career at Datsopoulos, MacDonald & Lind, P.C. in Missoula and also taught as

an adjunct professor at the University of Montana School of Law for two semesters.

As one of the youngest Montanans ever elected to the Montana Legislature, Laslovich first served in the House of Representatives from 2001 through 2004 and then in the Senate from 2005 to 2010, representing Anaconda-Deer Lodge, Granite, and Powell counties.

Laslovich received his J.D. from the University of Montana School of Law in 2006. He received his B.A. with high honors from the University of Montana in 2003.

During his career, Laslovich has volunteered for nonprofit organizations, including Aware, which serves people who have developmental and mental disabilities, and ExplorationWorks, which promotes the sciences to children, and he volunteers as a youth baseball and basketball coach. Laslovich also served on the Professionalism Committee for the State Bar of Montana.



## Parsons Behle & Latimer Welcomes Abigail R. Brown

Continuing our growth in Montana, Parsons is pleased to announce that Abigail R. Brown has joined our environmental, natural resources and water law practice teams. Abby brings more than a decade of experience to benefit Parsons' clients in a diverse range of water law and real property matters. Learn more about Abby at [parsonsbehle.com/people](https://parsonsbehle.com/people).

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## CAREER MOVES

**Cox retires from Boone Karlberg to focus on fire defense firm**

After 40 successful years with Boone Karlberg and serving the community, Missoula attorney Randy Cox will begin a retirement from the active practice of law. Cox will continue working as Executive Vice-President and General Counsel of the Bozeman-based company Wildfire Defense Systems Inc., which he founded with David Torgerson. WDS is the largest company in the United States providing qualified insurance resources devoted to wild-fire mitigation in evacuation zones. It operates in 20 states and employs over 350 people.

**Cox**

Throughout his career, Randy cultivated a statewide litigation practice focusing on defense of claims relating to toxic exposure, product liability, professional negligence, complex commercial litigation and railroad litigation. He also handled numerous plaintiff cases, particularly commercial disputes. Randy has briefed and argued dozens of cases in the Montana Supreme Court and the U.S. Court of Appeals for the Ninth Circuit and has tried dozens of cases in federal and state courthouses across Montana.

In addition to a busy litigation practice, Randy held membership and leadership positions with numerous legal organizations, including invitation-only memberships in the American Board of Trial Advocates, International Society of Barristers and the American Academy of Appellate Lawyers. Cox served on the Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure and was heavily involved in the last major revision of those rules. Randy also

served 25 years, including 12 as chair, of the Montana Board of Bar Examiners. Randy has been an adjunct professor at the University of Montana Law School, has guest lectured on trial practice topics, coached several competition trial teams and taught at the Advanced Trial Advocacy School for several years. He has given presentations, including trial skills demonstrations, at more than 75 continuing legal education programs across Montana, the United States and Canada, including roles as trial counsel in ABOTA-sponsored Masters in Trial programs.

Along with his wife, Theresa, Cox has been a longtime supporter of Missoula community projects, including A Carousel for Missoula, Dragon Hollow Play Area, Watson Children's Center, Missoula Food Bank, YMCA, First United Methodist Church and a number of other projects.

Firm members say they will miss working with Cox on a daily basis. In addition to his extensive knowledge of the law, Randy has imparted to his partners and students his enthusiasm for providing mentoring and skills development, earning the informal title "Trial Dad."

**Getty joins MLSA as Health Justice Partnership attorney**

Brent Getty joined Montana Legal Services in the fall of 2021 after a 14-year career with the Montana Office of the

**Getty**

fundraiser.

Getty received a Bachelor of Science Degree in economics and a law degree

Public Defender, including nine years as a public defender in the Kalispell office and five years as the deputy training coordinator. He also has experience as an appellate lawyer, an insurance regulator, and a professional

from the University of Kansas. He lives in Missoula with his wife, their two dogs, and two cats.

Getty serves as an attorney with the Montana Health Justice Partnership, a collaboration between MLSA, the Montana Primary Care Association, and local community health clinics located throughout Montana. His primary focus is on Western and north-central Montana, working to provide legal assistance to patients in some of Montana's most vulnerable communities to solve legal issues that impact those patients' health – such as unsafe housing, family violence, and denial of earned benefits.

In addition to providing direct client representation, Getty will bring his years of training expertise to educate community health clinic staff and the larger legal community to spot health harming legal needs and refer those cases to MLSA.

**Barber joins MLSA as Domestic Violence staff attorney**

Joy Barber graduated with high honors from the Alexander Blewett III School of Law at the University of Montana, earning her J.D. and a certificate in American Indian Law. She also has an M.A. in

**Barber**

English Studies from Western Washington University and a B.A. in English Writing from Pacific Lutheran University.

Prior to joining MLSA, Barber clerked for the Honorable Mike McGrath, chief justice of the Montana

Supreme Court. She was honored for her work in the Margery Hunter Brown Indian Law Clinic during law school and also served as a research assistant for the Rural Justice Initiative, investigating

**MORE NEWS, PAGE 9****SUBMITTING MEMBER NEWS ANNOUNCEMENTS TO THE MONTANA LAWYER**

The Montana Lawyer welcomes news from members including announcements of new positions, advancements, honors, appointments and publications.

If you have news you would like to submit to the Member News section, you can email it to [editor@montanabar.org](mailto:editor@montanabar.org). Please send questions to the same

address.

If you are submitting photos, they must be at a resolution of at least 200 ppi.

IS PLEASED TO ANNOUNCE THAT

# KARLA MÉNDEZ

## HAS JOINED THE FIRM

Karla represents a wide variety of clients in matters involving commercial and business transactions, estate planning, and contract disputes.

Karla grew up in Guadalajara, Mexico, where a majority of her family still lives. From a young age, Karla participated in National Sports competitions representing her home state as a Modern Pentathlon athlete. Karla attended Law school for the first time in Mexico, where she graduated with honors from the Instituto Tecnológico de Monterrey in 2016. During law school, Karla interned for an international law firm working in the tax department. After graduation, Karla joined the same firm as an associate and continued to work in the tax department until she moved to Michigan in 2018. Karla went on to attend Michigan State University College of Law. During law school, Karla interned for the Michigan State University College of Law Alvin L. Storrs Low-Income Taxpayer Clinic. She also participated in the NHBA 2021 Moot Court Competition on behalf of MSU's top-ranked moot court program. Karla obtained her second law degree from Michigan State University College of Law in 2021. She graduated top of her class, earning Dean's list and Cum Laude Honors.



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## NEWS FROM PAGE 7

pretrial release and detention procedures.

Barber previously served with MLSA as a Justice for Montanans (JFM) AmeriCorps at the Yellowstone County Self-Help Law Center.

Before JFM inspired her to pursue a legal career, Barber taught college writing and completed a prior year of service in Seattle's Literacy AmeriCorps teaching

English to speakers of other languages and citizenship classes.

Barber grew up in Anaconda and is a Montana history fan. She loves art and local symphony and theater performances. She is a lifelong runner and is forever chasing the writer's dream — meaning she always wishes she spent more of her free time writing fiction and lyric essays.

### Oomens joins Helena's Doney Crowley P.C. law firm

Doney Crowley P.C. is pleased to announce that Terisa M. Oomens has joined the firm in Helena as an associate attorney.

Oomens attended college at the University of Wisconsin-Platteville and received her Bachelor of Science in Reclamation, Environment and Conservation with minors in Sustainable and Renewable Energy Sources, Environmental Science, and Social and Environmental Justice. She then moved to Laramie, Wyoming to simultaneously obtain her Master of Arts in Environment and Natural Resources degree and a Juris Doctor. Prior to joining Doney Crowley, Oomens was an associate attorney at the MacPherson & Thompson, LLC law firm in Rawlins, Wyoming. She is admitted to practice in both Montana and Wyoming.

While growing up, Oomens moved 16 times and lived in 6 different states. With her new role at Doney Crowley PC,

she is delighted to plant roots in beautiful Helena. In her free time, Oomens enjoys exploring Montana with her husband, Jake, their son, and their three pointers.

### Johnston named partner at Joyce & MacDonald, PLLP

Joyce & MacDonald, PLLP, is pleased to announce that Saidee M. Johnston has been named a partner of the personal injury law firm as of Jan. 1, 2022.

Johnston, a 2009 Butte Central graduate, continued her education at the University of Montana where she graduated with honors in 2012 with a Bachelor of Arts degree in Liberal Studies. In 2015, she graduated from the University of Montana School of Law with a Juris Doctor degree. She has been practicing at Joyce & MacDonald since passing the Montana bar exam.

Johnston and her husband, Clay McQueary, are excited to be in Butte raising their 1-year-old son, Owen.

Johnston and the legal team at Joyce & MacDonald, PLLP represent those who have been injured, abused, or hurt in any way due to the fault of someone else. They take pride in getting fair treatment and compensation for their clients.

Johnston can be reached at 406-723-8700 or by appointment at her office located on the main floor of the historic Finlen Hotel at 100 E. Broadway in up-town Butte.



**Johnston**



**Oomens**

**MARYBETH SAMPSEL**  
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# 'A Guide to Statutory Interpretation' available from State Bar of Montana

By Greg Overstreet

The State Bar of Montana is pleased to announce a new publication providing a complete guide to rules of statutory interpretation in Montana.

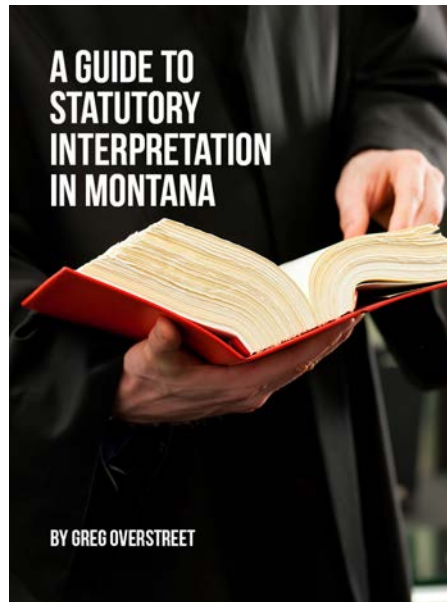
The publication, "A Guide to Statutory Interpretation in Montana," is available at [www.montanabar.org/Store/Publications](http://www.montanabar.org/Store/Publications). I am honored to be the author.

Here is why the topic of statutory interpretation is more important to practitioners than you might otherwise think and how this book can help you in your practice.

The rules of statutory interpretation can impact almost every litigated case. They can affect cases involving a statute, regulation, state constitutional provision, court rule, ordinance, or written instrument such as a contract – virtually every civil or criminal case. Therefore, it is fair to say that most cases in Montana are potentially affected by the rules of statutory interpretation presented in the book.

It has been my experience in almost three decades of litigating cases concerning state constitutional provisions and the meaning of statutes and regulations that the rules of statutory interpretation often – directly or indirectly – determine the outcome of a case. Judges leaning in one direction or another can often justify their decision when an attorney presents them with a helpful rule of statutory interpretation. These rules are remarkably effective.

Surprisingly, given their importance, this topic has not been addressed in Montana legal scholarship. The book is the first to present the Montana rules of statutory interpretation in a holistic, organized, and comprehensive fashion – and the first to synthesize the hundreds of cases and statutes into an understandable framework for applying these rules. The book is a clearly written



**A Guide to Statutory Interpretation in Montana is available at [www.montanabar.org/Store/Publications](http://www.montanabar.org/Store/Publications).**

scholarly treatise with 545 citations to cases, treatises, and statutes – all the law a Montana practitioner needs to quickly and thoroughly brief a statutory interpretation question.

Based on a synthesis of Montana case law, the book presents an analytical framework for determining statutory interpretation questions. It does so by dividing the otherwise jumbled multitude of rules of statutory interpretation into two categories: (1) plain-meaning rules, and (2) ambiguous-statute rules.

Utilizing these two categories, the book presents a two-part framework of how Montana courts interpret statutes. The first part is a court attempting to determine the plain meaning of the statute with the use of a four-step test. If a plain meaning can be determined the analysis stops. If, however, a court cannot determine a plain meaning of the statute from the four-step test – because, for example, the statute is ambiguous – then

the second part kicks in. That second part looks at the dozens of miscellaneous rules of statutory interpretation. Each rule is explained in the book with numerous citations.

Another feature of the book is to alert the reader to the multitude of very helpful Montana codified rules of statutory interpretation and legal maxims. Unlike most states, Montana is fortunate to have several statutes spelling out many of the most commonly used rules of statutory interpretation, defining common statutory terms, providing maxims, and even articulating rules of construing written instruments such as contracts and deeds. These codified rules of interpretation and maxims are a treasure trove for the practitioner. They also save the practitioner time; instead of researching the case law on an obscure rule of statutory interpretation, one can often simply cite a statute.

The book also addresses in detail how a court approaches a statutory interpretation question by examining burdens of proof, presumptions, and inferences. These can be the difference between victory and defeat for a practitioner.

The book shows that statutory interpretation is as much of an art as a science. It makes the point that a practitioner should not expect a completely predictable outcome in the case law or in a case they are litigating. The rules of statutory interpretation are merely a factor – albeit often a powerful one – in a judge's mind along with the facts, procedural history, equity, and public policy. The rules of statutory interpretation assist in the ultimate outcome of a case but rarely completely decide one. In any event, the rules of statutory interpretation are a formidable tool for deciding a case and practitioners should vigorously use them for their clients' benefit. Everything you need to do so is in the book.

***Greg Overstreet is a sole practitioner from Stevensville.***





## Attorneys needed for eviction help program

Lawyers make \$75 per hour to represent individuals and families whose housing is at risk

Since the height of the COVID-19 pandemic in 2020, the Montana Legal Services Association has partnered with the Montana Department of Commerce to provide eviction defense through the Montana Eviction Intervention Program (MEIP).

For many Montanans, the lasting effects of the Covid-19 pandemic are still disrupting daily life. Perhaps nothing has been more impactful than the economic strain placed on families due to loss of jobs, child care, and a higher cost of living. The effects of these pressures on MLSA's clients is evident in the calls MLSA has received in the last year. Since April of 2021, over 17,000 Montanans have contacted MLSA for legal issues related to the pandemic.

One of the ways that MLSA is able to respond to this need for services is through MEIP. MEIP aims to provide representation to tenants involved in an eviction. In order to provide representation to as many tenants as possible, MLSA partners with attorneys statewide to offer services to qualifying Montanans who are facing eviction. Thanks to American Rescue Plan Act funding through the U.S. Department of Commerce, MLSA is able to pay attorneys at a rate of \$75 per hour to provide advice and direct representation for individuals and families who are in the midst of an action for possession that puts their family's housing at risk. MLSA can further assist clients, and the attorneys who take these cases, by providing housing navigation services and providing direct rental assistance payment through the Montana Emergency Rental Assistance program.

At a time when there is an abundance of uncertainty and fear, housing

### WANT TO HELP?

Email Rachel [rfox@mtlsa.org](mailto:rfox@mtlsa.org) for more information, or to apply to be a part of MEIP.

is a baseline necessity that requires the attention of those with the means to help. As the demand for eviction assistance increases, MLSA is looking to expand the network of attorneys taking these cases throughout the state. Please apply to be a Montana Eviction Intervention Attorney today. Your hours and expenses are reimbursable and MLSA provides malpractice insurance. Your time and talent are essential and priceless to a family, a veteran, or a person with a disability, who is at risk of homelessness.

**Contact Rachel at MLSA for more information, or to apply to be a part of MEIP: [Rfox@mtlsa.org](mailto:rfox@mtlsa.org)**

A silhouette of two people on a mountain peak. One person is standing and leaning forward, reaching out to help another person who is sitting or crouching on the edge of the cliff. The background shows a blue sky with clouds and distant mountain ranges.

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Jessie Big Knife is the Chippewa Cree Tribal Attorney. (Photo provided)

# Tribal sovereign immunity: What is it, and what are its limitations?

This month, Kathryn Seaton (KS), Montana Legal Services Association, and Jessie Big Knife (JBK), Chippewa Cree Tribal Attorney, discuss the ins and outs of tribal sovereign immunity.

**KS: Before we dive into a discussion on tribal sovereign immunity, let's start with the concept of sovereignty. What is sovereignty? What is its relationship and importance to tribes?**

**JBK:** The generally accepted definition of sovereignty is the inherent right or power to self-govern. Sovereignty is important to tribes, and tribes have exercised their sovereignty since before colonization. Tribes had their own concepts of sovereignty that

pre-dated colonization. For example, the Chippewas and Crees were nomadic and moved from different areas for different reasons. This was a form of sovereignty that we exercised.

**KS: What is the source of tribes' sovereignty?**

**JBK:** Sovereignty is inherent and comes from the people governed. It started when the United States first made contact with tribal nations. Tribal sovereignty has always been recognized by the United States government. That recognition can be seen through treaties, tribal constitutions and corporate charters, tribal laws, ordinances, and the government-to-government relationship between the federal

government and tribes. The United States is a tri-sovereign nation — there is tribal sovereignty, federal sovereignty, and state sovereignty.

**KS: One aspect of tribal sovereignty that may be confusing to practitioners, is the limited nature of that sovereignty. Many practitioners are aware of case law that tribes are “domestic dependent nations.” See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). This may lead to a misunderstanding that, because tribal sovereignty is limited, it is somehow lesser than state or federal sovereignty. However, all sovereignty is limited. Federal sovereignty is limited by the Tenth Amendment. State sovereignty is limited by the Bill of Rights. It's**



**not unique for tribes' to have limits on their sovereignty.**

**JBK:** That shows how crucial it is to continue to educate those who may not fully understand tribal sovereignty. As practitioners, we play a key role in that process of educating individuals.

**KS: Moving to sovereign immunity specifically, in what court systems are tribes immune from suit?**

**JBK:** Tribal sovereign immunity extends to federal, state, and tribal courts. Can a tribe be sued in any of those courts? The answer is yes, if the tribe expressly authorizes it or consents to the suit, but unless the plaintiff can point to an express waiver by the tribe, or an abrogation by Congress, the case will be dismissed based on sovereign immunity.

**KS: In your experience, do you think tribes are more likely to consent to be sued in state, federal, or tribal court?**

**JBK:** I most often see consents to tribunals, whether it's state, federal, or tribal, in the context of economic development opportunities and contracting with non-tribal entities. Typically we grant limited waivers through key negotiations. Within our contracts we stipulate to Tribal Court.

**KS: What about suing an official? Does tribal sovereign immunity extend to suing officials in their official capacity? In their individual capacity? What about if the official is acting outside of their authority?**

**JBK:** Generally, tribal sovereign immunity will extend to a tribal

official acting in their official capacity and within the scope of their authority. Over the last decade, we've seen a proliferation of lawsuits where tribal officials are sued in their official or individual capacity, as an attempted end-run around tribal sovereign immunity. In *Lewis v. Clark*, the Supreme Court clarified that identification of the real party in interest dictates what immunities may be available. 137 S. Ct. 1285 (2017). In that case, a tribal official sued in his individual capacity for tortious actions that occurred outside the reservation boundaries was unable to assert tribal sovereign immunity as a defense, because it was the official and not the tribe who was the real party in interest in the case. This was regardless of any indemnification provisions applicable to the employee.

**KS: What determines if a tribal business enterprise enjoys the same immunity as the tribe?**

**JBK:** Sovereign immunity extends to tribal businesses that are considered an arm-of-the tribe. The Tenth Circuit set out a factor test in *Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173 (10th Cir. 2010). The Court enumerated six factors to consider: "(1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; . . . (5) the financial

relationship between the tribe and the entities; [and (6)] the policies underlying tribal sovereign immunity and its connection to tribal economic development. . ." *Id.* At 1187. The Fourth Circuit has adopted this test (*Williams v. Big Picture Loans, LLC*, 929 F.3d 170 (4th Cir. 2019)), as well as the California Supreme Court (*People v. Miami Nation Enterprises*, 2 Cal. 5<sup>th</sup> 222 (Cal. 2016)). We're seeing that this is becoming the generally accepted test.

**KS: Does tribal sovereign immunity extend to actions taken by tribal entities outside of a reservation?**

**JBK:** Sovereign immunity will extend to commercial activities conducted off the reservation. There are a line of Supreme Court cases that have reaffirmed this. The first case to touch on this was *Kiowa Tribe v. Manufacturing Technologies*, 523 U.S. 751 (1998). Recently, *Michigan v. Bay Mills* reaffirmed this holding that tribal sovereign immunity extends to commercial activities that arise off the reservation. 572 U.S. 782 (2014). This holding is on the hot seat right now, with a couple of strong dissents taking issue with the idea, so we will have to see how this law develops going forward.

**KS: Can tribal sovereign immunity be waived? How? By whom?**

**JBK:** Congress can abrogate sovereign immunity, but it must be done clearly and unequivocally, not inferred. Tribes can expressly waive

**MORE INDIAN, PAGE 27**



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# Ransomware Today: Top Tips for Law Firms

by Sharon D. Nelson, Esq., John W. Simek  
and Michael C. Maschke  
2022 Sensei Enterprises, Inc.

Ransomware has been a curse for quite a while. Law firms are one-stop shopping for cybercriminals, alluring because they hold the data of many people and businesses.

More than 80% of attacks today exfiltrate or take your data. That means you have a data breach – and potentially a number of legally required notifications. Attackers will try for two ransoms, one for the decryption key to restore your data and – if you’ve been lucky enough to be able to restore your data with known good backups that are NOT connected to your network, the cybercriminals will still demand a hefty ransom to keep them from selling or leaking your data. They’ll put pressure

on you by calling the media or they will call your clients themselves to let them know that their data will be leaked or sold if a ransom is not paid.

The average ransom paid at the beginning of 2021 was \$118,000 – by the end of the year, it rose to \$322,000.

Ransomware now comprises more than 75% of cyberinsurance claims. Which is why you are paying more (30-40% more) for your premiums and getting less (as coverage exclusions proliferate). One increasingly common provision excludes attacks by nation-states. Often, it is unknown who the attacker is – and who is going to prove whether the attack was a nation-state attack? We are already envisioning the court battles.

Humans are a factor in these attacks more than 80% of the time - whether by clicking on a link, failing to abide

by policies, using poor passwords, etc. We’ve even seen insiders selling out their employers for a portion of the ransom. Don’t ever assume that insiders, especially disgruntled insiders, can’t be a threat.

Remediation costs 10 times more than the ransom paid on average. This is one reason why some victims and their insurers are tempted to pay the ransom. They are counting on a good outcome, which is not always wise. If the cybercriminals retain your data, they may demand another ransom. And if you paid for a decryption key, it rarely works for 100% of your data.

By the end of 2021, the military - as well as both Microsoft and Google - announced that they had joined the fight. The military said they would impose costs on the ransomware gangs, though understandably declined to reveal the





specifics.

Corporations are going to court to seize control of malicious websites. Our government is arresting gang members and offering millions of dollars for the identification of major ransomware players.

Russia itself shut down REvil, one of the most notorious Russian ransomware gangs in January 2022, based on information provided by the U.S. In retrospect, who knows why? Were they placating us in advance before the war on Ukraine? Who knows? Their cooperation here remains a mystery to us.

#### **Our top tips for combatting ransomware:**

1. Use multi-factor authentication
2. Upgrade your router and firewall to include Intrusion Detection and Intrusion Prevention functionality
3. Keep software updated and patched
4. Use strong, complex passwords and a password management tool

5. Install Endpoint Detection and Response (EDR) software on all endpoints

6. Require annual mandatory cybersecurity awareness training for all personnel

7. Utilize a cloud backup provider to help protect your data from ransomware

8. Implement phishing testing for all employees

9. Utilize WPA2 or WPA3 to encrypt all wireless networks

10. Disable all unneeded network services

11. Change all factory default settings

12. Implement inactivity timers for all devices

13. Maximize log collection and retention

14. Begin implementing Zero Trust architecture

Could we go on and on with tips? Yup, but then your heads would hurt. Enough for now. Get these 14 things done and you're way ahead of most of

your colleagues.

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# Keep eyes open to powerful role of familiarity blindness in jury box

The cliché mock trial experience for many of our clients is the frustrating realization that mock jurors, for whatever reason, do not seem to care about or discuss evidence the client thinks is critical. The client sees a chunk of evidence or a key fact as the defining issue in the case, yet the mock jurors speak very little about it in deliberations, if at all. It seems to have almost nothing to do with the reason for their decisions. Why does this happen? Why do jurors lose sight of important evidence or testimony? Why do lawyers misjudge what will ultimately matter to jurors faced with processing the case narratives and rendering a decision?

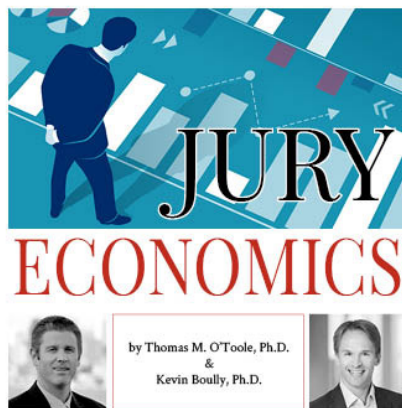
It's tempting to label jurors as lazy and stupid, and long for a better way to administer justice in complex, high-dollar matters. Some attorneys take this easy route. That conclusion is shortsighted. While there are certainly examples of lazy and stupid jurors, most jurors take their job very seriously and work hard to get it right. In fact, the question of competence is frustrating for two reasons:

1) You will always know more than your audience about your case, no matter who your audience is (as Jim Carrey's Dr. Robotnik says in the movie *Sonic*, "You know what's hard about being the smartest person in the world? Everyone else seems stupid."); and

2) Intelligence does not necessarily translate to better decision-making as several empirical studies have shown.

There is also the more important argument that it is not your audience's job to "get it." After all, they are *your* audience. Consequently, it is your job to understand *them*, adapt to *them*, and deliver everything *they* need to "get it." If your audience does not "get it," it is you, not your audience that has failed. That is the painful reality of communication and persuasion. This is the key factor too many attorneys misjudge.

There are a variety of potential explanations for why jurors miss key facts and evidence at trial, but in this month's



column, we want to focus on one particularly important cause that does not receive enough attention: familiarity blindness. What is familiarity blindness? It is something we have all experienced. One common example is when people try to proofread their own writing. Proofing your own writing is a bad idea because, no matter how hard you try, you will miss something, and it has nothing to do with how good of a proofer you are. Instead, you have become so familiar with your work and what it is supposed to look like that you become susceptible to overlooking your mistakes. In fact, as you read each sentence, you are more likely to see what you think it is supposed to say rather than what it actually says on the paper.

Familiarity blindness is a hyper-focus on what is familiar at the expense of what is unfamiliar. When we are presented a bunch of information, the parts that we recognize as familiar blind us to other information that is not as familiar or recognizable. It is a cognitive deficit that all human beings face, whether they are jurors, lawyers, judges, or rocket scientists. We gravitate to the familiar. We see the familiar first and foremost. It is the relief that you feel when you walk into a room full of strangers and recognize someone you know on one side of the room. It is also the cost of failing to see the fascinating stranger on the other side of the room or the novel magician doing magic tricks in the corner.

In some respects, familiarity blindness is similar to inattentional blindness, a concept developed by Daniel Simons, psychology professor at the University of Illinois. Simons conducted a series of experiments where he demonstrated that, when participants were focused on a specific task, that focus blinded them to things happening right in front of their own eyes. The most famous example of this is "The Monkey Business Illusion." In fact, if you are unfamiliar with this term, you should stop reading this column and search for the two-minute video about this on YouTube. In "The Monkey Business Illusion," half of participants were so focused on the task of counting how many times a basketball was passed between two players they failed to perceive a gorilla that walked across the screen, stopped to pound its chest a few times, and then walked offscreen. How could something like this happen? After all, it was a person in a gorilla suit who walked right into the middle of the scene where two players were passing a basketball – right into the middle of the very thing the participants were tasked with watching. It was so absurd it should have been impossible to miss, yet half of all participants missed it.

While inattentional blindness suggests that we are blinded by tasks, familiarity blindness suggests that observing something familiar, particularly in unfamiliar settings, can blind us to things that are happening right in front of us. It is why it is so hard to proof your own writing. You are simply too familiar with it.

At trial, familiarity blindness kicks in when jurors are desperately trying to make sense of the case before them and then find something familiar they can identify with. They are overwhelmed with information, not sure how to make sense of it, and then they experience that moment of familiarity that gives them a sense of relief. That familiar connection becomes a defining aspect of the case, a filter for how they view the case. Everything else becomes less

important or in some cases, nonexistent. It effectively blinds them to evidence and testimony that does not touch the familiar aspects of the case. What reinforces the familiar connection moves front and center, while everything else moves to the background. In thematic terms, it's familiarity first.

Personal experiences are one common source of familiarity blindness. Jurors look hard for a way to connect and engage with the evidence and stories they perceive in trial. They are in a new room full of strangers, looking for familiar faces. When jurors have personal experiences that relate to part of the case, they feel a sense of relief and a familiar connection through which they make sense of the issues. In fact, their own personal experiences in those instances often become the filters through which they accept or reject evidence and claims as true or false. In some instances, facts inconsistent with their familiar stories or experiences are rejected. In other instances, they are not unconsciously ignored or subordinated because they do not fit the juror's framework for the case.

Consider a wrongful termination case as an example. Obviously, a juror who has been wrongfully terminated from a job will use that personal experience to make sense of the case and fill in evidentiary gaps. On the simplest level, the plaintiff's claims are going to *feel* true to that juror, but that personal experience is also going to overwhelm evidence that goes against the plaintiff. It makes it easier for contradictory facts to go unnoticed. For example, the juror is going to look for the negative attributes of the offending manager when he takes the stand, allowing the manager's likable traits and testimony to go unnoticed even if they are right there in plain sight.

Another source of familiarity blindness is the narrative trope. A familiar storyline is powerful, particularly in cases where jurors are struggling to make sense of the issues. Consider the patent infringement case. Few jurors have experience with patents, and most patent infringement cases involve complex claims and endless information that is difficult to piece together. This is why we see the same themes emerge in mock

jury deliberation in patent cases over and over again: David v. Goliath, the American dream, deference to the PTO, the power of the "a-ha" moment, and so on. These are familiar shortcuts and when jurors take these narrative shortcuts, they do not travel the road of complex facts that might need to be considered – those facts that attorneys predetermined were the key factors for their winning case. When jurors look through their window, the attorneys' facts are nowhere to be seen because jurors have chosen a different route.

The concept of familiarity blindness has two important implications for litigators. First, it is critically important to create familiar connections to jurors in the presentation of your case. This makes it more real to them and gives them that same sense of relief you experience when you are standing in a room of complete strangers and then suddenly recognize a friend in the corner. Creating these powerful, familiar connections can literally blind jurors to arguments and evidence put forth by the other side.

Second, when jurors are not giving evidence or testimony the attention you believe it deserves, rather than taking the "more information is better" approach, stop and consider what is happening that is making jurors (and judges) blind to your point. Is the other side winning the familiarity battle and, if so, how can you even the score? Familiarity can be found almost anywhere, even in the most unfamiliar territory. This is the job of the persuading attorney, not the audience. Make the employer's job strike a chord by relating to parenting, teaching, or coaching others. Make the high-tech invention familiar by relating to a kitchen appliance or everyday device. Don't let lack of creativity perpetuate unfamiliarity or the blindness that prevents your success in trial.

**Thomas M. O'Toole, Ph.D. is President of Sound Jury Consulting in Seattle. Kevin R. Bouilly, Ph.D. is Senior Consultant at Persuasion Strategies in Denver.**



# Taming the never-ending to-do list

A great meme on the internet (credit unknown) goes a little something like:

How to clean up glitter.

1) Burn down your house.

2) Move.

3) The glitter followed you. There is no escape.

Parents out there, you know that the glitter is everywhere. Where did it come from? I've never even bought glitter, yet here it is in all the crevices of the couch. Find me one person who voluntarily invited glitter into their home and I'll owe you a beer.

So, what am I actually talking about? Glitter = Stuff you need to do. Tasks! In law practice, the tasks come from everywhere. Your paralegal walks by and lovingly sprinkles a load of tasks on your desk. You take a single phone call and oops, there's a new pile of tasks! Open email: glitter bomb! Staff meeting: serious glitter bomb! You *could* burn down your office but you know the glitter will follow you home. There is no end. One simply does not clean up glitter (finish tasks).

Some jobs wrap up nicely at 5 o'clock or at the end of every month or every project, but in contrast, there is little hope of ever having a clean slate or a perfectly done to-do list in the practice of law. When we feel like we have no control over the volume of work, the cadence of deadlines or stressful events, and no dam at the mouth of the glitter spout to give us any end in sight, we're on a fast track to burnout.

This is why in well-being circles we talk a lot about time management. Time and task management IS wellbeing, so long as the goal is to give you space to focus on your own well-being and to give you greater peace of mind. Yes, we need cultural work on why we have so much work (who can't say no? is our culture too litigious?), this article gives

advice on better managing time in order to give you peace of mind and NOT to make space for more work. This advice is largely based on the method "Getting Things Done" by David Allen.

**1) Where do all the tasks come from?** Make a list. Do they come from your paralegal, post-it's that appear on your desk from nowhere, phone, supervisor, email, text, random person in the hallway, pager, fax, physical inbox, and carrier pigeon? Try to cut this down to no more than five sources. If you feel like people pop into your office and gift you with tasks, deadlines and questions willy-nilly, think of using a daily or weekly check in where you collaboratively plan the tasks, rather than just lobbing glitter bombs at each other with abandon.

**2) Where do you capture the tasks?** Scan your desk right now and look for the places, lists, or objects you use to keep track of what you need to do. Do you have three physical inboxes? A wall of sticky notes? Does your assistant do all of this for you and you just do what they say? Is it a day planner, clipboard, flagged emails, and an online to-do list or calendar?

After making a list of all the places, decide on one place that you will capture all tasks. This can be a tough one and may take some trial and error if you don't take your "capture device" with you everywhere. Though you may always have your phone with you, it can be hard to make organized lists on a phone. Use a backup plan when you don't have your trusty capture tool- like sending an email to yourself titled "PUT IN PLANNER" then put the task in your planner when you're back at your desk.

It takes some time, but if you make a habit of sticking to your one to-do list, then you can start to trust in yourself that your list is always complete.



MERI ALTHAUSER

***Meri Althaus is an attorney of over 10 years practicing family law and mediation in Missoula. Her practice focuses on collaboration and solution-finding for her clients and their families. She also offers consulting services in workplace wellness, with a certification as a Workplace Wellness Specialist through the National Wellness Institute and as a Resilience and Thriving Facilitator through Organizational Wellness and Learning Systems.***





Eventually, your confidence in your method will drastically limit the amount of time you spend away from your desk stressing that you forgot to calendar a task.

**3) Rethink the way you organize your list.** Do you organize your to do list by date, file name, file number, or order that the task was given to you? Is your list a wild wild west of to-do's in no particular order??? These methods give you no quick way to prioritize and you still have to go through the secondary step of scrolling through your list to decide what to do next.

The first and easiest solution is to divide up your list by the amount of time your tasks take. So you might divide a piece of paper into four squares with one quadrant each for 5 minute tasks, 1 hour tasks, ½ day tasks, and full-day or multi-day tasks. Then, you'll know if you have a 20 minute break, you can take a few of those quick tasks rather than sorting through a fog of unorganized to-do's. Then, as you get used to this new way of organization, you may come up with

categories that amplify your ability to get things done easier without waffling about what to do next. For example, I have a "back burner" list of tasks to do when I get to them that are non-urgent, and an "at home" list of tasks I can do when I'm working from home and know I'll be interrupted often- so these are easier tasks that I don't mind stopping and starting.

Second, be sure to be granular about what goes on the list. If you just put "Depose Johnny Depp" on the list, you still have to think through all of the little tasks that lead up to that bigger project. Instead, write out all the baby steps: "line up court reporter" "assign background research" "main focus/outline Johnny" and "draft Johnny's questions" so that you never lose sleep worrying whether you remembered some element of that all-important depo.

And last, capture what feels like the un-capture-able. These are the things that tend to keep you up at night or perpetually come to you at random times in a panic. Like strategizing, debriefing or

"wait for response from opposing counsel about X." Write it down (so your brain doesn't have to fixate) and delightfully cross it off when it happens.

**4) Last and best, time block your calendar.** Now, use your calendar to schedule times to do the types of tasks you've organized and to maintain your organization. For example, schedule one 20-minute break at the end of each day to ensure you've swept all your to-do's over to your list. Schedule one time per week to clean up your back burner and a full ½ day for your major tasks. Most importantly: keep your appointments! Putting yourself on do not disturb to remain focused on these upkeep tasks will pay off in the end. When you spend quality time devoted to only one task, it's good for your brain. And, when you front load staying organized you can finally stop worrying about how you'll ever be able to clean up all this glitter!

With this in mind, you're sure to get that glitter under complete control by 2023!

# Advice in a vacuum: Why quick and easy answers are a bad idea

I love a good a story, particularly when a valuable lesson can be learned from its telling. Here are two memorable ones.

A long-term client reached out to his attorney with a quick question about an airplane he owned. The plane had been under renovation, which included a substantial upgrade, for some time. Due to time delays and cost overruns, a significant fee dispute had come into play. Figuring that possession of the plane would strengthen his position in the fee dispute, the client reached out to his attorney to ask if he could remove his property from the repair facility. For reasons unknown, the attorney failed to take any time to discuss the situation in depth. Instead, he made the decision to quickly share a technically correct answer. His reply was along the lines of “yes, recovery of property you already own is not illegal. You have a right to its possession” and he left it at that. The client shortly thereafter successfully recovered the property and was subsequently arrested due to the manner in which the recovery was done. Eventually the client incurred a substantial loss as a result of a civil suit brought by the repair facility. Of course, this client then sought recovery from the attorney alleging negligent advice. The attorney tried to defend his actions by essentially saying “Not only did I never tell him to go and take possession of the plane, I had no idea he would try something like that! This one’s not on me.” Suffice it to say, that defense didn’t fly. Pun intended.

My next story involves an attorney who was representing the executor of an estate. This attorney would later describe the situation as his having little involvement because the client was

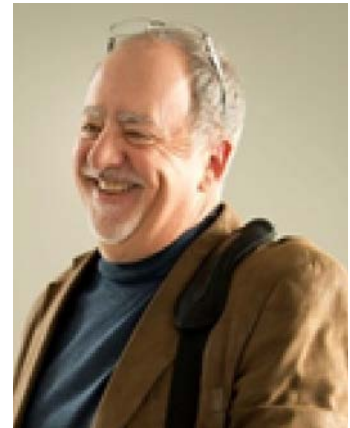
really running the show. Apparently, all the client wanted was a little advice and direction from time to time. At one point, this client reached out to share that she disagreed with a conclusion the Commissioner of Accounts had reached regarding the calculation as to how certain funds should be distributed. The attorney casually shared that he too disagreed with the Commissioner’s conclusion and also let the client know that if an issue were to ever arise, he would speak with the Commissioner in order to clear up the confusion. Unfortunately, this client took that response as an implicit OK to go ahead and she disbursed the funds in accordance with her interpretation of the will. Needless to say, the Commissioner did not approve the accounting and now there was a problem.

Here are the takeaways.

I get that at times it can be tempting to take the easy way out when a client asks a question. If nothing else, quickly spouting off some generic or technically correct advice or sharing an off-the-cuff comment can certainly save some time. Regardless of your reasoning, a decision to take the easy way out is never a good idea. That’s a takeaway.

It also does not matter if you take an easy way out because you truly believe you don’t have the time, view the question as unimportant, are talking with a non-client, are talking in a casual setting, or are just saying what you think your client wants to hear so you can move on. These are all rationalizations; and when rationalizations are used to justify a decision to take an easy way out, trouble

**MORE RISK, NEXT PAGE**



Mark  
Bassingthwaight

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“

Clients do expect their attorney to stand by any and all advice given.

”



## RISK FROM PREVIOUS PAGE

may be just around the corner. Such advice, which really is the equivalent of giving advice in a vacuum, is problematic because you are failing to consider how the person you are speaking with might rely upon or act on the advice. This too is a takeaway.

Giving advice in a vacuum is rarely appropriate, particularly in the absence of adequate and documented disclaimers. Even if technically allowable under some defined set of circumstances, doing so fails to consider the realities of the attorney-client relationship. Clients do expect their attorney to stand by any and all advice given and the client will consider an attorney's attempt to claim an intentional limited knowledge of the circumstances as irrelevant. The client will still seek to hold their attorney accountable for any unanticipated fallout that occurs once the client acts on the advice received. Again, a takeaway.

But wait, there's more.

There is also an ethical component to this. Consider ABA Model Rule 1.4 Communication, which states in section (b), "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This makes it quite clear. At a minimum, the attorneys in the two stories above should have taken the conversations further by inquiring about their client's proposed course of action. By not doing so, these two attorneys allowed their clients to act

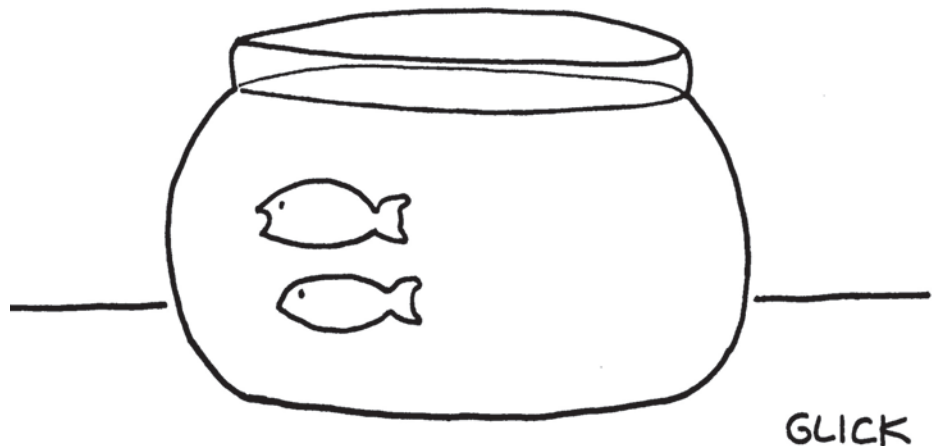
without the benefit of legal advice given with full awareness of the entire situation. Had these two attorneys made an effort to consider what their clients were thinking, the advice would have been, out of necessity, quite different.

In the end, a defense along the lines of "I had no idea my client was going to do that" is no defense at all, even with perceived short unimportant calls where one is tempted to not take the time to ask the right questions. When situations like the

above arise, there is no middle ground. There really are just two options. One is to decline to provide any advice and the other is to take the time to give a competent, thorough, and reasoned response based upon full awareness of the client's situation. Come at it from a different perspective by trying to put yourself in your client's shoes. Would you expect anything less when asking your attorney a question? Call me a skeptic if you must; but I seriously doubt it.

## JUST IS FOR ALL

BY ARNIE GLICK



*"I suppose that making a change of domicile is pretty much out of the question."*



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**Want to learn even more about what Fastcase can do? Check out their pre-recorded video tutorials to explore its powerful search tools on your own time: <https://www.fastcase.com/support/>**

## Docket Alarm adds millions of documents to Fastcase

Did you know that with Docket Alarm, Fastcase users can now access hundreds of millions of briefs, pleadings, motions, and orders? Available as an add-on to your Fastcase subscription, Docket Alarm dataset has increased Fastcase's dataset by more than half a BILLION documents. Login now using your member account.

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## FASTCASE OFFERS FREE CLE THURSDAYS THROUGH NOVEMBER

Don't forget to check out Fastcase's weekly Thursday webinars.

Fastcase offers free CLE webinars the first four Thursdays of every month through November 2022. Each webinar is approved for 1.0 live CLE credit in Montana. You can receive credit for each course one time.

Whether you're a new or experienced user, product experts will help you make sure you are getting the most out of your FREE access to Fastcase legal research. You can find links to registration and download the handouts at <https://www.fastcase.com/webinars/>

### Introduction to Legal Research on Fastcase

Thursday, July 7;  
Thursday, July 21;  
Thursday, Aug. 4;  
Thursday, Aug. 18;  
Thursday, Sept. 1;  
Thursday, Sept. 15;  
Thursday, Oct. 6;  
Thursday, Oct. 20;  
Thursday, Nov. 3;  
Thursday, Nov. 17.

### The Docket Sheet: A Docket Research Primer for the Modern Attorney Featuring Docket Alarm

Thursday, July 14;  
Thursday, Aug. 11;  
Thursday, Sept. 8;  
Thursday, Oct. 13;  
Thursday, Nov. 10.

### Introduction to Boolean

Thursday, June 23;  
Thursday, July 28;  
Thursday, Aug. 25;  
Thursday, Sept. 22;  
Thursday, Oct. 27.



# GANGLE MEDIATION

**A direct hard-working approach to dispute resolution.**

Cory Gangle has approximately 20 years of experience in litigation, business and dispute negotiation, and transaction review.

Cory's litigation experience includes both plaintiffs' work and defense work (including insurance defense and insurance coverage). His experience on all sides brings substantial value to the dispute resolution process.

Cory is highly recommended by some of Montana's finest mediators. Allow Gangle Mediation Services to serve as your next settlement master or mediator. You will not be disappointed.

## RELEVANT EXPERIENCE

Cory's experience litigating and negotiating resolution in these areas is a distinct advantage:

- Boundary disputes
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- Commercial transactions
- Construction law
- Contract disputes
- Contract negotiation
- Easements
- Employment law
- Encroachments
- Insurance coverage
- Land use
- Nuisances
- Partner/Shareholder/Member disputes
- Personal injury
- Probate and will disputes
- Professional negligence (architects, engineers, attorneys, etc.)
- Real estate disputes
- Soil and structural engineering
- Union contracts
- Water disputes

## OUR REFERENCES

“I strongly recommend that Cory Gangle be considered as your mediator. Over the last few years, I served as a mediator for Cory in a series of complex litigated matters. I found Cory to always be extremely prepared. By working with Cory, I found that he has many of the attributes and skills necessary to be an effective mediator. These include his knowledge, experience, intelligence, patience, neutrality, optimism, respectfulness and professionalism. I know Cory will do great work”.



– **Michael A. Viscomi, Esq.**

“Over the past several years, I have had the opportunity to mediate many cases in which Cory Gangle was involved. Cory has evolved into an outstanding litigant in both his approach to resolution and demeanor. I believe Cory would be a very good mediator, studious, and balancing arguments to effect an acceptable resolution. I recommend Cory as a choice for your mediation”.



– **Dennis E. Lind, Esq.**

## TO SCHEDULE

There are three ways to schedule a mediation or arbitration:

1. Email [info@ganglelaw.net](mailto:info@ganglelaw.net)
2. Schedule Online at [ganglelaw.net/mediation](http://ganglelaw.net/mediation)
3. Contact us at (406) 273-4304



# Segrest elected State Bar President-Elect

The State Bar of Montana is pleased to announce the results of the 2022 Election.

Stuart Segrest of Helena was elected President-Elect. Segrest is currently the Chair of the Board of Trustees for the State Bar.

In his day job, Segrest is a senior attorney at Christensen & Prezeau, PLLP. Before joining the firm, he spent 14 years working for the Montana Attorney General's Office, including serving as Chief of the Civil Services Bureau.

In other results, Tucker Gannett of Billings was elected as the State Bar of Montana's ABA Delegate. Members also voted on nine Trustee positions representing Area A, Area B, Area C, Area D and Area G.

Following are the complete election results:

## President-Elect

J. Stuart Segrest, Helena

## State Bar of Montana – ABA

### Delegate

Tucker P. Gannett, Billings

### Area A Trustee

Randy A. Snyder, Bigfork

### Area B Trustee

Beth Hayes, Missoula

Erica R. Grinde, Missoula

Stephen (Greg) Overstreet,

Stevensville

### Area C Trustee

Saidee M. Johnston, Butte



Stuart Segrest

### Area D Trustee

Samir F. Aarab, Great Falls

Claire Lettow, Great Falls

### Area G Trustee

Matthew A. Haus, Bozeman

Sherine D. Blackford, Bozeman

The officers and trustees will begin their new terms in September 2022 at the conclusion of the Board of Trustees meeting during the bar's Annual Meeting in Helena.

Thank you to all of this year's candidates. The bar encourages all of its members to consider running for office in the future.

## Member resolution proposals must be submitted by Aug. 7

Members may propose resolutions to be presented to the membership at the State Bar of Montana's Annual Business Meeting in September in Helena.

Resolutions must be submitted to the Executive Director by Aug. 7, which is 45 days prior to this year's Annual Business Meeting. Email to [membership@montanabar.org](mailto:membership@montanabar.org) with "Member Resolution" in the subject line.

Within 20 hours of the Annual Meeting, the bar's Past Presidents Committee will review all member resolutions before they are presented to the membership, as required by the bar's bylaws. The committee will examine proposed resolutions for scurrilous or defamatory material and ensure any proposed resolution is consistent with the bar's constitution and bylaws. Any member may attend the meeting, and reasonable notice of the meeting will be provided to members.

A summary of all resolutions shall be posted on the State Bar website ([www.montanabar.org](http://www.montanabar.org)) 30 days in advance of the Annual Meeting and published in the last issue of the Montana Lawyer before the Annual Meeting.

## INDIAN

FROM PAGE 15

their immunity as well.

**KS: What is the relationship between sovereign immunity and subject matter jurisdiction?**

**JBK:** Sovereign immunity will serve to divest a court of subject matter jurisdiction and will compel dismissal. It is more than an affirmative defense, it's an absolute jurisdictional

bar. Unless the plaintiff can establish a waiver, the court is required to dismiss the case. That is our position.

**KS: From your dual perspective as an attorney and a tribal member, what is the importance of sovereign immunity to tribes?**

**JBK:** Sovereign immunity allows us to pursue economic development. It also protects tribal assets from needless and unwarranted litigation. As a tribal member, I feel it is

important to protect tribal sovereign immunity to protect our tribal way of life. Our government and community gives us a place to practice and perpetuate our cultural values. We can embrace our identity through practicing our culture, singing songs, harvesting, among other things. Tribal sovereignty and tribal sovereign immunity are tools in the toolbox that tribes have to protect and preserve our way of life.



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## Robert Thomas ‘Skip’ Baxter

Robert Thomas “Skip” Baxter was born on July 2, 1940 in Spokane, Washington and passed away at his home in Thompson Falls on Jan. 25, 2022. Skip will be remembered by many for his great sense of humor, strong work ethic, quick wit, and love for his Lord, family, church, community, and the Thompson Falls Bluehawks.

After graduating from Thompson Falls High School in 1958, Skip attended Montana State University for two years and then completed his undergraduate studies at the University of Montana in 1962. Always eager to expand his knowledge, Skip pursued his Juris Doctorate at the University of Montana School of Law, graduating in 1965, and later obtained his masters in taxation law from New York University.

After law school, Skip worked in Great Falls at the Church, Harris, Johnson, & Williams law firm, in

Kalispell at Murphy, Robinson, Heckathorn, & Phillips and then returned to Thompson Falls in 1974 to start Baxter & Fletcher, Attorneys at Law, with Bob Fletcher. In 1986, he decided to switch careers and, as part of a local investors’ group, purchased First State Bank of Thompson Falls where he worked until his retirement in 2006.

Outside of the office, Skip could be found outdoors cutting wood, mowing lawns, snowplowing, snowmobiling, backpacking, hiking, or clearing Forest Service trails with a loosely-formed trail clearing group he called FOTOTS (Friends of The Old Trail System). On the rare occasion that you’d find Skip indoors, he’d be quizzing the kids and grandkids about all their activities, watching the University of Montana Grizzlies play football, or caring for the many animals that found a home with him and Susie.

Services are tentatively planned for summer 2022.

## Memorial service for Jamie Young set for July 22

A memorial service for Havre attorney Jamie Young will be held on July 22 in the District Courtroom in the Hill County Courthouse in Havre. Young, 43, died of breast cancer Feb. 20.

The service will begin at 11 a.m. The family, members of the bench and bar, associates, and friends are invited to attend. It will be broadcast on Zoom at [mt-gov.zoom.us/j/94308494718?pwd=a0FXTFZDOFRHaUNtTVFZMlRiWnZFUT09](https://mt-gov.zoom.us/j/94308494718?pwd=a0FXTFZDOFRHaUNtTVFZMlRiWnZFUT09).

## Memorial submissions

The Montana Lawyer will publish memorials of State Bar of Montana members at no charge.

Please email submissions to [jmenden@montanabar.org](mailto:jmenden@montanabar.org) using the subject line “Memorial.” Memorial submissions are subject to editing.

## BETTR SECTION MENTORSHIP PROGRAM



## NEW TO TRANSACTIONAL PRACTICE? DON'T KNOW WHERE TO FIND ANSWERS?

Providing limited-scope input within the mentor’s discretion, a mentor from the Business, Estates, Trusts, Tax and Real Property Section may be able to help. To learn more, or to find a mentor, email Brand Boyar, Mentor Program Chair of the BETTR Section, at [bboyar@wordenthane.com](mailto:bboyar@wordenthane.com).

**CLASSIFIEDS Contact** | To post a job on our online Career Center, visit [jobs.montanabar.org](http://jobs.montanabar.org) (Montana Lawyer classified included in price). For all other classified inquiries, email [editor@montanabar.org](mailto:editor@montanabar.org) or call 406-447-2200.

## ATTORNEY POSITIONS

**ASSOCIATE ATTORNEY:** Bitterroot Law is currently seeking an associate attorney to join our team. Candidates will represent clients in complex civil litigation and personal injury matters. Experience in criminal law is preferred but not required. Bitterroot law is an emerging law firm located in downtown Hamilton in the heart of the Bitterroot Valley. An attorney joining the firm would have full practice and office support as well as compensation commensurate with fee generation. Apply by email to [Tom@bitterrootlaw.com](mailto:Tom@bitterrootlaw.com).

**ASSOCIATE ATTORNEY:** Johnson, Berg & Saxby, PLLP of Kalispell, MT seeks a full time Associate Attorney with two to five years experience. Salary DOE. Please send resume and references to [kserna@jbsattorneys.com](mailto:kserna@jbsattorneys.com).

**ASSOCIATE ATTORNEY:** Urick Law Firm in central Montana is looking to hire a permanent, associate attorney. Beginning salary will be based on experience with a signing bonus. Urick Law Firm deals extensively in all property matters, water law, estate planning, probates, civil litigation, contracts, collections, and other areas. This is an excellent opportunity for fast advancement, and for you to grow as an attorney with an excellent work environment. To apply, email to [office@uricklawfirm.com](mailto:office@uricklawfirm.com).

**ASSOCIATE ATTORNEY:** Successful applicant will assist other attorneys in representing clients in a general practice law firm whose current case load consists primarily of family law matters, criminal defense, probate and estates, and personal injury matters. Duties of the associate attorney will include legal research and preparation of legal documents, including but not limited to: motions and briefs; discovery proceedings; trial hearings; and briefings. Candidates should also possess excellent communication skills both written and verbal. Apply by email at [miva@vanengenlaw.com](mailto:miva@vanengenlaw.com).

**ASSOCIATE ATTORNEY:** Tappan Law Firm is a small firm representing numerous clients from individual landowners with single-issue property disputes to large businesses with complex permitting and land-use demands. Please send a cover letter, resume, writing sample, and two references to [jpharmer@tappanlawfirm.com](mailto:jpharmer@tappanlawfirm.com). Incomplete applications will not be considered. Please do not hesitate to email or call with any questions, 406-449-3383.

**COMMERCIAL TRANSACTIONS:** Crowley Fleck PLLP seeks a Lateral Attorney to join our Commercial Transactions and Tax, Trusts & Estates Practice Groups in our Helena, MT office. Successful applicants should have 2 - 4 years of legal experience in business transactions, general corporate and commercial work, and estate planning. License in Montana required. Competitive salary and benefits for region. All applications will be held in confidence. Please send resume, cover letter, law school transcripts, and writing sample to Tiffani Mowry at [tmowry@crowleyfleck.com](mailto:tmowry@crowleyfleck.com)

**CONTRACT ATTORNEY:** Expanding Law Firm with Indian Law Practice Seeking Associate/Contract Attorney in Billings, Montana: Candidate must be licensed to practice in the State of Montana. Candidate must have a strong work ethic, proven case management skills and outstanding research skills. Must possess excellent communication skills (both written and oral) and analytical skills. Candidate should have respect for and familiarity with Native American tribal law, culture and history. Please Note Experience in: Tribal Health and Policy, Water Law, IHS/BIA 638-contracting, Indian Law. Send cover letter, resume and references to [Resume@NativeAdvocates.Law](mailto:Resume@NativeAdvocates.Law)

**CORPORATE COUNSEL,** NorthWestern Energy Legal Department: Provide support to NorthWestern

Energy's Regulatory Affairs activities before the Montana Public Service Commission, the Federal Energy Regulatory Commission, and state courts. Responsibilities include drafting pleadings, managing discovery, researching issues, presenting arguments, and assisting the team in developing and implementing regulatory strategies. External applicants should apply at <http://www.northwesternenergy.com>. If you have a disability that requires assistance and/or reasonable accommodation with the job application process, contact the HR department at 800-245-6977, or job.inquiries@northwestern.com

**DEPUTY COUNTY ATTORNEY:** Responsible for prosecuting felony and misdemeanor offenses within Madison County; prosecuting juvenile offenses in Youth Court; representing State of Montana agencies, handling involuntary commitment hearings and other matters. Also provides legal advice and opinions to county officials; represents Madison County in civil suits, performs other miscellaneous duties. Applications must be submitted online at [madisoncountymt.gov](http://madisoncountymt.gov) under the Deputy County Attorney job posting. Include Resume, Letter of Interest, Writing Sample, and three employment-related references with valid contact information.

**DEPUTY COUNTY ATTORNEY - CRIMINAL:** Performs complex legal, professional and administrative work. The work is performed in accordance with established standards and practices of the legal profession, state and federal law, and County policy. Under policies and procedures established by the Cascade County Attorney, the position initiates and prosecutes criminal cases through final disposition and provides legal counsel and advice on matters of criminal law and performs other related duties as required or assigned. Read full description and apply at <https://www.cascadecountymt.gov/223/Employment-Opportunities>.

**DEPUTY COUNTY ATTORNEY POSITIONS:** The Ravalli County Attorney's Office seeks one Civil Deputy County Attorney and one Criminal Deputy County Attorney. The civil deputy attorney will undertake the civil legal work of Ravalli County under the supervision of the Chief Deputy Attorney and the County Attorney. The Criminal Deputy Attorney will prosecute misdemeanor crimes and offenses in Justice Court and felony crimes in District Court and Youth Court including all aspects of criminal prosecution. Applicants must submit a resume, cover letter, writing sample, law school transcript and Ravalli County employment application. The application and the full job listings can be found at: <https://ravalli.us/jobs.aspx>.

**DEPUTY OR SENIOR DEPUTY COUNTY ATTORNEY** Full-time position representing Yellowstone County in Department of Public Health and Human Services (DPHHS) civil child abuse and neglect matters; does related duties as required. Eligible for telework upon supervisor approval after 6 months of continued employment. To see full listing or to apply visit [www.yellowstonecountymt.gov/human\\_resources/](http://www.yellowstonecountymt.gov/human_resources/)

**DEPUTY OR SENIOR DEPUTY COUNTY ATTORNEY** Full-time position which performs a wide variety of routine to complex criminal prosecution and/or litigation duties in the State and Federal court systems including misdemeanor and felony criminal violations, youth court, and child abuse and neglect matters; does related duties as required. To see full listing or to apply visit [www.yellowstonecountymt.gov/human\\_resources/](http://www.yellowstonecountymt.gov/human_resources/)

**DEPUTY COUNTY AND PROSECUTING ATTORNEY:** Carbon County, Wyoming. Trial experience preferred. Details available on Wyoming Workforce Center's website. Juris Doctorate degree and must be a member in good standing with the Wyoming State Bar. Salary range commensurate with qualifications and experience (\$70,000-\$110,000/year). Full county benefits. Provide resume, legal writing sample, and cover letter to the Carbon County Attorney's Office by choice of mail: Box 1146, Rawlins, WY 82301; fax: 307-328-2704; or [jacquelinebowlus@carbonwy.com](mailto:jacquelinebowlus@carbonwy.com). Background check required.

**FAMILY LAW ASSOCIATE:** The Judnich Law Office is seeking a great candidate to join our busy practice in Missoula. Successful candidates will have at least 1 year of experience in divorce and family law areas of law, other experience is also considered. This candidate must have an outgoing personality and be willing to work as part of an expanding legal team handling divorce & parenting cases. Position availability is immediate. Employer offers vision, dental, health and retirement benefits. Competitive salary and bonus structure will be DOE and discussed with each successful candidate. Apply by email to [marty@judnichlaw.com](mailto:marty@judnichlaw.com)

**PROSECUTING ATTORNEY OR ADVOCATE TRIBAL PROSECUTORS OFFICE:** (CONTRACT POSITION) The selected person must have knowledge of general legal principles, criminal law and procedures, court procedures and decorum, law enforcement procedures, as well as applicable Federal laws, Tribal laws and Montana State laws. Submit Tribal application, legal writing sample, copy of valid state driver's license, relevant transcripts and/or certificates and resume to the Tribal Personnel Department. Call 406-675-2700 ext. 1259 or visit [csktribes.org](http://csktribes.org) for application. Closing date is Sept. 8, 5:30 p.m.

**STAFF ATTORNEY:** The Montana State Library (MSL) is seeking applications for a Staff Attorney. This is a full time, permanent position that is eligible for all applicable state benefits and retirement. The position is located in Helena. To see full listing and apply, visit <https://bit.ly/3Nqxy1f>.

**TRANSACTIONAL ATTORNEY:** St. Peter Law Offices, P.C., is seeking a transactional attorney to join their fast paced and growing practice. Seeking an experienced transactional associate. The ideal candidate will preferably have at least 3-5 years of general corporate law, real estate, business organizations, and contract law background. Experience advising companies on entity formation,

## BOONE KARLBERG P.C. ATTORNEYS AT LAW

**LITIGATION PARALEGAL:** Boone Karlberg P.C., an established AV-rated Missoula law firm, seeks a full-time litigation paralegal to join our litigation team. Our firm is rated among the top firms in Montana according to numerous independent rating groups. Successful candidates will work closely with attorneys in the firm's litigation practice from beginning to end of case. Candidates must possess attention to detail, ability to multitask in a fast-paced legal environment, strong interpersonal, administrative and organizational skills, and the ability to work independently, as well as part of a team. Prior paralegal or law firm experience preferred but not required. Submit applications to [ksmith@boonekarlberg.com](mailto:ksmith@boonekarlberg.com). Full listing available at <https://www.boonekarlberg.com/jobs>.



contract matters, real estate transactions, LLM preferred. Must have strong writing, research, negotiating and analytical skills, and show attention to detail. Apply by email to [marie@stplawoffices.com](mailto:marie@stplawoffices.com).

## NON-ATTORNEY POSITIONS

**LEGAL ASSISTANT:** Assist busy attorneys with all tasks related to commercial and general civil litigation, personal injury, real estate and business, estate planning, probate, criminal defense, and appeals. The successful candidate must provide superb case management, prepare and file legal and other documents promptly, provide excellent customer service, and assist attorneys with day-to-day functions including calendaring and scheduling. Must have strong computer skills. Candidates should be comfortable working independently and be able to manage a wide variety of tasks.

**PARALEGAL/LEGAL ASSISTANT:** McGarvey Law is looking for a Paralegal or Legal Assistant with prior legal experience. Applicant must be a team player, able to independently problem solve, and have great communication/organizational skills. Pay competitive with health and dental benefits, SEP eligibility, and discretionary bonus. Please send cover letter and resume to [ktorbeck@mcgarveylaw.com](mailto:ktorbeck@mcgarveylaw.com).

**LEGAL ASSISTANT:** Small, relaxed-paced law firm in the beautiful Mission Valley on Flathead Lake seeking a part-time (approx. 30 hours per week) qualified legal assistant. Experience in probates, wills and estates; personal injury; misdemeanor criminal law; real estate; and/or family law preferred. Excellent writing, communication and computer skills; ability to organize files; management of court and case calendars; and client billing skills a necessity. Relocate to a better quality of life and work with us to help pay for it! Salary DOE. Send resume to [classifieds@montanabar.org](mailto:classifieds@montanabar.org).

**PARALEGAL: SIGNING BONUS OFFERED!** We are looking for a personal injury and family law Legal Assistant or Paralegal. The successful candidate will have experience or be willing to learn to provide assistance directly to a managing partner attorney. Perform administrative duties (calendar hearings and deadlines, organize case files, manage logistics etc); Maintain pleadings and discovery indexes; Organize exhibits, documents, evidence, briefs and appendices; Aid attorney with interrogatories and other discovery requests.

## MEDIATION

**MEDIATION/SETTLEMENT MASTER:** Guy Rogers of the Brown Law Firm (Billings and Missoula) announces that he has wrapped up his 35-year litigation practice and now works solely as a mediator/ settlement master. Guy handles mediations throughout Montana and works in his Bigfork/Missoula office during the summer months. Guy is a member of the National Academy of Distinguished Neutrals (NADN), and mediations can be scheduled through its website. Guy can also be reached at [grogers@brownfirm.com](mailto:grogers@brownfirm.com) (Legal Assistant Sylvia Basnett / [sbasnett@brownfirm.com](mailto:sbasnett@brownfirm.com)). Phone: (406) 248-2611.

## CONSULTANTS & EXPERTS

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

**CONDEMNATION EXPERT:** 21 years Condemnation litigation for state agency. 40+ years active litigation. Services include case analysis, evaluation of appraisals, negotiation assistance and strategy. Expert testimony on recoverable attorney fees and costs. Opportunity for lead and co-counsel on select cases. Email inquiries to [ed@mtjustcomp.com](mailto:ed@mtjustcomp.com).

**FORENSIC DOCUMENT EXAMINER:** Trained by U.S. Secret Service and U.S. Postal Inspection Crime Lab. Retired from the Eugene, Ore., P.D. Qualified in state and federal courts. Certified by the American Board of Forensic Document Examiners. Full-service laboratory for handwriting, ink and paper comparisons. Contact Jim Green, Eugene, Ore.; 888-485-0832. Website at [www.documentexaminer.info](http://www.documentexaminer.info).

**PSYCHOLOGICAL EXAMINATION & EXPERT TESTIMONY:** Montana licensed (#236) psychologist with 20+ years of experience in clinical, health, and forensic (civil & criminal) psychology. Services I can provide include case analysis to assess for malingering and pre-existing conditions, rebuttal testimony, independent psychological examination (IME), examination of: psychological damage, fitness to proceed, criminal responsibility, sentencing mitigation, parental capacity, post mortem testamentary capacity, etc. Patrick Davis, Ph.D. [pjd@dpcmt.com](mailto:pjd@dpcmt.com). [www.dpcmt.com](http://www.dpcmt.com). 406-899-0522.

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