

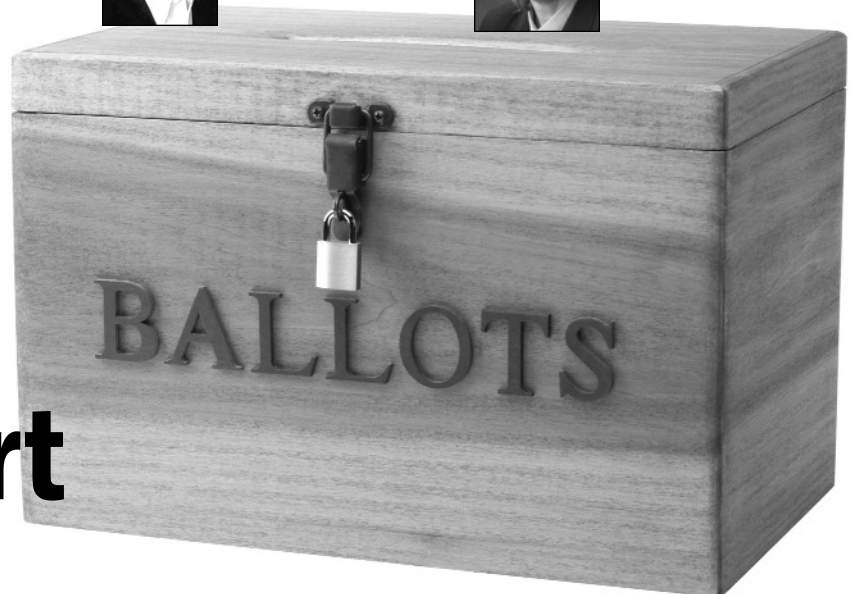
Lawyer

THE STATE BAR OF MONTANA

Election aftermath



The transition gets a jumpstart



Court orders:

90-day public
comment
period for the
Bar dues hike

See details on Page 11

On being white enough



*An incendiary new
history of race in the
workplace & courtroom*

INSIDE: THE 2009 DESKBOOK ORDER FORM



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PRESIDENT'S MESSAGE

Dues increase: Part II

Dues, deans, and holidays

Chris Tweeten

This is the season when people tend to get pulled in lots of different directions at once. In that spirit, this month I'm going to cover three unrelated things in one President's Message.

LAST MONTH I WROTE about the Lawyers Assistance Program, and its connection to the proposed dues increase. But the LAP is only part of the need that the proposed increase would address. The State Bar provides many programs and services, most of which respond to particular mandates set forth in the Supreme Court's Order Unifying the Bar. A little history may help explain.

The Supreme Court ordered the unification of the Bar on motion of the then-president of the voluntary Montana Bar Association, Henry Loble, in an order issued on Jan. 29, 1974. *In re Application of the President of the Montana Bar Association etc.*, 163 Mont. 526, 518 P.2d 33 (1974) ("Unification Order.") It did so over the objections of hundreds of Montana lawyers, but with specific objectives in mind.

The Court rested its decision to unify on the professional obligation that each lawyer undertakes as a condition of the privilege of practicing law. Among these obligations, the Court found, were the protection of clients from dishonest practitioners through "client security funds," advancing access to justice through "lawyer referral plans," advancing needed legal reforms, addressing unethical practices by fellow attorneys, and continuing legal education. 163 Mont. at 525-26. The Court expanded on these purposes in a subsequent order, adding promotion of access to justice and lawyer assistance to the list of objectives of unification. See *in re the Petition of the State Bar of Montana for a Dues Increase Order*, 2001 MT 108, ¶ 20 ("Dues Order.") The Court also made it clear that it viewed the unification of the Bar as a means to effectuate its Constitutional supervision over the practice of law. *Id.*, ¶ 19.

You will find a list of the State Bar programs attached to the pending dues increase petition on the State Bar website. The list shows that the State Bar's programs link directly to the purposes of the unification order or to providing services to various Supreme Court commissions that advance

those purposes. To clarify the point, I have also asked that the Bar's budget be posted on the web so you can better appreciate the needs of the Bar's programs.

The exhibits to the pending Petition show that even without the added cost of the LAP, the Bar's expenses will continue to eat into the Bar's reserves and consume them within the next few years. The trustees recognize that we have a duty to be good stewards of the Bar's funds. Bar executive directors George Bousliman and Chris Manos have worked tirelessly to develop as much non-dues revenue as possible, as you will see from a review of the revenue side of the budget. I have also created an ad hoc committee to conduct a line-by-line review of the budget to identify expenses that can be reduced or eliminated. The Bar will include such a review every three years in the preparation of its triennial budget status report to the Supreme Court. If any of you are interested in learning more about the Bar budgeting process, contact Chris Manos at the State Bar for more information.

Clearly the Bar cannot shut down Court-mandated programs without contravening the Unification and Dues Orders. The pending petition has presented the facts and alternatives, and we await the Court's guidance as to which way is the more appropriate.

I'M SURE MOST OF YOU are aware that after many years of exemplary service, Dean Ed Eck has resigned his position at the University of Montana School of Law to return to teaching. Dean Eck deserves much of the credit for the funding of the renovation and expansion of the Law School building that has staved off a serious challenge to the Law School's continuing accreditation. Dean Eck's intelligence, perseverance, and remarkably welcoming personal touch will be difficult to replace.

The University has asked me to serve on its dean search committee to recruit outstanding candidates from both academia and law practice, with the objective of hiring a new Dean next spring. A separate article on Page 21 in this month's *Montana Lawyer* contains more information.

The search committee needs your help. If you can think of lawyers who possess the qualities that you would want to

McGrath, Bullock in transition mode

By **Charles Wood**
The Montana Lawyer

Just 10 days after the November elections, both Attorney General Mike McGrath and Helena attorney Steve Bullock already were working on their transitions to two of Montana's top legal jobs.

On Nov. 4, McGrath defeated Helena attorney Ron Waterman to become the state's new chief justice of the Montana Supreme Court. Mr. Waterman, severely outgunned in the June primary by an almost 4-to-1 margin, narrowed things a bit in the general election, but still lost by a 3-to-1 margin – McGrath 317,727 votes to Waterman's 105,184.

Mr. Bullock won the state attorney general's seat being vacated by Mr. McGrath. Bullock, a Democrat, defeated Republican opponent Tim Fox, 243,652 votes to 220,459.

On Nov. 14, Mr. McGrath told *The Montana Lawyer* that



McGrath

he was busy preparing to move to the chief justice's office on Jan. 1. And he was working with Mr. Bullock to help him move into the Attorney General's Office. Mr. McGrath said that the transition to chief justice should be a "fairly seamless process" for him. He said the staff of the Supreme court and its Court Administrator's Office are "good people" and that almost all were interested in staying on. He said he is planning no big changes in the administration of the Court. He already is meeting with court office staff, he said.

Mr. McGrath told the *Lawyer* that he will recuse himself from deciding cases before the Supreme Court that he was actively involved in as attorney general, something Mr. Waterman reminded voters that McGrath would have to do. Mr. McGrath said he is now examining other cases to deter-



Bullock

More on TRANSITION, Page 39

Names crop up as possibilities for U.S. attorney, marshal

By **Lee Newspapers State Bureau**

With Barack Obama winning the presidency, some Montanans are expressing interest in the two key federal jobs that change with administrations: the U.S. attorney and U.S. marshal for Montana.

The terms of the current Montana officeholders, U.S. Attorney Bill Mercer and U.S. Marshal Dwight Mackay, will end when President Bush leaves office.

People interested in the jobs apply

with U.S. Sens. Max Baucus and Jon Tester, who will forward their recommendations to the Obama administration for its consideration. As the state's senior senator, Baucus plays the lead role in the recommendation after consulting with Tester.

Here are the names of people who confirmed they are interested in the U.S. attorney's job or would be interested if approached:

■ Melodee Hanes of Billings. Hanes

has worked as Baucus's state director since 1995 and previously worked as a prosecutor for 16 years in Iowa and four years for the Yellowstone County Attorney's Office before leaving in 2002 to join Baucus' re-election campaign staff.

■ John Mudd of Missoula. Mudd has practiced law since 2001. He has handled legal cases for the Baucus and Tester campaigns and represented the Montana Democratic Party in a federal

see in the new dean, please submit the names for consideration by the search committee.

FINALLY, AS YOU PREPARE for the holidays this year, please remember to spread the holiday cheer among those less fortunate than we are. We lawyers are always generous with our time, talent, and treasure. We give to good causes whenever we can – witness the expansion of the Law School building, which would not be happening without the generosity of

our Bar. This time of year, though, the little things also matter.

When you cross paths with a bell ringer standing in the cold and snow, empty out the change in your pocket and drop it in the kettle. Make a little bigger year-end donation to the charity of your choice. In our office, we adopt a family through a program in Helena for victims of domestic violence, and fill their Christmas stockings with gifts that they would otherwise do without.

Have a joyous holiday season and remember the reason we celebrate every year. Make the season a bit brighter for someone else. It might give you a warm feeling as well. ○

lawsuit this fall over alleged Republican vote suppression.

■ Josh Van de Wetering of Missoula. Van de Wetering has a private law practice after working for a decade as a deputy U.S. attorney.

■ Fred Van Valkenburg of Missoula. He has been Missoula County attorney since 1998 and has worked as a prosecutor in that office since 1985. He served for 20 years in the Montana Senate and was president for one session and majority leader for three sessions.

Also mentioned as potentially interested in the U.S. attorney's job but who couldn't be reached for comment were: Steve Doherty, a Missoula lawyer and former state senator from Great Falls; Pat Smith, a Missoula attorney; Mike Wheat, a Bozeman attorney and state

senator who was an unsuccessful candidate in June for the Democratic nomination for attorney general.

THREE MEN – Billings Mayor Ron Tussing, Dennis McCave of Billings, and Ed Tinsley of Helena – are interested in the U.S. marshal's job for Montana.

Tussing, who was sworn in as mayor of Billings in January 2006, was an unsuccessful Democratic candidate for the Public Service Commission from District 2, losing on Nov. 4 to Commissioner Brad Molnar, R-Laurel.

Before being elected mayor of Billings, Tussing was a SWAT (Special Weapons and Tactics) team leader, detective and was twice elected sheriff as a Democrat in Lancaster County, Neb. Democratic Gov. Bob Kerrey appointed Tussing superintendent of the Nebraska State Patrol. Tussing later served as

chief of police in Billings for more than six years.

McCave has worked for the Yellowstone County Sheriff's Office for 30 years. His current assignment is overseeing the Yellowstone County Detention Facility.

Tinsley is a Lewis & Clark County commissioner who recently lost a bid for re-election. He is a graduate of the Montana Law Enforcement Academy and worked as chief of securities enforcement for the State Auditor's Office. He is Montana's Democratic national committeeman and was the state party's first superdelegate to back Obama last winter.

The marshal oversees the Marshals Service office in Montana, which is responsible for protecting the federal judiciary, transporting federal prisoners, and apprehending fugitives. ○

Seeley is state's newest district judge

Assistant Attorney General Kathy Seeley, of Helena, defeated Helena attorney Steve Frankino to win a judgeship in the Helena District Court on Nov. 4.

Ms. Seeley won by 16,391 votes to 15,576.

Seeley and Frankino, a district court senior law clerk, were vying to replace Judge Thomas Honzel, who is retiring from the bench on Dec. 31. Ms. Seeley joins Jeffrey Sherlock and Dorothy McCarter as the three district judges for the 1st Judicial District of Lewis & Clark and Broadwater counties.

Ms. Seeley graduated from the University of Montana School of Law in 1983. She worked as a law clerk for 1st Judicial District Court Judge Henry Loble. In 1985, she joined the staff of the Montana Attorney General's Office. She initially advised and represented the Motor Vehicle Division and handled cases in the Montana Supreme Court and the federal

courts. She continued her court cases and various other duties, including the research and writing necessary to draft attorney general opinions.

Ms. Seeley and her husband Rex are the parents of two teenagers.

MEANWHILE, in the only other contested district judge race, Polson District Judge C.B. McNeil fended off a challenge by Arlee attorney Joey Jayne to retain his seat on the bench of the 20th Judicial District in Lake and Sanders counties.

Judge McNeil won the race with 10,217 votes to Ms. Jayne's 7,492.



Kathy Seeley

Voters oust embattled clerk of court

Yellowstone County Clerk of Court Laura Brent, who was chastised recently by the county's five district judges for ignoring court orders (see October 2008 *Montana Lawyer*), lost re-election on Nov. 4 to her opponent Carol Muessig.

Ms. Muessig, a Democrat, defeated Ms. Brent, a Republican, 34,957 to 28,289. Muessig is the office manager at the Jarussi & Bishop law firm in Billings.

In a letter to Ms. Brent in August, the judges said she was facing legal trouble because she mostly ignored 11 court orders, has failed to complete the implementation of jury management software, and had other problems in the clerk's office.

In other areas, Silver Bow County's chief deputy county attorney, Eileen Joyce, defeated Deputy County attorney Sam Cox to become the new county attorney. In Anaconda-Deer Lodge County, Joan Borneman kept her seat as county attorney. And in Roosevelt County, Patricia Stennes won the race for clerk of court.

Lawyers keep watch at polling places

About 300 Montana attorneys kept watch at polling sites across the state on election night on behalf of the Democratic Party's nationwide Voter Protection Program.

The attorneys were on hand not to closely examine the voting process or look for fraud, but to assist if any conflict arose between voters and election officials.

No significant election problems were reported in Montana Nov. 4.

Mortgage relief and other tax breaks

By Robert W. Wood

*While bank bailouts make news,
taxpayers get some crumbs*

Although the news media understandably focuses on the multibillion dollar

federal bailouts of financial institutions, Joe the Taxpayer has at least received a few crumbs. In fact, over the last year, there have been a number provisions of federal tax law enacted that are designed to positively impact consumers. That is entirely appropriate, given the huge fallout related to the subprime mortgage meltdown and resulting economic black hole. Here's a brief review of Congressional tax law fixes that could impact you.

Mortgage debts

In December 2007, Congress enacted the Mortgage Forgiveness Debt Relief Act of 2007. The target of this act is home foreclosures, with specific help to alleviate the tax effects of treating a foreclosure as a real estate sale or disposition. The general rule – that a foreclosure is a sale – continues to apply. Sale treatment means that you may have to pay tax if you have a gain. True, there is a provision in the Internal Revenue Code to exclude the gain on the sale of a primary personal residence of up to \$500,000 for a husband and wife filing jointly, or \$250,000 for single filing status.

Thus, you get a tax break if you have a modest gain on your principal residence. On the flip side, however, if you experience a loss on the disposition of your residence, you can claim no tax deduction. The tax treatment of a foreclosure can seem even more unjust.

Under long established tax rules, when you experience mortgage debt forgiveness (you walk away from your home and are relieved of the debt), it is considered taxable income. This creates situations in which a taxpayer loses a house through foreclosure, and still has to pay income taxes. The relief of indebtedness represents a purely paper increase in wealth. Fortunately, for tax years 2007, 2008 and 2009, the federal law changed this rule to exclude up to \$2 million of debt cancellation income from a foreclosure. It applies to foreclosures between Jan. 1, 2007 and Dec. 31, 2009.

Economic Stimulus Act

Next in the federal parade of relief legislation was the Economic Stimulus Act of 2008, passed in February 2008. This federal law provides a one-time refundable tax credit against personal income taxes of \$600 per individual (plus another \$300 for qualified dependents). This federal law triggered all of the economic stimulus checks (a whopping \$93 billion mailed out) to millions of taxpayers (reportedly over 110 million taxpayers).

The Economic Stimulus Act also included provisions to raise the maximum loan amounts homebuyers could receive for mortgages backed by Fannie

Mae and Freddie Mac, plus other agencies.

More Housing Relief

In May 2008, Congress passed the Food, Conservation & Energy Act of 2008. Buried in that law was some tax help to military veterans purchasing homes, authorizing states to issue qualified veterans mortgage bonds under which interest payments are tax-exempt. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008. It contains a number of tax provisions that impact individual homeowners.

For one, there is a new repayable tax credit for principal residence purchases by first-time homebuyers. This is an odd tax credit, since most tax credits are never repaid. This new tax credit has to be repaid to the federal government in equal installments over 15 years, without interest. In effect, this is an interest-free loan from the federal government for qualified first-time homebuyers.

There are definitions and technical rules, but if you qualify, the credit is equal to 10 percent of the purchase price of the residence, up to a maximum of \$7,500 for a single person or a married couple filing jointly (or \$3,750 for a married person filing separately). The credit is phased out for individuals with certain modified adjusted gross income (for joint filers, generally the phase-out is for combined gross income between \$150,000 and \$170,000).

This repayable tax credit applies to residences bought between April 9, 2008 and July 31, 2009. Normally, you are to claim the credit for the year of purchase, but in limited circumstances, you can reach back. There are timing years on repayment, too, and rules covering what happens if you sell the home or cease to use it as a principal residence.

There are likewise rules about involuntary conversions (destruction, theft, condemnation, etc.). The credit is not available to nonresident aliens, nor to buyers who finance with tax-exempt revenue bonds.

Standard deduction changes

Another change in the 2008 Housing and Economic Recovery Act concerns individual taxpayers who do not itemize deductions (non-itemizers). For the 2008 tax year only, taxpayers who do not itemize deductions can increase their standard deduction to account for regular state property taxes assessed by state or local governments. This increase in the standard deduction can be the amount of the state and local

property taxes or \$500 (or \$1,000 for joint filers), whichever is less. This tax gross-up for non-itemizers also applies to owners of cooperative apartments.

Hurricane help

There have been several federal laws specifically designed to help victims of Hurricanes Katrina, Rita and Wilma. The 2008 Housing and Economic Recovery Act also has some hurricane relief. For one, this act expands casualty loss tax relief for owners of homes that were damaged by the hurricanes in 2005.

If you had hurricane damage, you probably need to see someone who specializes in this area. There are a number of different federal laws, including the Gulf Opportunity Zone Act passed in late 2005. However, the 2008 Housing and Economic Recovery Act contains some additional relief, allowing taxpayers the claimed a 2005 casualty loss deduction to amend their 2005 returns.

AMT relief

The 2008 Housing and Economic Recovery Act also tinkers with the dreaded alternative minimum tax, or AMT. For one thing, interest on certain tax-exempt bonds issued after July 30, 2008 is no longer considered a tax preference item. Moreover, certain exempt facility bonds that are part of a larger issue from which at least 95 percent of the net proceeds are used to provide qualified residential rental projects, qualified mortgage bonds and qualified veterans' mortgage bonds, have also been deleted. There are reforms for real estate investment trusts as well.

Of course, as this short list should indicate, the AMT is still largely intact. Look for more tinkering with the AMT in the future, though outright repeal of the AMT may just be too expensive to happen anytime soon.

Low-income housing credits

The 2008 Housing and Economic Recovery Act liberalizes some rules surrounding low income housing tax credits. These credits are designed to stimulate development of low income property. Bear in mind that it is the developer or owner of property that gets the credit.

Military personnel

Finally, the 2008 Housing and Economic Recovery Act reinforces some protections for military personnel regarding mortgage foreclosure. For example, a service member can request that a mortgage lender set the interest rate at no more than 6 percent while he or she is on active duty, and the lender must comply.

Conclusion

None of these provisions of federal law is likely to radically alter the economy. Nevertheless, some of them are pretty significant. Tax relief from up to \$2 million worth of discharge of indebtedness income is perhaps the most widely applicable provision. The repayable tax credit for first time homebuyers is also significant. We can probably look for additional provisions in the future, especially targeted at housing.

ROBERT W. WOOD, a member of the State Bar of Montana, practices law with Wood & Porter, San Francisco (www.wood-porter.com), and is the author of *Taxation of Damage Awards and Settlement Payments* (3d Ed. Tax Institute 2005 with 2008 update), and *Legal Guide to Independent Contractor Status* (4th Ed. Tax Institute 2007), both available at www.taxinstitute.com.

Innocence Project opens Montana office

The Montana Innocence Project has quietly opened its doors in Missoula, the *Missoulian* reported on Nov. 16.

The project, based on and affiliated with the Innocence Project in New York City, has only one employee, but a cadre of volunteers is on board and the group has forged agreements with the University of Montana, the *Missoulian* said.

Jessie McQuillan, the group's executive director, said, "We want to work with people throughout the justice system to make sure innocent people aren't convicted."

While Montana hasn't had a huge number of high-profile cases where people have been wrongly convicted, there have been a few. The most prominent, the case of Jimmy Ray Bromgard, ended with

Bromgard being released after serving 15 years for a rape he didn't commit.

The fledgling group has drawn a strong, well-connected board of directors, including former federal magistrate Bart Erickson and Dan Donovan, president of the Montana Association of Criminal Defense Lawyers.

McQuillan said the group will take written requests for investigation from both prisoners and attorneys. A basic background investigation will determine whether the case has merit, but subsequent work will be conducted by students in the University of Montana Law and Journalism schools.

Court amends the CLE Rules

The Montana Supreme court has ordered changes in the Rules of Continuing Legal Education that clarify the procedure by which attorneys are transferred to inactive status for noncompliance with CLE requirements.

The Nov. 13 order is also meant to make all references to the procedure consistent, the Court order said. The order accepts recommendations from the Court Commission of Continuing Legal Education.

You can find the court order with the rule changes at:

<http://courts.mt.gov/newrules.asp>

Public defenders in revolt

By Erik Eckholm
of the New York Times

Public defenders' offices in at least seven states are refusing to take on new cases or have sued to limit them, citing overwhelming workloads that they say undermine the constitutional right to counsel for the poor.

Public defenders are notoriously overworked, and their turnover is high and their pay low. But now, in the most open revolt by public defenders in memory, the government appointed lawyers say budget cuts and rising caseloads have pushed them to the breaking point.

In September, a Florida judge ruled that the public defenders' office in Miami-Dade County could refuse to represent many of those arrested on lesser felony charges so its lawyers could provide a better defense for other clients. Over the last three years, the average number of felony cases handled by each lawyer in a year has climbed to close to 500, from 367, officials said, and caseloads for lawyers assigned to misdemeanor cases has risen to 2,225, from 1,380.

"Right now a lot of public defenders are starting to stand up and say, 'No more. We can't ethically handle this many cases,'" said David Carroll, director of research for the National Legal Aid and Defender Association.

The state's argument for the budget cuts is the same as it is for other agencies and programs that have been hit — the sour economy and falling revenues.

THE MIAMI-DADE CASE, which is being closely watched across the country, was appealed by the state and is now before the Florida Supreme Court. If the judge's decision is upheld, it could force courts here to draw lawyers from a smaller state office and contract with private lawyers, at greater expense. But such lawsuits are just the most overt sign of the burdens that lead harried lawyers

Citing rising workload, public lawyers reject cases

in Michigan to talk openly about "McJustice" and in New York to make dark jokes about the plea bargain "assembly line."

"In my opinion, there should be hundreds of such motions or lawsuits," said Norman Lefstein, a professor at the Indiana University School of Law and an expert on criminal justice.

"I think the quality of public defense around the country is absolutely deteriorating," Mr. Lefstein said, asserting that unless states spent more on lawyers, the courts would force them to delay trials or, as has happened in a few cases, threaten to drop charges against unrepresented defendants.

The most immediate impact of the rushed justice, Mr. Lefstein and Mr. Carroll said, is that innocent defendants, sitting in jail, may feel pressure to plead guilty or may be wrongfully convicted — which means the real offenders would be left untouched.

Appeals claiming inadequate defense are extremely difficult to win, experts say.

In its landmark 1963 decision, *Gideon v. Wainwright*, which was widened in subsequent cases, the United States Supreme Court ruled that poor criminal defendants were entitled to government-paid representation.

In the 11th Judicial Circuit of Florida here, the defenders' office has had its budget cut by 12.6 percent in the last two years while the workload has climbed by 29 percent over the last four years, said the circuit's chief defender, Bennett H. Brummer.

State Senator Victor D. Crist, chairman of the Criminal and Civil Justice

Appropriations Committee, is a vocal critic of the Miami-Dade lawsuit, saying Mr. Brummer is "blowing things out of proportion."

Mr. Crist said the judicial system had faced smaller cuts than other parts of government. Although no defendant should be denied due process, he said that the courts, state's attorneys and public defenders must tighten their belts, too. He said defenders' offices could operate far more efficiently, for example, by more carefully choosing which cases required depositions and other time-consuming actions. He said they should impose fees on clients, even if the sums were low or payment was delayed.

Legal defense is a right, Mr. Crist said, but "quality education is a right as well, and proper policing and safety in the community and maintaining standards in our prisons." Legislators, he added, had to make choices.

Mr. Brummer countered: "There's a race to the bottom here. As the loads worsen, the more experienced lawyers leave. But the cases continue to come in."

THIS PUTS DEFENDERS like Arthur J. Jones, 30, on a treadmill of frustration. In his Miami office on a recent morning, Mr. Jones looked over a printout listing 155 current clients. He spent a frantic morning in court, handling arraignments and plea bargains for 23 offenders, a majority of whom he had never met before. Most of his cases involve lesser felonies like cocaine possession, burglary and grand theft.

Mr. Jones, in between hushed conversations with clients in the hallway or the holding pen, said he wished he had more time to investigate cases and could go to trial more often, rather than accepting the police version of events and then, after perhaps a five-minute discussion, helping his clients make a

More DEFENDERS, Page 25

By **Greg Tuttle**
of the Billings Gazette

Gazette wants Court to amend rule on disciplinary records

The *Billings Gazette* has asked the Montana Supreme Court to revise its own rule that the newspaper alleges violates the Montana Constitution by shielding from public disclosure some lawyer disciplinary records.

In a petition filed with the state's high court in October, a lawyer for the newspaper said the Supreme Court has a duty to ensure that the rules it adopts comply with the public's right-to-know provision of the state Constitution.

"If it is the purpose of an attorney discipline proceeding to protect the public and maintain the integrity of the legal profession, a rule that keeps the conduct of an attorney vested with the public trust a secret, cannot further that purpose," wrote Helena attorney Mike Meloy, who is representing the newspaper.

At issue is the misconduct of former Billings Deputy City Attorney Moira D'Alton, who in 2006 was disciplined by the Supreme Court for violating four provisions of the Montana Rules of Professional Conduct, the guidelines written and enforced by the Supreme Court to govern actions of lawyers. D'Alton's discipline included a public censure, a 30-day suspension of her license, and two years of probation. The discipline followed complaints filed against D'Alton in 2003 and 2004, while she was working as a city prosecutor.

After D'Alton was disciplined, the newspaper sought disclosure of the complaints filed against her with the Montana Commission on Practice and the Office of Disciplinary Counsel, the branches of the Supreme Court that investigate allegations of lawyer misconduct.

The agencies denied the newspaper's request, citing a rule written by the Supreme Court that keeps such complaints confidential if the accused attorney admits to the allegations and accepts disciplinary action before a formal complaint is filed.

The newspaper responded in May 2006 by filing a lawsuit in Lewis & Clark County District Court against the state of Montana. The newspaper argued that the public has a right to know the details of misconduct by a lawyer who works for the government.

Previous rulings by the Supreme Court have established that

public employees in positions of public trust, such as teachers, public defenders and police officers, have a reduced right to privacy in matters of misconduct that result in discipline.

In May 2007, Judge Thomas Honzel ruled against the newspaper, saying he did not have authority to order the release of documents held confidential under a rule created by the Supreme Court. The newspaper then appealed the case to the Supreme Court.

In a unanimous ruling issued in August, the justices said the records sought by the newspaper would not be made public because the case was improperly filed with the District Court. The ruling, written by Justice Patricia Cotter, also upheld Honzel's finding that a District Court judge does not have the authority to order the release of documents held confidentially under a Supreme Court rule.

Cotter also stated that D'Alton had an expectation of privacy when she admitted to the misconduct under the Supreme Court rules. Releasing those documents, Cotter said, would violate D'Alton's due-process rights.

In the new case filed directly with the Supreme Court, the newspaper has dropped its request to have D'Alton's disciplinary records released. The *Gazette* now seeks to have the Supreme Court revise its rule that allows for such records to remain secret in cases involving government attorneys.

The Supreme Court rule that keeps such records secret violates the public's right to know and is "patently deficient in that it does not permit disclosure to occur when the attorney's conduct arose out of public employment," Meloy wrote on behalf of the newspaper.

"Indeed, there is nothing rational about keeping the misdeeds of a government attorney from public scrutiny while permitting disclosure of information related to the discipline of a police officer, a teacher or public defender."

D'Alton was fired by the city of Billings in 2004 and now works as state public defender. She recently won a wrongful-termination lawsuit against the city when a district court judge said the city did not follow its own policies when it fired D'Alton. The amount of damages owed D'Alton by the city has yet to be determined. ○

Libby JP may lose job over sexual advances

From the **Missoulian**

A judge in Libby is off the bench, with a recommendation that he be removed permanently from office, after investigators ruled he did, in fact, offer leniency to female defendants in return for sexual favors.

The fate of Gary Hicks, a two-term justice of the peace, now is in the hands of the Montana Supreme Court.

"I didn't see any surprises here," said Stephen Berg, prosecuting attorney in the case. "There was no question in my mind that the commission had to be thinking of removal."

The state Judicial Standards Commission heard complaints against Hicks during an Aug. 19 hearing, and issued its unanimous recommendation on Oct. 21.

Hicks solicited sex in exchange for court leniency, the commission ruled, and he retaliated with high bail amounts

More on LIBBY JP, Page 24

The Montana Supreme Court set Feb. 17, 2009, as the deadline for comments about the State Bar's petition for a Bar dues increase.

The increase would raise dues by \$50 for both active and inactive members. The Bar, which already had taken some member comments, requested a further comment period for the Court. The new 90-day comment period ordered by the

Court sets comment period for Bar dues increase

Court began on Nov. 18, the day the order was signed.

Comments may be submitted by the State Bar membership and the public to the

clerk of the Supreme Court at PO Box 203003, Helena MT 59620-3003 by Feb.17.

Find the dues increase petition and the comment period court order at the home page of www.montanabar.org

State Bar signs on to letter to Obama, McCain

The presidents of the state bars across the U.S. have sent a letter to President-Elect Barack Obama, seeking to engage him in a discussion about the key legal issues facing the country. Among those signing the letter was State Bar of Montana President Chris Tweeten. The letter was addressed to both presidential candidates after a summit of bar presidents was held in New York in August. The letter addresses the bars' concerns, and asks the winner of the election to meet with bar presidents in April to discuss the Obama program on justice-system issues. The letter follows:

Dear Senator Obama:

We are State Bar Presidents from across the United States. Recently, we met as a group in order to identify and discuss the key issues of law and policy common to our respective States and to the nation, issues that we believe you, as a Presidential candidate, should address both during this 2008 election year and if you are elected, after you take office in January 2009. With such a large number of critically important legal issues in the U.S., this election is likely to represent an important shift in our nation's policies that will affect every facet of American life.

Forty-five years ago, after taking office, President John F.

Kennedy met with all fifty State Bar Presidents, the President of the ABA and fifty African-American lawyers to discuss the issues that most affected the States and the legal profession. Out of that meeting grew the Lawyers' Committee for Civil Rights Under Law. It is in that collegial spirit that we ask you for a time for a group of us to a meet with you and your campaign staff, prior to the election, in order to ascertain your views and, again, if you are successful, to meet again after the election in order to discuss the issues outlined below in greater depth.

We, as State Bar Presidents, on a non-partisan basis, submit the following short list of questions for your consideration.

Major legal issues affecting our states and our society 1) Justice for all

While the United States Supreme Court in *Gideon v. Wainwright* confirmed in 1965 that an individual has a right to counsel when accused of a crime, the reality, in many parts of the country, is that the poor lack the most fundamental legal defense services, and fare even worse in civil litigation where there is no right to counsel, and where they are too often

More LETTER TO OBAMA, Page 30

The Montana State Bar Section on Construction Law held its 4th Annual Construction Law Institute in Bozeman on Sept. 26. The program was attended by approximately 65 Montana lawyers and construction professionals.

The program, titled "Differing Perspectives: Construction Projects From the Point of View of Owners and Contractors," covered a variety of issues from construction contracting issues for both contractors and owners to special issues arising in energy-related construction projects and particular types of construction contracting such as "Design

Construction law event draws national speakers

Build" projects.

The Construction Law Section brought leading construction practitioners from throughout the nation to the program. The presenters included: Michael D. Tarullo, A. Elizabeth Patrick, G. Edgar James, Carina Y. Ohara, and Michael L. Sterling. Additionally, the Construction Law Section presented an update on Montana issues by three of the Section's members: Christian T. Nygren,

Eric Nord, and Buzz Tarlow.

A highlight of the Institute was the Career Achievement Award which was given to J. Michael Young, of the law firm of

Alexander, Baucus, Taleff & Paul in Great Falls. Mr. Young was recognized for his contributions to construction law through his many years of practice both as a lawyer for the state of Montana and in private practice.

Construction Law Section Chair Chris Nygren said the Section "would like to have another program in the spring focusing on issues for subcontractors and contractors, perhaps in the Missoula area."

Pro bono reporting and online option accompanies IOLTA reporting form

A report form about lawyers' pro bono performance is being mailed this month to State Bar members, along with the mandatory, annual IOLTA reporting form.

Bar members have the option of filling out the pro bono form on the State Bar website. The IOLTA form must be returned to the State Bar offices by mail. The deadline for filling out the IOLTA

form and pro bono form is Dec. 12.

For members who choose to fill out the pro bono form, the link to the form can be found on the State Bar home page (www.montanabar.org) under the "Front Burner." The form leads off with instructions on how to complete it.

The pro bono reporting form is designed to capture the time attorneys spend in performing work described

under Rule 6.1 of the Rules of Professional Conduct as well as other information about opportunities, education needs, and experiences. Rule 6.1 states, "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least 50 hours of legal services without fee or expectation of fee."

If you have any questions or concerns about the form, contact Patty Fain of Billings, the statewide pro bono coordinator for the Montana Supreme Court, at (406) 794-7824 or PFain@mt.gov.

BAR-BENCH BRIEFS

Janna Gobeo honored as Attorney of the Year

Missoula MLSA attorney Janna Gobeo, who is a lawyer for the Montana Legal Services Association, has been awarded the Missoula Family Violence Council's Attorney of the Year Award for her service to survivors of relationship violence.

The Missoula Family Violence Council is a nonprofit organization dedicated to educating the public about relationship violence, sexual violence, stalking, and the abuse of children, elders and persons with disabilities. MFVC members include educators and school administrators, law enforcement personnel, crime victim advocates, counselors, social service providers, and members of the community at large.

Two named Prosecutors of the Year

The Montana Coalition Against Domestic & Sexual Violence, Montana Attorney General's Office, and State Bar of Montana have named two recipients as Prosecutors of the Year. Awardees are Deputy Yellowstone County Attorney Rod Souza and Deputy Hill County Attorney Lindsay Osborne.

Mr. Souza and Ms. Osborne were recognized for their commitment and excellence in prosecuting domestic and sexual violence cases. Recipients of this award are recognized for using evidence-based prosecution, which relies on all evidence, not only victims' testimony. They are honored for working effectively with law enforcement, victim services programs, and victims to successfully prosecute cases while maintaining high standards for victims' rights. Further, they are recognized for understanding the dynamics of domestic and sexual violence, the importance of prosecution towards ending the cycle of violence, and for compassion and empathy in working with victims.

Real Estate CLE to discuss recent cases

Easements incorporated by reference from surveys, as discussed in *Blazer v. Wall* and *Our Lady of Rockies v. Peterson* (each decided in April, 2008), will be featured at the 2009

Fairmont Real Estate CLE on Feb. 13 at Fairmont Hot Springs.

The cases will be presented in oral argument, explaining each side's position. The Supreme Court's majority opinions will be presented, along with explanation of the dissents. James Bartlett and Randall S. Ogle, original counsel on *Blazer*, will present this case and discuss the decision's impact. William O. Bronson and Donald S. Snavelly will present and discuss *Our Lady v. Peterson*. Randall A. Snyder moderates.

Plan to attend and learn whether these cases present the latest and perhaps final word for when easements from surveys may be relied upon in the chain of title.

Retirement party set for Judge Honzel

The 1st Judicial District Bar Association and the staff of the Lewis & Clark County Courthouse will celebrate the retirement of the Helena District Judge Thomas C. Honzel at 7 p.m., Thursday, Dec. 18, at the Great Northern Hotel, 835 Great Northern Blvd., in Helena. Everyone is invited to attend.

Hors d'oeuvres and a no-host bar will be provided.

Grant given for self-help law videos

The Montana Legal Services Association, Montana Supreme Court Office of the Court Administrator, and the University of Montana School Of Law received a \$31,071 Technology Initiative Grant from Legal Services Corporation and State Justice Institute to produce low cost, high quality client education and outreach videos.

The videos will be used by Montana's new court-based Self-Help Law Centers and by MLSA in its community education campaign. The project partners will use grant funds to purchase the basic "off the shelf" consumer-level equipment needed to film, edit and duplicate video content.

order online at www.montanabar.org and
click on the Bookstore tab.

Upcoming CLE seminars for Montana lawyers

December 2 Kalispell – Hampton Inn

OSHA Compliance 2008 6.0 CLE credits. Presented by Fred Pryor Seminars, (800) 556-3012

December 2 Helena – Great Northern Hotel

Water Rights Sales & Transfers in Montana 6.0 CLE credits. Presented by Lorman, (800) 678-3940

December 3 Missoula – Ruby's Inn

OSHA Compliance 2008 6.0 CLE credits. Presented by Fred Pryor Seminars, (800) 556-3012

December 3 via satellite in Montana

Year-End Tax Update 4.0 CLE credits. Presented by Edward Jones Company, (314) 515-5848

December 3 Helena – Park Plaza Hotel

Land Surveys, Legal Descriptions & Boundaries 6.50 CLE credits. Presented by HalfMoon LLC, (715) 835-5900

December 3 Billings – Crowne Plaza Hotel

County Attorneys Winter Training Seminar 9.0 CLE credits, including 1.0 Ethics credit. Presented by the Montana County Attorneys Association, (406) 443-1570

December 4 Helena – Colonial Hotel

OSHA Compliance 2008 6.0 CLE credits. Presented by Fred Pryor Seminars, (800) 556-3012

December 4 Teleconference

Paralegal Seminar: Emerging Trends in Real Estate 1.0 CLE credit. Presented by IPE, (800) 777-8707

December 4 Billings

Landlord-Tenant Law 6.50 CLE credits, including 1.0 Ethics credit. Presented by Sterling Education Services, (715) 855-0495

December 5 Teleconference

Paralegal Guide to Successful Trial Techniques 1.0 CLE credit. Presented by IPE, (800) 777-8707

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Other web & phone CLEs for Montana credit are:

■ MTLA's SeminarWeb Live! Seminars at www.seminarweblive.com/mt/index.cfm?showfull-page=1&event=showAppPage&pg=semwebCatalog&panel=browseLive

■ Lorman Education Services' teleconferences at www.lorman.com/teleconferences/

December 12 Billings – Crowne Plaza Hotel

Building Your Civil Trial Skills 6.0 CLE credits, including 1.0 Ethics credit. Presented by the National Business Institute, (800) 930-6182

December 12 Teleconference

Legal Writing for Paralegals 1.0 CLE credit. Presented by IPE, (800) 777-8707

December 16 Helena – Metcalf Building, Capitol Complex

Montana Wrongful Discharge Act 3.0 CLE credits. Presented by the state Personnel Div., (406) 444-3985

December 17 via satellite

What Tax Advisors Need to Know in a Struggling Economy 2.0 CLE credits. Presented by Edward Jones Company, (314) 515-5848

December 18 Missoula – Courtyard Marriott

Montana Public Records Act Compliance 6.25 CLE credits. Presented by MEDS-PDN, (715) 836-9900

January 14 Billings – Holiday Inn Grand

Advanced Employment Law 6.0 CLE credits. Presented by the National Business Institute, (800) 930-6182

January 16 Big Sky – Huntley Lodge

Annual CLE & Ski 10.0 CLE credits, including 1.0 Ethics credit. Presented by the CLE Institute of the State Bar of Montana, (406) 447-2206.

January 30 Bozeman

Water Law Update Presented by the CLE Institute of the State Bar of Montana. Details will be mailed to Bar members.

February 13 Fairmont Hot Springs

Annual Real Estate CLE Presented by the CLE Institute of the State Bar of Montana. Details will be mailed to Bar members.

February 20 Bozeman

Bench-Bar Conference Presented by the CLE Institute of the State Bar of Montana. Details will be mailed to Bar members.

Economic-relief rule creates an IOLTA problem

The ABA and the State Bar of Montana are writing to the federal government to complain that lawyers' IOLTA trust accounts have fallen through a gap in a new federal economic-relief program.

The Federal Deposit Insurance Corporation (FDIC) on Oct. 14 created the Temporary Liquidity Guarantee Program (TLGP) to "strengthen confidence and encourage liquidity in the banking system by, among other things, providing full coverage of non-interest bearing deposit transaction accounts (such as payroll accounts used by businesses) regardless of dollar amount." On Oct. 23, the FDIC Board adopted an Interim Rule and released it for public comment. The Interim Rule does not provide full coverage for Interest on Lawyer Trust Accounts (IOLTA), which are similar to these transaction accounts, the ABA said. The unintended consequence of this Interim Rule, the ABA added, is that a client's total funds in one financial institution including the amount in an IOLTA account exceeding \$250,000 are eligible for unlimited insurance only if they are moved to a covered "non-interest bearing deposit

transaction account."

The ABA is urging Congress to support expanding the TLGP to provide full coverage for IOLTA accounts, regardless of dollar amount. The ABA sent a letter to Sheila C. Blair, chair of the FDIC, seeking a clarification or exception to the rules explicitly stating that funds in IOLTA accounts have unlimited deposit insurance coverage regardless of dollar amounts, because:

- IOLTA accounts are effectively the same as payroll accounts.

- While these accounts pay interest, banks do so with explicit permission of federal regulators and only pay the interest to third party non-profit IOLTA programs.

- Thirty-seven states require lawyers to deposit client funds that cannot earn net interest for the client in IOLTA accounts.

- Now is not the time to force lawyers to abandon a program that provides much needed revenue for legal aid for the poor, especially now with increase in foreclosures and evictions.

"The TGLP, as currently configured,

has the potential to greatly reduce the interest income received by IOLTA programs," the ABA said, "because in many states a significant portion of the IOLTA funds are generated by attorneys holding large amounts of client funds for short periods of time, such as funds held for real estate transactions and for large settlements for multiple clients prior to distribution for which IOLTA accounts act as clearing accounts.

"Establishing multiple accounts at various financial institutions for amounts over \$250,000 for a client is not a viable solution. Not only is it unworkable because attorneys cannot know whether a client may later deposit excess funds of their own at any of the banks chosen, it is not possible to split a large deposit which itself is only in the IOLTA account just long enough for the check to clear."

Also, the State Bar of Montana wrote a letter bearing the same argument to Montana's U.S. Senators Max Baucus and John Tester and to U.S. Rep. Dennis Rehberg.

The National Organization for Bar Counsel also is lobbying Congress and the FDIC for the rule fix. ○

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Author: Klaus Sitte, director of Montana Legal Services

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Annual Report lists court achievements

The following is excerpted from the Montana Supreme Court's Annual Report, released in October 2008, covering the Montana judicial branch for the year 2007:

A message from Chief Justice Karla M. Gray

As I reflect on 2007 in preparing this report to the citizens of Montana, I am delighted by the progress in Montana's Judicial Branch. The Judicial Branch – at all levels – continued to do an extraordinary job of adjudicating cases and providing a place for Montanans to resolve their disputes, especially given available resources. The Branch also is rising to meet even newer challenges. Courts and individual judges are taking leadership roles in addressing serious issues that go to the heart of the system of government we all hold so dear. I am pleased to bring these matters to your attention.

Equal access to the justice system is one such issue. An ever-increasing number of litigants are representing themselves in all Montana courts each year. For most of these citizens, it is not truly a “choice” to self-represent, but a decision driven by economic factors. Montana's judges, clerks of court and many other partners recognize this, and have attempted to assist these litigants in opening the doors of justice to all. In 2007, the Legislature and Governor Brian Schweitzer stepped up to join the movement toward equal access by providing state funding for a self-help law program. Because of the commitment to access to justice by judges, clerks of court, equal access organizations, Judicial Branch staff and many others, we are establishing a self-help law program that is Montana-specific and provides Montanans with meaningful access to the courts. The funding was provided on a one-time only basis, however, which presents both a challenge and an opportunity. We must – and will – prove to the funders during the 2009 legislative session that this program is worthy of continuation and, indeed, modest expansion so our courts are truly accessible.

The rights of children in our court system also has remained an issue close to my heart. In 2007, the Judicial Branch's commitment to what I fondly call “kid cases” continued to be a priority. The Supreme Court co-hosted the second annual children's summit, bringing together the various participants—judges, lawyers, social workers and others—involved in child abuse and neglect cases. The changes resulting from the summit have been significant. As one example, the Supreme Court has dramatically reduced decision-making time in abused and neglected “kid cases” so that both children and parents can know what their futures hold as quickly as possible. Our Youth Courts also have undertaken creative approaches to managing juvenile offenders, including children, who have committed offenses and also have mental health issues. Finally, the Judicial Branch was successful in securing additional funding for the Court Appointed Special Advocate programs that provide essential services to abused and neglected children and to the judges who face the difficult decisions of determining what is best for the children's future.

The Judicial Branch also took the unprecedented step of systematically analyzing the workload in the District Courts. What we found was not unexpected: Montana's trial court judges are facing caseloads that are overwhelming in number and increasingly complex. We simply must add judges and staff to meet the caseload demands in a timely fashion for Montanans. While adding judicial resources is critical, we also must examine the way we do our work. To that end, both the Supreme Court and the District Courts embarked on court performance measurement projects, which will help us identify ways to manage the work we do for Montana's citizens even better. The Montana Judicial Branch is the first in the nation to tackle performance measurement projects for both the appel-

More ANNUAL REPORT, Page 32

Task force work begins on E-filing, remote access

By **Ed Smith**, clerk
Montana Supreme Court

After the 2007 Montana Legislature provided funding for a Judicial Branch electronic filing pilot project, the Montana Supreme Court's Commission on Technology appointed an E-Filing Task Force and named Ed Smith, clerk

of the Supreme Court, as chairman. In June, the Court expanded the scope of the task force's work to address specific issues related to privacy and public access to court records via remote access (Internet).

The newly titled E-Filing & Remote Access Task Force held its first meeting on June 26. The primary goal of the group is to define and adopt functional and technical requirements that will

serve as the basis for issuance of a formal request for proposal to secure a vendor to then design and implement a comprehensive electronic filing system for the entire branch – the limited jurisdiction courts, district courts, and Supreme Court. In addition to this goal, the task force will study and recommend policies and procedures for accessing court records via the internet.

“We have a great opportunity to design the best e-filing system in the country, but it will take vision and commitment by all the stakeholders in our Montana state court system to make it a

reality,” said Mr. Smith.

While many state’s have employed e-filing at various levels of court, it is the aim of the task force to create and implement an e-filing system that comprehensively addresses the e-filing needs of all levels of state courts. Such a system would be the first of its kind nationally. In concept, this system would be designed to interact with various systems already being used, or available for use, by the practicing bar, general government, law enforcement, and self-represented litigants.

To aid in accomplishing this comprehensive approach, the task force has established working groups to study and make recommendations to the task force in the areas where e-filing interacts with the issues of rules implementation, archival and document management. The needs of the courts of limited jurisdiction, who have direct interaction with law enforcement, may require special attention and requirements not typically found at the other levels of court. Additional working groups will focus on pro se litigants, the implications of e-filing with privacy and access rights, and the technical requirements necessary to support statewide e-filing.

The task force is meeting once a month and the meetings are open to the public, the date, location and time of which are posted on the judicial branch website. At present, the task force is reviewing the functional and technical e-filing standards developed and adopted by the National Center for State Courts in 2003. In addressing each national standard in this lengthy document, the task force takes action discussing, adopting, rejecting and/or referring to one or more working groups, the standard in question. The task force hopes to emerge from this process with a set of requirements tailored to the specific needs of our courts and our citizens.

The membership of the task force and its working groups has been designed to incorporate broad input and viewpoints from e-filing users representing the bench, the bar, clerks of court, and the public. The members of the task force are: Ed Smith (chair), clerk of the Supreme Court; Hon. Thomas McKittrick, 8th Judicial District; Hon. Russell Fagg, 13th Judicial District;

Hon. Larry Carver, justice of the peace, Judith Basin County; Nancy Sweeney, clerk of district court in Lewis & Clark County; Laura Brent, clerk of district court in Yellowstone County; Shorty Stewart, clerk of court, Missoula County Justice Court; P. Mars Scott, Missoula attorney; Allison Paul, deputy director, Montana Legal Services Association; and Chris Manos, executive director, the State Bar of Montana.

The task force is staffed by Karen Nelson, director of Information Technology, Supreme Court Administrator’s Office, and John Ramirez, project manager from Computer Consulting Corporation.

The working group members are:

1. Rules: Peg Allison, chair, clerk of district court, Flathead County; Lori Maloney, clerk of district court, Butte-Silver Bow; Bernie Cassidy, Lincoln County attorney; Judge Greg Mohr, Richland County justice of the peace; Becky Bird, district court administrator, Yellowstone County; and Barbara Hartzell, Missoula paralegal.

2. Archives / Document Management: Kay Johnson, chair, clerk of district court, Blaine County; Ruth Reeves, clerk of district court,


Cascade County, Jodie Foley, state archivist; Patti Borsberry, deputy secretary of state for Records; Audrey Hinman, Internet Technology Services Bureau chief, Department of Administration; Sharon Skaggs, clerk of Yellowstone County Justice Court.

3. Limited Courts: Judge Greg Mohr, chair, Richland County justice of the peace; Sharon Skaggs, clerk of Yellowstone County Justice Court; Thelma Keys-Nicol, clerk of Kalispell Municipal Court; Sheri Bishop, clerk of Gallatin County Justice Court; Judge Johnny Seiffert, Carbon County justice of the peace.

4. Pro Se Litigants: Ed Higgins, chair, attorney, Self Help Law, Montana Legal Services; Lonnie Browning, Self Help Law administrator, Court Administrator’s Office; Judge Michele Snowberger, city judge, Belgrade; Shirley Faust, clerk of district court, Missoula County.

5. Privacy and Access: Corbin Howard, chair, Billings attorney; Tim Little, Missoula attorney, Montana Legal Services; Jennifer Brandon, clerk of district court, Gallatin County; Kent Sipe, Musselshell County attorney; Tina Sunderland, Missoula paralegal; Sheri Bishop, clerk of Gallatin County Justice Court

6. Technical: Karen Nelson, chair, IT director, Court Administrator’s Office; Jim Dolezal, Missoula County IT Office.



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Court appointments

The Montana Supreme Court has made the following appointments to the Court's agencies:

- **Sentence Review Division:**

Glendive District Judge Richard Simonton was appointed for a three-year term, to replace District Judge Katherine Irigoin, whose term expired.

- **Commission on Practice:** Rich Ochsner of Missoula was appointed as a non-lawyer member to fill the remaining term of Art Noonan of Butte, who resigned from the Commission.

- **Equal Justice Task Force:** Deb Dumontier and Bernadette Franks-Ongoy were reappointed to three-year terms.

Federal Court proposes significant changes to Montana's local rules

The U.S. District Court for Montana is proposing substantial changes to the District's Local Rules of Procedure, and have made them available for public review and comment.

The proposed changes affect electronic filing; venues; filing of motions; disposal or retention of paper documents; public access to, privacy of, and sealing of documents; document formats; costs; pro-se plaintiffs; and more.

The 31 pages of proposed rule changes can be found on the Court's website at:

www.mtd.uscourts.gov

under "Documents" and "Local Rules."

Along with the proposed changes, the website provides comments explaining the purpose for each proposed change and a chart listing each current and proposed new local rule by title. As to each rule, the chart shows whether no change is proposed, whether a new rule is proposed, whether amendments are proposed, or whether deletion of the rule is proposed. Page numbers on the chart refer to the pages of the first document where the proposed change may be found.

Direct your comments to mtl_localrulescomments@mtd.uscourts.gov. The deadline is 5 p.m., Tuesday, Dec. 9.

If adopted by the judges of the District of Montana, the proposed changes will go into effect on Jan. 1.

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ORAL ARGUMENTS

December

No Arguments Scheduled

January

- Case No. DA 07-0752 – REVELATION INDUSTRIES, INC., formerly known as Revelation Engineering, Inc., Plaintiff and Appellant v. ST. PAUL FIRE & MARINE INSURANCE COMPANY, Defendant and Appellee.

Oral argument is set for Wednesday, Jan. 14, 2009, at 9:30 a.m, in the courtroom of the Montana Supreme Court, Helena.

- Case No. DA 07-0751– JAYDON PAULL, Plaintiff and Appellant v. PARK COUNTY MONTANA, and STATE OF MONTANA, Defendants and Appellees.

Oral argument set for Wednesday, Jan. 14, 1:30 p.m, in the courtroom of the Montana Supreme Court, Helena.

- Case No. DA 07-0478 - STATE OF MONTANA, Plaintiff and Appellee, v. DAVY LEE KENFIELD, Defendant and Appellant.

Oral argument is set for Wednesday, Jan. 28, 9:30 a.m, in the courtroom of the Montana Supreme Court, Helena.

TO VIEW BRIEFS containing details on each case, go to <http://courts.mt.gov/library>, click on "Cases" in the top navigation bar, and search for the case by names or case number.

Committee set up to search for new law dean

By **Rob Gannon**, UM vice president for Academic Affairs

E. Edwin Eck, dean of The University of Montana School of Law since 1995, will step down from his position at the conclusion of the academic year and return to the law faculty. Provost Royce C. Engstrom has launched a national search for the next dean of the School of Law as it begins the second century of its distinguished history.

Engstrom made note of the University's good fortune in having a law dean of such long standing. "The Law School has made great progress during Dean Eck's tenure and we are all grateful for his steadfast service. The University and the legal community have benefited in many ways from his 14 years at the helm."

Dr. Perry J. Brown, the long-serving and respected dean of the University's College of Forestry & Conservation and current associate provost for Graduate Education, has been tapped by Engstrom to head the search committee. The Committee's task will be to oversee the recruitment process, and present a "short list" of exceptional candidates for interviews in the early spring of next year.

The search committee, in addition to the chair, consists of a diverse group of dedicated people who will bring a wide range of perspectives and experience to the task. The membership includes six members of the Law School faculty, each with specialties in varied legal areas, two members of the Law School staff, two members of the practicing bar [including State Bar President Chris Tweeten], the chair of UM's Political Science Department, and two current UM Law students.

The committee will draw on the unique attributes of both the Law School and Montana to attract top-notch candidates to the position. The University can boast of a talented law faculty committed to an innovative curriculum, a personalized learning experience for a select student body, the allure of Missoula's blend of small-town charm and big-city sophistication, and the Law School's close connection to the Montana bench and bar.

"I have every faith that this committee, especially given its makeup, will find the next leader of our law school to move it even further along its path to excellence," remarked Engstrom. The search committee will begin its work immediately and Engstrom expects to name a dean before the end of the Spring 2009 semester.

The most visible of the Dean Eck's many contributions to the Law School will be a greatly improved facility. Eck provided the leadership in a project that will substantially renovate and expand UM's Law Building. He will continue to oversee the completion of that project, as well as preparations for the next American Bar Association accreditation visit. The building's renovation and expansion is central to the Law School's ongoing accreditation and will only serve to enhance the School's growing national reputation.

"The building project itself stands as a clear symbol of his determination to move the school forward and his lasting contribution to its success," Engstrom noted

SEE JOB DESCRIPTION AND APPLICATION details under "Law Dean Search" at www.umt.edu/law/ ○

A letter to Dean Eck

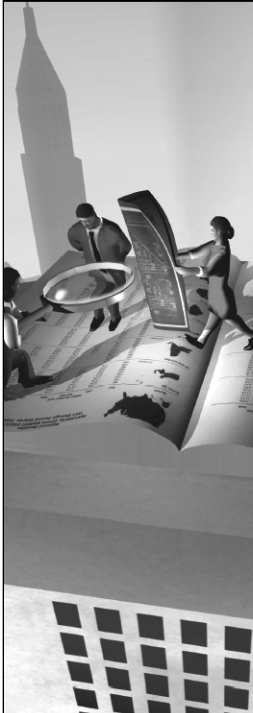
Dear Ed:

This is to thank you for your excellent service to the law school, to all of the Montana lawyers, and to the State of Montana. You have done a superb job in your 14 years.

Thank you particularly for your engineering of the construction of the much needed new Law School building. That was a formidable task, not the least of which was the raising of the money necessary to get it done. I know that you spent hundreds of hours on those tasks.

I wish you the best in your future endeavors.

— **George C. Dalthorp, Billings (Class of 1958)**



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Are you white enough?

From Jim Crow laws to workplace discrimination, the history of race and the American courtroom is incendiary

What Blood Won't Tell: A History of Race on Trial in America

By Ariela J. Gross

Review by **Laura Miller**
Salon.com

Come January, Barack Obama will be sworn in as either the first black president of the United States or the 44th white one, or both, or neither, depending on how you interpret his race. Race is such a monumental force in American culture and politics that the idea that it has to be interpreted may strike many people as bizarre. Of course Obama is black, some might argue, judging by his appearance, or by his self-identification as an African-American or even by his marriage and important relationships with other African-Americans. Yet more than one commentator has complained that he isn't "black enough," by which they may mean that his complexion isn't dark enough, or that he was raised by whites, or that his African father provided him with no heritage in North American slavery, or that he doesn't sufficiently align himself with the policies of a certain portion of African-American political leadership.

THE PROBLEM with race as Americans understand it is that it doesn't really exist. It is a brutal fact of life for millions of citizens, and an inescapable problem for the rest, but it is also, as Ariela J. Gross writes in her densely researched "What Blood Won't Tell: A History of Race on Trial in America," a "moving target," whose definition and meaning is always in flux. Many of us can avoid encountering this strange truth in the imprecise realms of cultural and social life, but when it comes to the law, imprecision just doesn't cut it. Gross's book, a history of cases in which people have challenged their official racial designation, eloquently demonstrates just how difficult it can be to say what race – mine, yours, anybody's – actually consists of.

The earliest racial identity trials in America involved people

who maintained that because they were white rather than black, they could not be held in slavery. In one case, a woman named Alexina Morrison was so successful at convincing the populace of a Louisiana town that she had been kidnapped into slavery that a mob attempted to lynch her master on the steps of the courthouse. The famous Sally Miller claimed to be an orphaned German immigrant who had been scooped up from the docks in New Orleans at the age of 4 and sold as a "mulatto" to a local restaurateur. Whether or not these women's stories were true (and they probably weren't), they were arguments

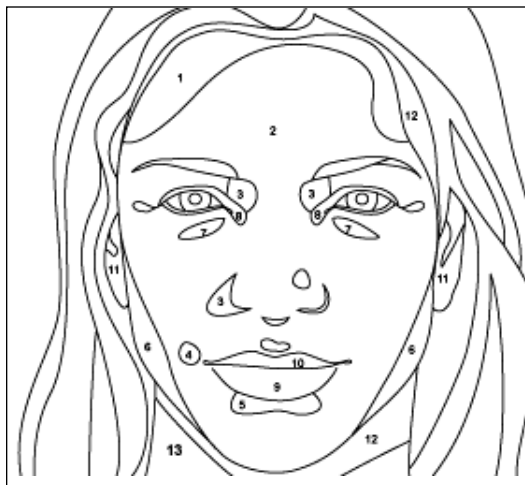
founded on the notion that white people, solely by virtue of being white, could not be enslaved.

It wasn't always so. In early America, as Gross tells it, African slaves, free people of color, white indentured servants (whose situation in many ways resembled that of slaves) and other people of varying statuses made up a workforce and a population that mingled freely with European settlers and Native Americans. "During the colonial era," she writes, "and even in the early republic, race had rarely provided the explicit justification for slavery. The founders of the republic perceived slavery as a necessary evil

that they professed hope would wither away."

The cotton gin, and with it the entrenchment of a plantation economy in the South, made slavery seem essential to landowners there, and for the indefinite future. As a result, Southerners developed "a race-based ideology" that declared enslavement to be a condition to which "negroes" (a relatively new concept that lumped together a whole slew of tribes and peoples) were supposed to be "uniquely suited" and in which no white person could rightfully be held.

ALTHOUGH "What Blood Won't Tell" also details the changing landscape of race for Indians, Asian immigrants, native Hawaiians, Filipinos and Mexican-Americans, to one degree or another the division between black and white has shaped the way Americans understand race in all its permutations. To be Indian, for example, was once a national identity, rather than a racial one; Indians were viewed as members of particular tribes much as Frenchmen were citizens of France,



even when they were of mixed racial backgrounds. As the growing nation devoured the Indians' territories (increasingly justified by the argument that Indians, like blacks, couldn't properly manage owning land), these former foreign nationals were "racialized" when they became American citizens. Their status and rights, while not equal to that of whites, were still somewhat better than those of blacks. If you couldn't convince people that you were white, it was preferable to be Indian, and many of the racial identity trials Gross covers involve people trying to prove as much. Entire pocket communities in the South – probably "tri-racial" in origin and known as Red-Bones, Melungeons or Croatans, among other names – went to great lengths to insist that they were Indian, Portuguese, "Black Dutch" or some other ambiguous combination: anything but black.

"WHAT BLOOD Won't

Tell" is largely a catalog of delusions and the strategies by which Americans tried to prop up those delusions in courts of law. After the Civil War, Gross notes, with the legal racial divide destabilized by emancipation, state and local governments established Jim Crow laws to maintain a strict separation of blacks from whites. They tried to convince themselves that the two races had always been kept rigorously apart. (In truth, as Gross points out, blacks and whites often lived and socialized together in intimate proximity before the war.) The very fact that some people with African "blood" (not a biologically valid concept, but a common term, then and now) could pass themselves off as white betrayed the reality; blacks, whites and Indians had been marrying, having sex and producing mixed-race children from the very beginning. Nevertheless, it was crucial to the mirage of white supremacy to insist that a true Southerner could detect the presence of a drop of African blood the way (as one witness put it) "the alligator knows three days in advance that a storm is brewing." Even if they couldn't tell you how they knew, they just knew, appealing to what Gross refers to as "common sense" notions of race.

At a time when public records were nonexistent, inconclusive and highly disputable, authorities often relied on the fact that the person in question socialized with whites, behaved properly, went to white churches, and, if male, successfully performed such civic responsibilities as jury duty, voting and service in the militia — all activities reserved for white men. The rationale behind this was that if all the white people in the community thought this individual was white, how could they possibly be mistaken? If it was impossible to tell the difference, how significant could the difference really be?

ALTHOUGH JUDGES AND JURIES often took appearance into account – examining not only skin color, but hair texture and, curiously, the arches of the feet, which were said to be "hollow" in whites – reputation and behavior were if

anything more important. A demure, chaste, ladylike female was surely white, as was an educated, responsible, "genteel" man with managerial skills. (One defendant's "very graceful" and widely admired dancing was cited as proof of his whiteness – a reversal of the contemporary stereotype about black men being the better dancers.)

These things might seem to the modern readers to be mere manners, easy enough for anyone to learn regardless of their ancestry, but the people making these judgments were deeply invested in the belief that blacks were incapable of such "civilized" behavior, and thus justified relegating them to second-rate citizenship.

The notion of the "blood quantum," a meticulous accounting of the racial make-up of one's parents, grandparents and great-grandparents, arose under Jim Crow. A person might look pale enough, but if they had one black great-

grandparent, provided that this ancestor was "pure blood" African, they could be classified as black. As a result, crucial aspects of a person's life – who they could marry, where they could live, what property they might own, where their children could go to school, and so on — might hang on the question of whether or not surviving witnesses thought their great-grandmother had kinky or straight hair or went to a certain church.

Most often questions came up as the result of disputes and grievances. Men trying to ditch their wives, relatives quarreling over inheritances, families feuding with their neighbors — all were liable to zero in the ambiguous racial identity of an opponent as a tempting vulnerability. Mixed-race marriages, legal in many states before the War (the term "miscegenation" was itself coined in 1864), could be declared invalid and their offspring illegitimate. Called upon to testify, neighbors would often offer wildly conflicting accounts: he thought of her as black; she saw her visiting with white folks; someone else regarded her as belonging to a group that was simply "a mixture," but of what, no one was ever quite sure.

SCIENTISTS AND CULTURAL anthropologists eventually wormed their way into such trials, testifying as expert witnesses (though not, Gross maintains, ever quite displacing the authority of "common sense"). Elaborate theories of the various races and their supposedly innate characteristics were used to justify a panoply of risible policies. Often, a sort of Catch-22 applied: In early 20th-century Texas, Mexican-Americans were treated much like blacks, but were officially classified as "Caucasian." Though they somehow never could get their kids into white schools or serve on juries themselves, complaints about bias were met with the argument that since Mexican-Americans weren't a race, they couldn't be the targets of racial prejudice. Furthermore, since they were technically white, they had no reason to object to having their cases tried before all-white juries.

Latinos were denied the full rights of American citizenship,

the argument often went, not because of their race, but because of cultural factors, such as their presumed deficiency in English as well as and having "customs and ways different to ours," in the words of one local sheriff. ("What Blood Won't Tell" is rich in such quotes from original sources, and an often jaw-dropping survey of unabashedly racist remarks from the past, both distant and all too near.) Here Gross brings the narrative up to the present day and hits upon the latest knot in the tangled skein of race in America. If we believe, as almost all authorities now do, that racial differences are a matter of culture rather than biology, how should that effect our understanding of racial discrimination?

For example, if a black employee is fired on account of an assortment of traits – a manner of speaking or dressing or cornrowed hair – deemed "unprofessional" by her boss, is she the target of racial bias? Is "professional" simply a code word for "white," and are we expecting everyone to "act white" in order secure a decent job? Gross seems to think as much, referring to "employers and governments" who "use their power to coerce racial performances – to force people of color to perform whiteness – in order to gain access to political institutions or employment." The idea of simply saying we'll be "colorblind" doesn't work. "Because racism has expressed itself in cultural terms" – that is, by defining people of different races as behaving in innately different ways – "race and culture cannot be disaggregated without ignoring vast realms of reinforcement of racial hierarchy." And there is, after all, no reason why cornrowed hair should impair anyone's "professionalism."

Gross goes on to refer to the phenomenon of "covering," as defined by Yale law professor Kenji Yoshino (though she does not mention him by name), in which members of disfavored minorities are accepted as long as they behave exactly like the favored majority. But when Gross insists that "we should formulate antidiscrimination law to encompass discrimination law

to encompass discrimination not only on the basis of race understood as 'skin color' but on the basis of racial performance as well," she naively ventures into territory where Yoshino is too wise to tread. If courts have had so much difficulty determining what race people are, then how can they reasonably be expected to rule on which race behaviors and appearances belong to?

MUCH OF WHAT MAKES a group of people a society is a shared body of cultural behaviors – a language, a set of manners, ethics, and customs. It doesn't even make sense to speak of a "society" in which the people are expected to share little more than geographic proximity. As pie-in-the-sky social engineering projects go, few can match the impracticality of deciding that we need to evaluate each and every one of those shared practices to make sure that it is not unduly imposing "white" behavior on people of color, and that this is an ideal job for our legal system. Yet even this pipe dream is insufficient for Gross, who deplores recent rulings by the Supreme Court as having moved away from the goal of affirmative action, which is to "restructure society in a nonhierarchical way."

For better or worse, human societies are hierarchical – it's hard to see how any large and complex one could even function if it weren't. The real question is, on what do we base our hierarchy? How do we decide who leads us, who runs things, how resources get distributed and wrongs addressed? This is a matter for all of us together to decide, on the basis of standards a lot more meaningful and reliable than old ones like race.

A book like "What Blood Won't Tell" – which is, after all, a history, not a prescription – may not offer much that's usable as a guide to the future. But it does provide us with plenty of evidence of how badly we can and have screwed up, and how much imagination and determination it will take to do it better. ○

LIBBY JP, from Page 10

when rebuffed. He visited the homes of female defendants to solicit sex, and when complaints were filed he stopped in at one woman's workplace "for the sole purpose of interfering and suppressing any investigation into his conduct."

He made sexually charged comments to women defendants, in one case promising to "woo you in ways that none of the young men could."

He visited another woman in the jail, tickled her feet and remarked on her "cute little toes," before telling her "that someday she will owe him for coming in and releasing her on her own recognizance," the Judicial Standards Commission wrote.

With nearly no exceptions, the commission accepted the charges leveled by nine women against Hicks, concluding the allegations were "proven by clear and convincing evidence."

The judge was not available for comment, nor was his lawyer, Kalispell attorney Tami Fisher. Previously, Fisher said Hicks' "intent was clear. His intent was innocent. He was try-

ing to be friendly and likable and approachable, to put people at ease, and his comments were misunderstood."

At the August hearing, Hicks and Fisher argued the Libby judge should be admonished, and no more.

The commission, however, chose not to admonish, or even suspend Hicks, but rather to remove him from office. The commission makes its recommendations to the Montana Supreme Court, "and it's basically now in the court's hands," said Ed Smith, clerk of the state's highest court. "I would think that they'll want to act in a reasonable time frame, given the seriousness of the situation."

The Supreme Court could follow the commission's recommendation that Hicks be removed from office, Smith said, or could, after review, decide a different fate for the former car salesman turned justice of the peace.

By law, Hicks has been placed on paid administrative leave pending the Supreme Court review. His three secretaries – who had complaints of their own, Berg said – already had left the office, choosing to quit their jobs until the matter was resolved. ○

life-altering deal.

"I'd love to have time to visit the crime scene and do more legal research," Mr. Jones said.

In Missouri, the system has not added staff members in eight years, while the annual number of cases has grown by 12,000, said J. Marty Robinson, the director of the state's public defenders. "We're on the verge of collapse," he said.

Mr. Robinson appealed to an oversight commission, and beginning last month, defenders in more and more counties are declining misdemeanor cases and others that are unlikely to result in incarceration.

In Kentucky, the state public advocate, Ed Monahan, filed a lawsuit that would allow defenders to turn down cases they cannot ethically handle. "Since Gideon, I don't remember a time when the challenges to adequate representation have been so great," Mr. Monahan said.

SIMILAR LAWSUITS are pending, or defender offices have turned down clients this year, in Tennessee, Minnesota, Maryland and Arizona.

In New York City, financing from the city and state for criminal defense declined by 2.7 million this year, from a budget of just over \$90 million. Meanwhile, the annual number of cases has climbed to 226,000, from 210,000 in 2006.

The city's Legal Aid Society is promoting a bill before the City Council that would set a cap of about 70 clients

for a lawyer handling felony and misdemeanor cases, compared with the more than 100 that many struggle with now. This would require a significant increase in funds.

The rushed processing of even misdemeanor pleas can have serious consequences for the accused, noted Deborah Wright, president of the Association of Legal Aid attorneys, the union for New York defenders. Even if they get no jail time, such defendants still get a criminal conviction, which can affect immigration status and some public benefits.

Michigan requires counties to protect the indigent without providing state funds, resulting in large disparities. In some counties, those charged with misdemeanors are not even offered a lawyer; in others, the judge hires one for a flat fee, creating a conflict of interest and incentives to skimp on defense, according to a recent report by the National Legal Aid and Defender Association and the Michigan Bar Association.

On the positive side, Mr. Carroll of the defender association said that Nevada, Louisiana and Montana had recently acted to shore up public defenders.

IN MIAMI, as elsewhere, cases involving serious felony charges, potentially involving prison terms of decades or life, more often go to trial. Amy Weber, who has worked in the office for five years, handles about 50 serious felony cases at one time — too many, she said. "The stakes are a lot higher and the cases involve lots of witnesses, lots more discovery," she said.

On one day in April, Ms. Weber had

13 cases set for trial, so she had to arrange for delays in all but one. That same day, James A. Simons, 59, who was in jail on child pornography charges, was offered a plea: one year in prison. Ms. Weber said she simply had no time to discuss the offer with him, but that he surely would have accepted it and ended his case.

Not receiving an immediate agreement, prosecutors gathered more evidence and rescinded the one-year offer. Mr. Simons ultimately had to accept a five-year sentence. "My client suffered and it makes me feel terrible," Ms. Weber said. "You try to tell yourself you can only do what's possible."

Her colleague, Mr. Jones, left his \$44,000-a-year job on Monday for private practice, saying he could not support his children on that salary. A few weeks earlier, he had to tell a 53-year-old man who was charged with grand theft, for stealing a few locks from a Home Depot, that the state was offering five years because earlier convictions made him a "habitual offender." In a discussion in a holding pen, his client asked, "Won't they take one year?" Mr. Jones went back to the prosecutors, who calculated that the minimum sentence, under a scoring system here, would be 2.6 years. But Mr. Jones had no time to check their math.

The man was already resigned to taking that sentence when the prosecutors discovered their calculations were mistaken: the correct minimum was 366 days.

"You see how easily accidents can happen?" Mr. Jones said. "He easily could have gotten three years instead of one." ○

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Judge Mark Painter

Time to ban the Elizabethan Middle-English



This column addresses some miscellany. Long-time readers will note that the references to the "rules" refer to those in "The Legal Writer 3rd Ed.: 40 Rules for the Art of Legal Writing" (see ad on next page).

Useless And Distracting Stuff

"Now comes the plaintiff [where?], by and through the undersigned attorney, and moves this honorable court to grant summary judgment."

Does that convey any meaning at all? Of course not – it's just legal nonsense. But we litter our legal documents and pleadings with it. Delete it. Just write "Jones moves for summary judgment." Unless, of course, the honor of the court is actually in question.

"Know all men by these presents."

What does that mean? I always think I am going to get a present.

"To all to whom these presents shall come, greeting."

This nonsense is on all of my certificates of election. These quaint documents are a veritable litany of banned words: *know ye*, *aforsaid*, *said in witness whereof*, and even *in pursuance of*, which is even worse than *pursuant to*. Gosh.

"Further affiant sayeth naught."

This is Elizabethan Middle-English, still sometimes appearing in affidavits. But in the real world, the *-th* has long since been replaced by *-s*, or by nothing. We write *he says*, not *sayeth*. We *make love*, not *maketh love*.

See Bryan Garner's comment in "Modern American Usage" on this anachronism:

"When the affiant hath nothing further to say, the affiant generally stoppeth testifying."

And is it *naught* or *not*? The former makes more grammatical sense, but, says Garner, "the best choice is ... to use these

phrases not."

A rule against apostrophes?

Did someone ban contractions from legal writing? Is there a rule against apostrophes? Writing *is it not likely* instead of *isn't it likely* just sounds stuffy. If you prefer *cannot* for *can't*, I won't argue, but generally use the contraction if it sounds natural. And yes, sometimes the formal can supply slightly more emphasis. Write with your ear, as well as your eye and your brain.

The apostrophe is unjustly maligned. Avoiding apostrophes results in clumsy constructions. It also adds to the word count, by adding clutter. The apostrophe is a useful tool. Use it.

In addition to contractions, some writers seem to think possessives are banned. Lawyers write *the docket of the court* instead of *the court's docket* (my rule: always question "Of"). Use the possessive with the apostrophe, not the longer and more pompous of construction.

Fun with numbers

The general rule is to spell out numbers one through ten. You should then use numerals for 11 and above.

Some authorities do have different rules. For example, "The Chicago Manual of Style" favors spelling out numbers up to one hundred.

But Bryan Garner's "Modern American Usage" specifies the one-to-ten rule, as does his "Dictionary of Modern Legal Usage." That rule is better for legal writing.

As with most rules, there are exceptions. If a number begins a sentence, it is spelled out, though it is often better to recast the sentence. "Nineteen ninety-nine will be remembered for ..." would be much better as "We will remember 1999 for ..."

Another hint: leave out the double zeros after a decimal. Write \$200, not \$200.00. And substitute words for rows of zeros where possible. Write \$2 million, \$5 billion. For percentages, use the percent sign (%).

And remember, no parenthetical numerals. Never clutter your document with both words and numbers: "There were four (4) plaintiffs and six (6) defendants." Never.

Too many dates

Lawyers and judges use too many dates. Using an exact date signals that it is important - that the reader should remember it for future reference. If that's not your intention, strike it out.

You can convey continuity and order by clues like next and later. Or use "in June," then "in July" to show chronological order.

When using month-day-year style, there is a comma before and after the year – "the ceremony of June 26, 2003, was festive." In the day-month-year style (more prevalent in Commonwealth and European writing), there is no comma – "the ceremony of 26 June 2003 was festive." And remember that when not using an exact date, there is no comma between the month and year: "in June 2003."

In referring to decades, do not use an apostrophe – "during the 1980s" not "1980's." Technically, either is acceptable; but

the modern rule, which produces cleaner looking text, is to leave out the apostrophe.

Uncommon Comma Considerations

Commas do not surround Jr., Sr., III, Inc., LLP, Ltd., and the like. Just write, "John Smith Jr. is president of Minoliana Inc." In parenthetical material, a comma never precedes a closing parenthesis, but may follow it. "When in Rome (where I went last year), be sure to see the Pantheon." A comma is used to set off a state or country: "Peoria, Illinois, is her home."

Cross out cross-references

I received an e-mail with this question: Where do you use *supra* and *infra*? My short answer is – nowhere. Nor should you use *op. cit.* or *loc. cit.*

These cross-reference indicators are distracting and unnecessary in most legal writing. They abound in law reviews, so new lawyers tend to believe they are acceptable, even desirable. If you want your brief or memo to be just as unreadable

– and unread – as most law reviews, then litter it with *supras* and *infras*.

When you use an *infra*, you are saying to the reader "I'm going to tell you about this later." That's just silly – if something is relevant now, talk about it now, not later.

Footnotes are for citation only. So any *supra* or *infra* would automatically be in a footnote. But instead of using a *supra* to indicate you have cited something just a footnote or two earlier (if it is in the last footnote, it would be *Id.*), it's more convenient for the reader if you just repeat the cite.

MARK PAINTER has served as a judge on the Ohio First District Court of Appeals for 12 years, after 13 years on the Hamilton County (Cincinnati) Municipal Court. He is also an Adjunct Professor at the University of Cincinnati College of Law. Judge Painter is the author of five books, including "The Legal Writer: 40 Rules for the Art of Legal Writing."

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ABA decries expensive state judicial races

By **H. Thomas Wells Jr.**
ABA president

We need courts that are fair and impartial in order to have equal treatment under the law and protect our personal freedoms. Fair and impartial courts are threatened in states such as Alabama, my home and the site of this year's most expensive state supreme court race. In states like these [including Montana], the system sets up its judges to rely on campaign contributions from interests that argue before the courts.

Judges should be accountable to the law and the Constitution, not the whims of the day or to popular public opinion. We urge citizens in states under the grip of increasingly costly court races to band together and find solutions that remove the potential influence of money from our courts.

One of the ways in which the ABA is mobilizing better support for state courts is by organizing the Summit on Fair & Impartial State Courts, scheduled for May 2009 in Charlotte, N.C. Each state supreme court chief justice is being asked to form a delegation that represents the state's supreme court, legislature, and executive branch, bar associations, and non-governmental citizen organizations. This diverse, national group of leaders will collaborate on plans for promoting fair and impartial courts that are empowered to serve the public. The summit will highlight strategies for good inter-branch relations, so that courts have the resources they need to provide fair and impartial resolution of disputes.

H. THOMAS WELLS JR., *president of the American Bar Association, is a partner with Maynard, Cooper & Gale in Birmingham, Ala.*

LETTERS

There are a lot of Montanans to thank

I wish to give thanks for the great work being done by *The Montana Lawyer*. I follow attentively my Montana Bar essentially through the publication, in that I reside and practice in Colorado, although having been licensed in Montana since '68.

■ Thanks to [State Bar President] Chris Tweeten – he has been actively involved in the leadership of the Bar for a long time, much behind the scenes. I thank him for his many years of devotion to the betterment of our profession. I wish to specifically thank him for his President's Message re: "Dues Increase Part I: Lawyers Helping Lawyers." The last paragraph of his message speaks so loudly of the good of Chris Tweeten's heart and character. I have been in recovery for over 20 years, having suffered the horrors of alcoholism. I was from time to time active with Lawyers Helping Lawyers, both in Montana and Colorado. I also have lost a number of friends via suicide.

Mr. Tweeten, words don't do it here –

just ask you to please know my gratitude knows no bounds, my appreciation is deep, my thanks heartfelt. I don't give respect – respect is earned. Chris Tweeten, if I may, long ago you earned mine, and your President's Message simply confirms in part why. You are a good man.

■ I noted [Helena attorney] Ward Shanahan receiving his 50-year Bar membership pin. Yesterday, I called Mr. Shanahan at his home and personally thanked him for his many years of service to the Bar and to the profession. He worked with Barney Reagan many years ago with getting the Montana Legal Services Organization off the ground and helped the organization wend its way thru a myriad of problems. I know of this first hand in that I worked with Barney and Ward, being in charge of the Missoula MLSA office in conjunction with initiating the program at the Law School – the Clinical Experiment, I called it. Dean Sullivan, Barney Reagan, Ward Shanahan. Anyway, that

is my self-centered blurb on that. Thanks, Ward.

■ To Amy Sings in the Timber, my thanks for her great work with the Montana Justice Foundation. Also thanks to [Billing attorney] Sherry Matteucci for her gift to the Foundation.

■ My thanks to Dean Eck for his great work with my alma mater. I wish him the best in his return to teaching. The law school will miss his strong leadership.

This is the first time I have ever singled out items from the *Lawyer*, but this October publication just really impacted me with content and raised my awareness of how much I appreciate my home state of Montana and the great work the profession does.

– **John Prater, attorney**
Englewood, Colorado



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unable to secure representation on matters affecting fundamental human needs. This profound justice gap encroaches not only upon the poor (some 38 million people), but increasingly upon the middle-class as well. With the secondary mortgage crisis, that gap has reached an acute stage.

The Pledge of Allegiance ends with these three words “justice for all.” At this critical time during the campaign, we ask what you propose to do to make justice for all meaningful for all Americans. We ask you:

- What level of Federal funding will you propose for civil legal services?
- Are you in favor of restoring Federal civil legal services funding to its pre-1980 level, accounting for inflation, and then increasing funding over the course of your term in order to keep pace with inflation?
- Will you reorganize the Legal Services Corporation? If so, how?
- Will you remove restrictions on the use of Legal Services Corporation funding, or at least limit them by removing the restrictions from the use of non-Federal funding sources?
- Will you guarantee civil legal services funding in certain critical areas, such as child custody and housing?
- Will you offer a bill that establishes Federal laws governing interest on IOLA/ IOLTA accounts?

● Will you sponsor a bill to create a Federal Civil Gideon statute in order to achieve a right to counsel in civil litigation in which basic human needs are at stake including a funding mechanism for the meaningful provision of such right?

● If you are elected, will you call upon the Governors of the States to act consistent with the access to justice policies that you endorse and plan to implement at the Federal level and to provide funding for state implementation?

We would like to discuss these questions with you in greater detail and work with you to shape laws and policies that ensure justice for all of our citizens, whatever their means.

2) A fair and impartial judiciary and Justice Department

A broad view of access to justice necessarily entails proper funding for the judiciary. Another concern we have is that the judiciary is our co-equal third branch of government, yet it does not receive support commensurate with its hallowed place in government. Our Federal courts have witnessed a decline in compensation for our judges and magistrate judges. The reality is that our Federal judges today earn less in real dollars than they did ten years ago; and their salaries no longer keep pace with inflation. A concurrent national trend is that Federal judges are leaving the bench because of the lack of court funding and because of inadequate salary increases.

So we ask you:

- Will you support measures on a Federal level to ensure the judiciary is properly funded?
- How will you accomplish this in the near term?
- What specific measures are you prepared to take in order to ensure that our judges, court personnel and court facilities receive priority in budgetary allocations – especially in view of the economy?
- What criteria are relevant to the appointment of United States Attorneys?
- On a related issue, do you believe that judicial recusal should be mandatory when a party who appears before a judge made a contribution to that judge’s campaign for election?

3) Civics education

As former United States Supreme Court Justice Sandra Day O’Connor has noted, “knowledge of our Constitution and the role of the courts is not handed down in the gene pool. Each generation must learn about our system of government and the citizen’s role.” It is disturbing to us that the public also does not feel a responsibility to support the justice system at all and does not fully know how judges are selected. The importance of infusing civics education into the public schools cannot be overemphasized. Findings from the Annenberg Public Policy

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Institute show that only one in three Americans can name the three branches of government and only one in ten can name the Chief Justice of the United States. But seven of ten Americans know at least one of the American Idol judges. Far too many states have largely cut civics education entirely from the required curriculum. Students who receive civics education are 2-3 times more likely to vote and engage their elected officials about their concerns.

The questions we would like you to address are:

- Do you see the lack of civics education as a national problem?
- If so, what specific initiatives would you sponsor to alleviate this problem?

We would like to have a dialogue with you and your staff about these issues at your earliest convenience. We will be contacting your staff to schedule such a meeting. ○

Job-discrimination plaintiffs fare poorly in federal courts

New data from federal court records show that workers bringing employment discrimination lawsuits increasingly fare poorly in the federal courts, according to a report published by the *Harvard Law & Policy Review* and released by the American Constitution Society for Law & Policy (ACS).

Studying data from the Administrative Office of the United States Courts, authors Stewart J. Schwab, dean of the Cornell Law School, and Kevin M. Clermont, law professor at the Cornell Law School, find that "the federal courts disfavor employment discrimination plaintiffs, who are now forswearing use of those courts." The authors conclude that they've "unearthed an anti-plaintiff effect that is troublesome."

Highlights from the study, "Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?," include:

■ As a result of the likelihood of unfavorable rulings in employment discrimination cases, more employees are declining to bring actions in federal court. Over seven years, 1999-2007, there has been a drop of 37 percent in the number of cases brought by plaintiffs.

■ Employment cases fare much worse than other types of cases that are filed. Between 1979 and 2006, the win rate for plaintiffs in job discrimination cases in the federal court system

was 15 percent, in contrast to 51 percent for non-jobs-related cases.

■ Employment discrimination plaintiffs are not likely to experience any greater success at the appeals court level. Data reveal that plaintiffs who lose at trial achieve reversals in less than 9 percent of their cases. In contrast, defendants who lose at the trial court level are granted reversals in 41 percent of their cases.

The authors suggest that, "Perhaps the plaintiffs' lawyers are now recognizing their low chances for success in federal court and thereby becoming less inclined to venture into the court system." ○

Racicot resigning as chief of American Insurance Assn.

Former Montana Gov. Marc Racicot, a member of the State Bar of Montana, is leaving his job as president of the American Insurance Association, the Washington, D.C.-based group said in a Nov. 15 news release.

The group said Racicot would leave the position Feb. 1 after serving as president and CEO for more than three years.

A spokesman for the group would not say why Racicot is leaving, but said it was a personal decision and that Racicot hasn't decided what he will do next.

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late and trial courts. I am proud of this effort, and believe it will produce improvements in an already very solid judicial system.

This 2007 Annual Report provides you with additional information about our successes and about the challenges that remain. I recommend the 2007 Annual Report of the Judiciary of the State of Montana to you.

Montana Supreme Court

Major initiatives and successes:

■ The Supreme Court disposed of 713 cases in 2007. The number of actions filed before the court was down slightly from 2006 but still remained at high levels. A full breakdown of Supreme Court statistics is available at “Caseload Statistics” at <http://courts.mt.gov/clerk/default.asp>.

■ The Supreme Court completed the lengthy project of updating the Rules of Appellate Procedure. The members of the Supreme Court do the actual preparation of updating of the Rules in addition to regular casework. The new Rules are available at http://courts.mt.gov/library/mt_law.asp#judicial.

■ The task force appointed to develop access rules for court records completed its draft rules, which were approved by the Supreme Court. Access to electronic court records has become an increasingly complex area as more and more court records become available electronically. The rules address the very important issue of balancing the protection of privacy rights with the public’s right to know. The rules are available at http://courts.mt.gov/crt_records/default.asp.

■ The State Law Library, under the leadership of the Supreme Court, continued to improve its electronic resources and efforts to make information available throughout the state. State Law Librarian Judy Meadows continues to provide extraordinary leadership in the on-going effort to provide legal research resources to the public and the increasing number of pro se litigants in all courts.

■ The Supreme Court co-hosted the second Children’s Summit, which focused attention on child abuse and neglect cases in the courts. The summit brought together more than 125 people from the various disciplines involved in these “kid cases”. In addition, to planning improvements on a local level, summit participants heard from former foster children.

■ Under the leadership of Clerk of the Supreme Court Ed Smith, a modern case-management has been operational in the Clerk’s Office for a second full year permitting the efficient tracking of cases from filing to disposition.

■ The Supreme Court’s lawyer discipline system continued to manage a high volume of complaints against lawyers from

members of the public. The Office of Disciplinary Counsel processes all complaints against Montana attorneys. Complaints deemed valid are moved forward to the Supreme Court’s Commission on Practice, which makes disciplinary decisions or recommendations to the Supreme Court. Full statistics about attorney discipline are available at <http://www.montanaodc.org/>.

■ Other commissions operating under the supervision of the Supreme Court continued to process hundreds of complaints and petitions and perform other important work. A full overview of the boards and commissions is available at <http://courts.mt.gov/supreme/boards.asp>.

■ The Supreme Court added a law clerk position specifically to review petitions filed by self-represented litigants. Like courts at all level, the state’s highest court is struggling with a significant self-represented litigant caseload. A dedicated law clerk was added to focus solely on those actions pending before the Court in effort to manage that workload.

■ The Supreme Court received funding to implement a self-help law program to assist those litigants acting pro se in court. The program, funded on a one-time only basis, includes funding for two self-help law centers in Montana, several mini-grant programs and a legal forms development contract.

Montana District Courts

Major initiatives and successes:

■ Caseloads continue to grow throughout the district courts. Rural areas are not immune to this growth with multi-county districts experiencing caseload growth as well. It is clear that the district courts will need additional judges to manage the trial court caseload. In 2007, more than 41,500 cases were filed in the general jurisdiction courts. About 20 percent were criminal cases. Full statistics are available at <http://courts.mt.gov/dcourt/dcstats.asp>.

■ Under the direction of the District Court Council, the judges completed a workload study. The study demonstrated that additional judges were needed throughout Montana to manage increasing caseloads. The full report with 2007 case filings is available at District Court Workload Study

■ Three new judges joined the district courts in 2007. Judge Brad Newman (2nd Judicial District), Judge Ray Dayton (3rd Judicial District) and Judge Laurie McKinnon (9th Judicial District) took office in January.

■ The district courts continued on the path toward deployment of a modern case management system in the 56 Offices of the clerks of district court. The 2007 Legislature provided the funding to allow the Judicial Branch to deploy the system on a statewide basis. In addition, the Branch also received funding for additional videoconference sites, courtroom technology improvements and an e-filing pilot project. Technology

continues to be increasingly important in meeting the demands placed on trial courts in a large state such as Montana.

■ The second Youth Court report card with a variety of statistics and information about youth served through the Youth Court was completed. The report was made possible because the web-based youth court case management system is now fully operational. The report can be viewed at http://courts.mt.gov/dcourt/youth_court/YouthCourtReportCard2007.pdf

■ The Legislature provided \$300,000 for security infrastructure in courtrooms throughout Montana. The Judicial Branch requested the funding after completing an in-depth analysis of security needs in the 56 district courts. The funding has been used to purchase items such as metal detectors, duress buttons and other courtroom security items.

■ District court judges continued to demonstrate leadership in maintaining and increasing local drug courts. The Legislature appropriated – for the first time – general fund dollars to support the problem solving courts that are located throughout Montana. The Judicial Branch hired a statewide drug court coordinator to oversee the distribution of the dollars and to provide technical assistance to local courts.

■ District courts continued to make use of video conferencing capabilities. A cost benefit analysis of the video network completed in 2005 supported the theory that the use of video technologies, when appropriate, could lower costs in the court and criminal justice systems. The 2007 Legislature supported the expansion of video conferencing by funding additional sites in the district courts.

■ The Montana Water Court, under the leadership of Chief Water Judge C. Bruce Loble, continued the herculean task of adjudicating water rights claims in Montana.

Montana courts of limited jurisdiction

Major initiatives and successes:

The Montana courts of limited jurisdiction include 158 justice, city and municipal courts. Limited jurisdiction courts are the courts most often accessed by citizens of the state. These courts handle a variety of matters both criminal and civil in nature.

■ Limited jurisdiction court judges continued to manage huge caseloads in 2007. A detailed summary and breakdown of court statistics is available at [http://courts.mt.gov/lcourt/stats/2007/2007COLJStats\(2\).pdf](http://courts.mt.gov/lcourt/stats/2007/2007COLJStats(2).pdf)

■ The Commission on Courts of Limited

Jurisdiction continued to manage the twice-yearly judges training sessions. Limited jurisdiction judges are required to attend the schools each year in order to remain certified. Every four years all judges in the limited jurisdiction courts are required to pass a comprehensive exam covering their jurisdictional areas. Newly elected or appointed judges must pass the test within six months of taking office. More information about Montana's Courts of Limited Jurisdiction and the judicial training program is available at <http://courts.mt.gov/lcourt/default.asp>.

■ Judge Mary Jane Knisely, with financial support from a federal grant, started Montana's first municipal court drug court. The court, part of the Billings Municipal Court, addresses the substance abuse issues present in some criminal defendants. Judge Wanda James in Mineral County also operates a successful adult drug court. Judge Karen Orzech continued her activities with a mental health court in Missoula County.

■ All but the smallest limited jurisdiction courts were equipped with an automated case management system. In addition, the courts began reporting data to a central court repository. The repository provides a back-up site for courts and also permits appropriate information exchanges between the courts and other partners such as the Department of Justice.

■ Judges in the courts of limited jurisdiction continued to take an active role in court-related projects by serving on various commissions and task forces.

○

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Andrée Larose has joined the law firm of Reynolds, Motl & Sherwood in Helena. Ms. Larose has practiced law in Montana for 25 years, both in private practice and as a staff attorney for a non-profit organization. She moves to Reynolds, Motl & Sherwood from her position as senior staff attorney with Disability Rights Montana, where she has been employed for the past 20 years. During that time, she has represented dozens of students to enforce their rights under federal and state special-education and anti-discrimination laws. Ms. Larose often speaks publicly about disability rights and has given presentations on special education law at statewide and regional forums. Ms. Larose is a 1982 graduate of the University of Tennessee College of Law. She is admitted to practice in Montana's state and federal courts, the Salish & Kootenai Tribal Court, the 9th Circuit Court of Appeals, and the U.S. Supreme Court. Ms. Larose will practice primarily in the area of civil rights, with an emphasis on the educational rights of students with disabilities.



James H. Cossitt Law Firm of Kalispell announced the arrival of a new associate, **Jeffrey K. Greenwell**. Mr. Greenwell graduated from Weber State University in 2002, where he received a BS in Technical Sales. He subsequently graduated with a JD and an MS in Environmental Law from Vermont Law School in May 2007. Mr. Greenwell was admitted to the Montana Bar in 2008. Originally from Mississippi, Mr. Greenwell was raised primarily in Ogden, Utah. He is an avid outdoor enthusiast with a special interest in whitewater rafting, hiking, and skiing. He is starting his practice by providing legal counsel in the firm's core areas of bankruptcy, workouts, and business and commercial litigation.

Kalispell attorney **James H. Cossitt** will be a panelist on a teleconference and live video webcast on "Strengthening Your Core Bankruptcy Practice: 2008 Best Practices" sponsored by the ABA's General Practice, Solo & Small Firm Division, to be held in two parts in December and January. The webcast is based on a forthcoming Best Practices Working Paper which is a comprehensive attempt to provide guidelines to lawyers, clarify and provide details of how lawyers should complete the bankruptcy property and creditor schedules. The working paper is scheduled to be published in the American Bar Association's Section of Business Law quarterly publication, *The Business Lawyer*, in late November. Mr. Cossitt is a graduate of Iowa State University and received his law degree from the University of Iowa College of Law in 1986. He became board certified in consumer bankruptcy in 1995 and business bankruptcy in 2005, by the American Board of Certification. After practicing law and serving as a bankruptcy trustee in central Iowa, he established a private practice in Kalispell in 1999. He specializes in bankruptcy, debtor/creditor, and commercial law.

Steve Fletcher has opened his own practice, Fletch Law PLLC, specializing in personal injury, worker's compensation, and social security disability. Mr. Fletcher has over 20 years experience in all of these areas. Fletch Law will be based in Missoula but will take cases statewide.

Ben A. Snipes has been associated with the Great Falls law firm of Lewis, Slovak & Kovacich. Mr. Snipes attended the University of Montana-Western where he received a BS in Business Administration, magna cum laude. He then attended the University of Montana School of Law and achieved a juris doctorate in 2008. During his law school career, he worked as an intern with both Paoli, Latino & Kutzman and ASUM Legal Services. Mr. Snipes' practice will be limited to plaintiffs' civil litigation, including personal injury, toxic tort, and environmental litigation.

Robert Anderson, senior trial attorney with the Environmental Crimes Section of the U.S. Department of Justice, stationed in Missoula, has been selected with three others to receive the 2008 Attorney General's Distinguished Service Award for the successful undercover investigation and prosecution of international syndicates engaged in smuggling endangered sea turtle products into the United States from Mexico and China. Mr. Anderson, who is a U.S. representative to Interpol's Environmental Crime Committee, and a professor in the summer program at Vermont Law School, previously received the award in 1998.

Montana and California attorney/mediator **John Drath** has opened a branch office in Bigfork, where he will focus on mediation. Mr. Drath received his undergraduate degree from the University of Washington in 1965, and his law degree from the University of San Francisco in 1969. A career of defending personal injury, employer liability, and professional liability litigation led to a growing mediation practice, both here in Montana and in California. He is a member of the American Board of Trial Advocates, a fellow of the American College of Trial Lawyers, and a past president of the Association of Defense Counsel of Northern California. He has been an active member of the Montana Bar since 1993. He can be contacted at Drath, Clifford, Murphy & Hagen, 439 Osborne Ave., Suite 115, Bigfork; phone (800) 880-4933, fax (406) 837-1503, e-mail jdrath@drathlaw.com.

Susan Fisher Stevens, formerly of the Billings firm of Wright Tolliver Guthals from 1983 to 1999, has been selected to co-chair the annual meeting of the ABA Forum on the Construction Industry, to be held in New Orleans from April 16-18. The focus of the meeting will be transactional, legislative and litigation issues associated with "green" sustainable construction projects, Brownfield reclamation projects, and construction of alternative energy facilities. She recently completed three years as division chair of the Forum's In-House Counsel Division, and has also authored the Montana chapter

for the second edition of the ABA publication "A State-By-State Guide to Construction And Design Law," scheduled to be released in late 2008. She is employed as the in-house construction law attorney for Sprint Nextel Corporation in Overland Park, Kan.

The Montana Legal Services Association announced that it has two new board members:

■ Private attorney **Gary Zadick** has been in practice in Great Falls for 30 years. He is a partner in Ugrin, Alexander, Zadick & Higgins. Mr. Zadick spoke at the recent Great Falls Access to Justice Forum about the future of access to legal services in Montana. He saw two areas he believed could make a difference: motivating the bar to fulfill its pro bono obligation, and further development of the online self-help resources. Mr. Zadick stressed that pro bono service needs to be voluntary and "from the heart." He praised the efforts of MLSA and the State Law Library. He challenged the state's access-to-justice community to look to other states and to look ahead to a day when low-income Montanans could solve certain legal problems by online filing.

■ **Donna Goff** is a paralegal in Sidney. As a Volunteer in Service to America (VISTA) she helped create MLSA's Eastern Montana Self-Help Law Project. Ms. Goff has appeared pro se in district court (modifying an unfair parenting plan) and has assisted countless others to do the same. Though her VISTA service is finished, she continues to help

others. For nearly three years, Ms. Goff works for the Richland County Coalition Against Domestic Violence. She still volunteers to help pro se litigants who are sent to her by the clerk of court.

Worden Thane law firm of Missoula announced that a number of firm attorneys have been selected to be listed in the 2009 edition of "The Best Lawyers in America." They are:

■ **Jeremy G. Thane**, health-care law, labor and employment law, medical malpractice law, personal injury litigation, and product liability litigation.

■ **Ronald A. Bender**, banking law, commercial litigation, insurance law, labor and employment law, product liability litigation, and real estate law.

■ **Patrick G. Frank**, commercial litigation and construction law.

■ **Martin S. King**, banking law, bankruptcy and creditor-debtor rights law, commercial litigation, and real estate law.

■ **Patrick D. Dougherty**, corporate law, real estate law, tax law, and trusts and estates.

■ **Carl Mendenhall**, commercial litigation, education law, health care law, insurance law, medical malpractice law, and workers' compensation law.

■ **Peter S. Dayton**, real estate law.

■ **Shane A. Vannatta**, intellectual property law.

DEATHS

Don Burris, Billings attorney

Billings attorney Don Edgar Burris, 78, died on Oct. 22.

Mr. Burris was born and raised in Ohio. During the Korean Conflict, he served in the Marine Corps, earning a Purple Heart and Bronze Star. After his military service, he graduated from Antioch College with a BA degree. He then went on to earn his law degree from Ohio State. He became a member of the Ohio State Bar Association and the California State Bar Association and practiced criminal law there for 13 years.

In 1975, he received an appointment as an administrative law judge for the Social Security Administration and moved his family to Montana. He "parted with the federal government as a whistleblower in 1988," his obituary said, and began a career as an attorney in Montana with a specialized practice in Social Security disability.

In 1990, Mr. Burris was the unsuccessful Democratic nominee for Congress for the Eastern District of Montana, running against Ron Marlenee.

Mr. Burris continued his Social Security legal practice until only a few weeks before his death. "He was always proud to advocate for the poorest of the poor and the neediest of the needy," his obituary said. "He felt there was no higher calling nor any more important reason to be an attorney."

He was a member of the Yellowstone County Democrats, the Montana Democratic Party, the Veterans of Foreign Wars, Marine Corp League, the Chosen Few, the Shrine, and the 33rd Mason. Mr. Burris was recognized with the Presidential

Award for work with people with disabilities.

Mr. Burrison is survived by his wife, Ginger Bigler Burris, a son, a daughter, and a stepson.

Otis Packwood, former U.S. attorney, judge

Billings attorney Otis Larry Packwood, 81, died in the Billings Clinic on Oct. 15.

Mr. Packwood was born in Billings. He attended Eastern Montana College as an undergraduate and obtained a law degree from the University of Montana in 1953.

Mr. Packwood was a deputy county attorney for Yellowstone County and was elected to three terms as Billings city judge. He was then a law partner with Charles Luedke for 12 years.

Mr. Packwood served as U.S. attorney for Montana for nearly eight years. He was then appointed and served as a Federal Personnel Appeals regional appellate judge for the United States with primary jurisdiction in New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands. He held this position for 12 years.

Mr. Packwood is survived by his wife, Jackie, two sons, and a daughter.

Other deaths

● **Victoria Marie White**, a long-time judge on the Crow Tribal Court, including three terms as chief judge, died at Crow Agency on Sept. 27 at age 65.

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Send classified ads to *The Montana Lawyer* magazine, P.O. Box 577, Helena MT 59624; or fax to (406) 442-7763; or e-mail to cwood@montanabar.org. Please include billing address. The deadline for the December / January issue is Nov. 25. There is no separate January issue.

Call (406) 447-2200 for more information.

ATTORNEY POSITIONS

CHIEF DEPUTY COUNTY ATTORNEY:

The Hill County Attorney's Office is hiring a full-time chief deputy county attorney. The chief deputy will primarily handle civil issues with some criminal prosecution. Applicant must be licensed to practice law in Montana. Three years of experience in civil law, criminal law and trial experience is preferred. Salary \$50,000 to \$61,000 per year, depending on experience. Position is open until filled. Submit a letter of introduction, resume, transcript and writing sample to: Hill County Attorney's Office, 315 4th Street, Havre MT 59501. A complete job description can be obtained by contacting personnel@co.hill.mt.us or (406) 265-5481, ext. 239.

DEPUTY COUNTY ATTORNEY:

The Hill County Attorney's Office is seeking a full-time deputy attorney. Must have JD from accredited law school, admitted to Montana bar or making admission. Experience in criminal law and trial experience is preferred. For a detailed job description, contact the Hill County Personnel Office at (406) 265-5481, ext. 239 or e-mail personnel@co.hill.mt.us Salary depends on experience, plus benefits. Submit a letter of interest, transcript, resume and references to the Hill County Attorney's Office, Hill County

Courthouse, 315 4th Street, Havre MT 59501. Deadline: open until filled.

GENERAL COUNSEL: The Legislative Branch of the Crow Tribe of Indians is currently accepting applications for a full-time in-house general counsel position. The successful applicant will be responsible for performing legal services for the Crow Tribal Legislature, including working with legislative members, committees and sub-committees to draft and review tribal laws, resolutions, and amendments; representing the Legislature in court proceedings; attending legislative sessions and other meetings involving tribal legislative matters; providing legal advice and assistance to the Legislature; and managing and supervising the Legislature's Office of Legal Counsel. Preference in filling the position is given to qualified Crow Tribal members, and to qualified members of federally recognized Indian tribes. Interested individuals should submit a letter of interest, resume, three (3) references, and a writing sample to: Beverly Shane, Secretary of the House, Crow Tribe Legislative Branch, PO Box 309, Crow Agency MT 59022. For more information, visit www.crowlegislature.org/employment.

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LAW CLERK: The 20th Judicial

District, Polson, is recruiting for a law clerk. This is an excellent opportunity to gain experience in all aspects of the law. Applicants must have a JD and have legal research experience. The position comes with a full state benefit package including a generous leave package. Salary \$40,684 per year. More details at <http://mt.gov/statejobs/statejobs.asp> or local Job Service.

ATTORNEY: Dawson County Domestic Violence Program is seeking a full-time civil legal attorney to work in Eastern Montana. Case load will be divided between family law and sexual assault cases. May participate in out reach and community legal education. Salary depends on experience. Send a resume and a sample of your legal writing. Applicants must be admitted to practice in Montana. Send to: Dawson County Domestic Violence Program, PO Box 505, Glendive MT 59330.

TRIBAL ATTORNEY: The Quinault Nation is recruiting for a tribal attorney position focused on child support and child welfare protection. This full-time position is within the 7-member team comprising the Office of Reservation Attorney, under the executive branch of the Quinault government. Our office is located next to the confluence of the Quinault River into the Pacific Ocean on the pristine Quinault Reservation. First screening of applications scheduled for Nov. 15. To apply, please call (360) 276-8215 ext. 577 or see quinaultindiannation.com.

ATTORNEY – DOMESTIC VIOLENCE LAW: DOVES, a private crime victim advocate non-profit organization located in Polson, is seeking a full-time civil legal services attorney to represent victims of domestic violence, sexual assault and stalking, in the Confederated Salish & Kootenai Tribal Court. The attorney will work with clients of the CSKT Victim Assistance Program to provide civil legal assistance in tribal court. Applicant must be admitted to the Montana Bar. This is a grant-funded position. Services to be provided include representation for divorce, custody, and/or visitation cases and obtaining child support orders; providing representation for administrative matters such as access to benefits for housing or matters related to employment; and other legal services that may become necessary to properly and completely represent a victim of domestic violence. Preferred qualifications include three years experience in family law or domestic violence services. Salary depends on experience, with a salary range of \$46,000 to \$52,000. For more information contact Jenifer Blumberg, executive director of DOVES at (406) 883-3350. Interested

applicants should submit a letter of interest, resume, and writing samples (recent law school grads should include transcripts) to DOVES, PO Box 1773, Polson MT 59860. Applications will be reviewed Nov. 10, continuing until position is filled.

ATTORNEY: The law firm of Crowley, Haughey, Hanson, Toole & Dietrich PLLP seeks an attorney with 2-10 years experience to assist in its litigation practice in our Helena, Montana, office. Successful applicants must be licensed to practice law in the State of Montana, strong academic record, solid research and writing capabilities. All applications will be held in confidence. Please submit your cover letter, resume and transcript to: Crowley, Haughey, Hanson, Toole & Dietrich PLLP, Attn: Joe Kresslein, PO Box 2529, Billings MT 59103.

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TRANSITION, from Page 5

mine the status of his involvement in them while on the Court.

Mr. McGrath said the transition facing Mr. Bullock as attorney general may be considerably more complicated, considering the size of the Justice Department. He said Mr. Bullock will likely face more personnel turnover, mostly from retirements, within the Justice Department. "Most [Justice Department] people will stay," McGrath said, "and I think his transition will go well."

AS THE chief justice-elect, Mr. McGrath told *The Montana Lawyer* that there were three issues on which he would like to have the State Bar's active support during the 2009 Legislature:

■ A proposal for more district court judges and court staff – especially in Flathead and Yellowstone counties – to fill needs identified in a 2007 court-system workload study (see study at <http://courts.mt.gov/dccourt/dcc/Montana%20study.pdf>).

■ A continuation of the state's fledgling Drug Court program. "Drug courts are a way to reduce overall court costs by getting offenders sober, returning them to families, and getting them out of the court system," Mr. McGrath said. He said the initial funding for drug courts in Montana has been very limited, and needs to be increased by the Legislature.

■ A judicial pay increase. "District court judges in Montana are among lowest paid in United States," Mr. McGrath said, adding that a district-court pay increase proposal will be introduced in the Legislature. "It's important to the Bar that we are able to recruit the highest-quality judicial candidates."

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