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THE STATE BAR OF MONTANA

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■ Negotiation Theory

– Knowing the difference between strategy and tactics

Securities

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PRESIDENT'S MESSAGE

Our interaction with Legislators

Also, more on CLEs and work-life balance

Peggy Probasco

This month, I am covering a potpourri of topics that are uppermost in my mind in this, the depths of another Montana winter. All are topics that are likely to have come to your attention as well.

The Legislature is now in session and your State Bar is busy tracking bills of interest to the bar in general as well as keeping sections informed of bills of interest to them. See the article on these bills on the next page. I welcomed the new legislators to the Jan. 4 Law School for Legislators, cosponsored by the State Bar, the UM Law School and the Legislative Council (see photo on Page 15). It was an opportunity to see those legislators I knew and to meet others.

Although I was not able to stay for the whole presentation, I understand the Law School for Legislators was well attended and once more appreciated by the attendees. Presenters this year included retired Law Professor Larry Elison, Legislative Attorney Greg Petesch, ACLU Counsel Betsy Griffing, who also is a UM law professor, and Chief Justice Karla Gray. UM Law School Dean Ed Eck also gave welcoming remarks. If you know or see any these people, take a moment to thank them for taking the time to impart some fundamentals to our legislators.

I also have appeared before the Senate Judiciary Committee to voice the Bar's support of SB 202, public funding of Supreme Court justice races. While there, I had the opportunity to speak to three of our attorney legislators – Senators Jesse Laslovich, Larry Jent and Jim Shockley. While I have met each of these individuals before, I appreciated the opportunity to see them at work and observe that each is an asset in their respective positions. I hope we can all appreciate the sacrifices these and other attorney legislators are making to serve our state in this capacity.

Keep track of bills the Bar is watching on the web site. If there are issues in the Legislature of particular interest to you, get involved. It is good to watch this branch of government at work.

OTHER ARENAS THAT SHOULD be of interest to all Montana attorneys include the upcoming deadline for obtaining and reporting your CLE credits for 2006. The deadline is March 31, 2007, and this is the year many of

you must be sure to have your required number of ethics credits. If you are short in these credits or any credits, contact the State Bar office for your options to obtain some of your needed hours. There are various methods to meet the requirements and not all require attendance at a currently offered CLE. However, between now and the end of March there are excellent opportunities to attend CLEs as well.

The Solo and Small Practice CLE held in Missoula on Feb. 2 was a great success and the Bar hopes to offer more of this genre of CLE in the future. There was also the Montana Labor and Employment Law CLE in Billings on Feb. 9 and the Bench-Bar CLE in Bozeman that same day. The annual Real Estate CLE, headlining stream access issues is scheduled for Feb. 16 at Fairmont Hot Springs. On March 2, you can attend a CLE on Attorney-Paralegal Practice Tips and March 16 is the annual Ethics CLE in Butte.

IN THE LAST ISSUE of *The Montana Lawyer*, you were introduced to Mike Larson, our new director for the Montana Lawyer's Assistance Program. Mike is diligently working on the many issues attendant to a new project, and brings not only a background well suited to the position, but also an enthusiasm which is sure to invigorate and mobilize this fledgling program. Along that same line, the excellent letter written by P. Mars Scott to the State Bar and published in the last issue is well worth your time to read.

Some of you may recall the assessment given to us in the annual meeting in Helena two years ago. The presentation was titled "Begin with the End in Mind." If you have a copy, complete the assessment now if you have concerns about yourself and your practice. If you need a copy, check the State Bar web site. It is never a bad idea to determine if you are attaining your goals and doing so in a manner that is healthy for you and your family.

In short, there is plenty to keep us all busy while we hope for more snow, contemplate sunnier climes, and wait for spring. ○

At this point, seven bills on Bar radar

As of Feb. 12, the State Bar of Montana had taken active interest in seven bills and one resolution introduced in the 2007 Legislative session.

Of those bills, the Bar testified in support of three of them in hearings, and one has already been passed by the chamber in which it was introduced.

BILLS ACTIVELY SUPPORTED by the State Bar are:

■ **HB 60**, titled The Montana Access to Civil Justice Act. This act appropriates \$1.1 million to establish a self-help law program for Montana citizens, to be administered by the Montana Supreme Court. The act is designed to make Montana's court system more accessible by providing all Montanans with user-friendly information through technology and volunteer services, and improve court proceeding for self-represented litigants. The bill was introduced by Rep. John Parker, D-Great Falls, an attorney. Testimony on the bill was heard by the House Judiciary Committee on Feb. 7.

■ **HB 361**, introduced by Deborah Kottel, D-Great Falls, revises the law on proxy marriage, requiring one party to be a citizen member of the U.S. Armed Forces. Montana is one of the few states allowing proxy marriages – where one or both of the marrying couple are absent – and currently only has a U.S. citizenship requirement, not a military requirement. The bill was passed by the House and transmitted to the Senate on Feb. 7.

■ **SB 202**, provides candidates for election to the Montana Supreme Court with the option of a publicly financed election campaign. It provides for public funding and disclosure through the office of the Commissioner of Political Practices. This bill was introduced by Sen. Jesse Laslovich, D-Anaconda, an attorney. The Bar testified in support of the bill at a hearing in the Senate



Peterson



Laslovich

The missing legislators

In its post-election analysis of the number of lawyers to be serving in the 2007 Legislature, the December/January *Montana Lawyer* missed two of them while cross-referencing the State Bar and Legislatur databases. That means nine lawyers are serving, instead of the seven that we reported. One contention in the article remains viable, however: nine lawyers are still the lowest number to serve in the Legislature in at least a decade, and still keeps Montana near the bottom of the list of states' percentage of attorneys in legislative bodies.

The attorney-legislators *The Montana Lawyer* overlooked for the current session are:

- **Rep. Ken Peterson**, a Republican from Billings who has served in the Legislature previously. He is now serving on the House committees of Fish, Wildlife & Parks, Human Services, and Judiciary.
- **Sen. Jesse Laslovich**, a Republican from Anaconda, is a 2006 UM Law School graduate who was admitted to the Bar last year. He is chair of the Senate Judiciary Committee and chair of the Senate Ethics Committee. He also serves on the Senate Committee on Committees, and the Highways & Transportation and Rules committees.

Judiciary Committee on Jan. 25.

TWO BILLS ACTIVELY OPPOSED by the State Bar ran into trouble early in the session:

■ **HB 165**, requiring a candidate for the office of district judge to meet certain minimum civil or criminal trial-experience qualifications, including experience as counsel in a dissolution of marriage case involving children. Introduced by Rep. Ken Peterson, R-Billings, the bill was tabled by the House Judiciary Committee on Jan. 22.

■ **HB 229**, which would require disqualification of a judge from a case when an attorney in the case has made a reportable campaign contribution to the judge. The bill was introduced by Scott Mendenhall, R-Clancy. The State Bar testified against the bill in a hearing

before the House Judiciary Committee, which later tabled the bill on Jan. 30.

The Bar also is opposing a Senate resolution:

■ **SJ 8**, introduced by Sen. Jerry O'Neil, R-Columbia Falls, is a joint Senate and House resolution urging the Montana Supreme Court to allow any person to take the examination for admission to the State Bar if the person has graduated from any law school, whether or not the school is accredited by an accrediting entity. The Bar was among those testifying against the resolution before the Senate Judiciary Committee on Feb. 8.

OTHER BILLS on the State Bar's Bill Watch List (see www.montanabar.org), but on which the Bar's Executive Committee has not taken a

stand are:

■ **HB 251**, authorizing a city or town to establish a city court of record, and providing for the jurisdiction, powers, duties and procedure of the court. It provides that an appeal from a city court of record to a district court is “an appeal upon the record.” Introduced by Rep. Ron Stoker, R-Darby, the bill was passed by the House and was in the Senate Judiciary Committee at *Montana Lawyer* press time.

■ **HB 402**, revises fees collected by

the Supreme Court by requiring cross-appellants to pay a filing fee, adding other fees and increasing certain current fees. Introduced by Rep. Art Noonan, D-Butte, the bill was approved by the House Judiciary Committee on Jan. 30.

THERE ARE A NUMBER of draft bills – which have not been introduced into the legislative session – that the State Bar has already placed on its Bill Watch List.

The drafts concern public financing of Supreme Court candidates, making unauthorized practice of law a crime,

revising attorney fee laws and laws governing courts, judges and civil procedure, a fully informed jury law, and a study of the judicial ethics code

KEEP WATCHING the State Bar’s Bill Watch List at www.montanabar.org to see whether these and other bills are introduced and become law. We’ll have an update in the March *Montana Lawyer*.

Meanwhile, the complete text of the bills can be found at the Legislature’s web site at <http://leg.mt.gov>. ○

Excerpted from the *Missoula Independent*

An unfunded federal mandate that seeks to create de facto national identity cards has spurred Montana to the forefront of rapidly mounting nationwide opposition.

On Feb. 1, the Montana House of Representatives unanimously approved two bills that signal the state’s refusal to go along with the 2005 Real ID Act. A bill introduced by Rep. Brady Wiseman, D-Bozeman, directs state government not to implement Real ID, while another by Rep. Diane Rice, R-Harrison, takes the opposition one step further by “nullifying” the law in Montana. Gov. Brian Schweitzer and the Montana attorney general’s office both have pledged their support, though neither bill has yet been considered by Montana’s Senate.

“The feeling is so strong that we don’t need to jawbone about this,” said Wiseman of the bills’ thus-far unanimous approval. “Our right to be left alone is being chipped away and we’ve drawn the line here in Montana.”

Wiseman and others raise a chorus of complaints in regard to the Real ID legislation, saying it opens a new chapter in Big Brother’s playbook, threatens privacy rights, attempts to “commandeer” state government, and creates overwhelming cost and needless bureaucracy. Besides, they say, rather than achieving Congress’ goal of increasing security to thwart terrorists, it will provide more fodder for identity thieves.

Rooted in a recommendation from the 9/11 Commission, the Real ID Act sets national standards for driver’s licenses and is scheduled to go into effect May 2008. It will create consistency among driver’s licenses nationwide and embed them all with “a common machine-readable technology,” which the Department of Homeland Security (DHS) has yet to define. For the first time, states will be asked to verify all documents used to issue licenses – like birth certificates and Social Security cards – and to create and share with state and federal governments a database of their citizens’ information.

On top of that, Real ID expects states to fund their own licensing system overhauls, an undertaking expected to cost

Montana is trying to fight off the national ID card

more than \$11 billion nationally and at least \$11 million in Montana. If states don’t conform with the new law, their residents won’t be able to use their state licenses for anything requiring federal approval, including boarding airplanes, entering federal buildings, opening bank accounts and collecting Social Security payments.

A key concern for Montanans, who are afforded an explicit right to privacy by the state’s constitution, is control over their personal information, Wiseman said. And given that the DHS, is still crafting specific rules to govern Real ID implementation, Wiseman said Montanans simply can’t trust federal officials to adequately shield confidential information.

It’s impossible to even know at this juncture what information Real IDs will include. At a minimum, Real IDs must have a person’s name, birth date, gender, driver’s license number, home address, signature, machine-readable technology and a photograph, but DHS may retain authority to also require biometric identifiers like fingerprints or retinal scans.

Scott Crichton, director of Montana’s American Civil Liberties Union, likens the new ID system to Social Security numbers of old. “It was sold as just being used for one purpose, and today it’s used for everything you can’t even get some services without divulging it,” Crichton said. “The Real ID is that sort of thing, cubed.”

Each facet of Real ID what information it includes and who can access it, what it will cost to create it and how it will interact with existing and future technology – raises a host of concerns that need addressing, Wiseman said. Take, for instance, the possibility that the “common machine-readable technology” incorporated into Real IDs could be Radio Frequency Identification (RFID) chips, which are already being incorporated in U.S. passports. RFIDs, tiny chips increasingly installed in consumer products and packaging, can be read and tracked from a distance without a subject’s

More NATIONAL ID CARD, Page 39

Chief justice outlines judicial needs

Says courts have entered 'new era'

The following State of the Judiciary address was delivered to the 2007 Legislature on Jan. 18 by Chief Justice Karla M. Gray of the Montana Supreme Court:

[House] Speaker Sales, [Senate] President Cooney, members of the 60th Montana Legislature, honored guests and fellow Montanans:

I'm most honored to report to this joint session of the Montana Legislature – and the people we all serve – on the Judicial Branch's accomplishments since our two branches were last officially together in 2005, and on the challenges that remain. This is the fourth time I've formally reported to you as chief justice of the Montana Supreme Court, and it's certainly been an interesting "ride," thanks in large part to this body's decision in 2001 to have the state assume financial responsibility for the district courts spread across the entirety of this place we all so gratefully call home. I report with great satisfaction that the promise of state assumption is being realized, and that the Judicial Branch has entered a new era of accountability, modernization and increased responsiveness to Montana's citizens. We still need your help to meet our constituents' needs for – and constitutional guarantees to – quality and reasonably timely justice, but more on that a bit later.

Let me start by recognizing, and thanking you for, the hugely important action you took last session – under the leadership of Senator McGee and others – in creating the first-ever Montana public defender system. That system is rightly being looked to as a model by other states, and by removing responsibility for indigent defense from the Judicial Branch to the branch where it properly belongs, you also left us—thankfully—able to focus on Judicial Branch planning and activities.

This has been a biennium of enormous accomplishments and improvements in the Judicial Branch which, as you know, has approximately 400 employees across Montana, but makes up only 2.5 percent of the overall state general fund budget. I started preparing for today with a very lengthy list of our successes during the past biennium. I soon realized it was just too much to cover without risking my vocal cords and, much more importantly, without presuming on your time constraints. So, I've narrowed down to a few major areas. I invite you to contact either myself or our excellent administrative staff if you want to learn more or if we can assist you in your work in any appropriate way. Government works best when it works together to meet the needs of our citizens.

THE JUDICIAL BRANCH HAS FOCUSED heavily on Montana's kids these past two years, first with our emphasis

on more efficient and effective management of child abuse and neglect cases. At the urging of the Judicial Branch, the Departments of Public Health & Human Services and Justice, as well as the new Office of the Public Defender, joined with us to hold the first-ever Montana summit on the protection of children this past August; its theme was "Children Can't Wait." The event brought together almost 200 people – prosecutors, defenders, social workers, volunteer CASAs (court-appointed special advocates for kids) and trial judges – to focus on improving processes for Montana children and their families involved in abuse and neglect cases. Senators Williams and Esp joined us, and we appreciated it.

The summit was a huge, action-oriented success. Real, tangible improvements on the state and local level began there, and continue through local action teams made up of all the "players" in child abuse and neglect cases, because children really can't wait.

Our second children's summit – with the theme "Dear Kids, We're Getting There!" – will be held on Aug. 22-23 this year, and I invite all of you to join us in this important collaborative effort. I'm glad to see from the number of bill draft requests on this subject that the Judicial Branch and the Legislature are on the same page about the importance of improving abuse and neglect proceedings. It's an area that needs the efforts of all of us – for Montana's kids.

I mentioned our wonderful CASAs as important participants in last year's summit, and I want all of you to know about the extraordinary help they provide to kids and trial courts in abuse and neglect proceedings. We need more volunteer CASAs and more CASA programs throughout the state. To that end, you have before you a modest budget proposal to expand existing programs and create new ones where they don't yet exist. Montana's kids will benefit greatly by your favorable consideration.

ANOTHER MAJOR EMPHASIS and accomplishment relating to children has been our improvements in the youth courts. We have fully implemented an automated and shared case management system in all youth courts, resulting in availability of statistics and data about youths in the youth court system. We produced the first-ever "Youth Court Report Card," designed to provide information and accountability to the people of Montana. The District Court Council reallocated some existing youth court resources to provide more help to youth courts with the greatest need. We still need, however, the very minimal staffing increases for youth courts which are contained in our budget proposals. Again, we hope you will give these staffing increases favorable consideration.

Our last major effort involving youths and youth courts was to work with the Department of Corrections to modify provisions of the incredibly successful Juvenile Delinquency

Intervention Program (called JDIP), in ways agreeable to both the Department and the Judicial Branch. This carefully negotiated legislation is now before you in Senator Shockley's SB 146, and we urge its passage.

THE OVERALL VISION of state assumption was to allocate state resources to Montana's trial courts on a reliable and systematic basis relying on sound data. Thus, a major, two-part focus within the Judicial Branch over the last two years has been to collect actual data, on an "apples-to-apples" basis, on trial court filings and workload.

The first part was the adoption of Uniform Case Filings Standards by the Supreme Court, effective Jan. 1, 2006, after long and careful study and work by the District Court Council. For the first time ever, we will soon share with you the numbers of filings for each District Court on an equal and case-specific basis.

The second major component of the data soon available to you is the result of a District Court Workload Assessment Study which explains – in real terms – how much judicial time is spent on each type of case. This careful and process-oriented study grew out of the District Court Council, and was ably led by District Court Judges McKeon, McKittrick, McLean, Curtis, Watters and Tucker, with expertise obtained from the National Center for State Courts. The detailed Workload Assessment Study, together with the results of the Uniform Case Filing Standards, will provide an appropriate basis for your serious consideration – in the 2009 Session – of the very real need for more judges in Montana.

In the meantime, we are requesting small additions in FTEs for staffing the district courts. These modest proposals, for which we respectfully ask your support, will enable Montana trial courts to provide better service to the people of Montana.

Judges, of course, rely heavily on highly competent and motivated employees in addressing their growing caseloads and other judicial obligations, and I can assure you that the district courts and youth courts are chock full of some of the finest public employees in Montana. But we have been dogged since state assumption with large inequities in employee pay which resulted from state assumption. This problem is significant because it affects not only employee morale, but our ability to continue to hire and retain quality people to staff our courts.

We have repeatedly requested your help on this issue, and we seek it again this session. It is totally unfair to subject our employees – all within one branch of government – to an inequitable pay system. It is even more unfair when, on top of intra-branch inequities, Judicial Branch employees whose work is very similar to certain Executive Branch employees, also are paid less than those employees. I urge you to support our budget proposal to finally equalize Judicial Branch employee pay, so the Judicial Branch you effectively created via state assumption can treat its employees like others in state government service.

ON ANOTHER MATTER closely related to district court workload and staffing, one thing that became clear during the children's summit was the difficulty trial judges have in meeting the tight statutory timelines required for child abuse and neglect cases, given their heavy caseloads. The same is true with a large number of other statutes that require district courts to give certain cases priority and meet strict timelines. I know you understand that judges need adequate time to hear, consider and decide cases. So, I respectfully request you to be mindful – as you consider changes to the child abuse and neglect, and other, statutes – that imposing stricter, and shorter, and additional, timelines may result in expectations and requirements of district courts that simply cannot humanly be met.

ANOTHER MAJOR Judicial Branch emphasis continues to be information technology and modernization, an area in which we have made great strides. When I became chief justice in 2001, Montana courts were operating with

what might accurately be characterized as late 1950s technology. You helped us move forward with critically needed funding in 2003 and 2005. That funding, in combination with federal dollars – which I didn't like asking for, but which were so desperately needed by our branch – allowed us to move parts of our courts to early 21st Century technology standards. All but the tiniest courts of limited jurisdiction are now served by a modern case-management system called FullCourt. The youth courts have a shared case-management system. The clerk of the Supreme Court finally has a modern case management system which no longer relies on Word Perfect 5.1. And, importantly, both the courts of limited jurisdiction and the district courts share a central repository for court data, with catastrophic data back-up, which also allows the courts to share information with other entities such as the Department of Justice.

In addition, with the assistance of clerks of the district court in Missoula and Mineral counties, we have piloted a case-management system that will modernize data collection at the district court level. We must be able to install and implement that system in the other 21 judicial districts, so that – finally – all of our courts will be on the same 21st Century technology page at the same time.

On a related matter, the Montana Supreme Court has developed and soon will roll out detailed rules addressing public access to court records. Technology truly will lead to greater public access to court records and, consequently, to more transparency and accountability in our Branch.

I'm very proud of what the Judicial Branch has accomplished with regard to information technology and automation in so few years and with limited resources. Our efforts in this arena have been successful because we function as a branch of government, rather than separate county-based district courts; and we have been good and careful stewards of public dollars. For these reasons, I'm comfortable asking for your assistance in finalizing our remaining and necessary technology projects:

'The Judicial Branch has entered a new era of accountability, modernization and increased responsiveness to Montana's citizens. We still need your help to meet our constituents' needs.'

completing the modernization of district court case-management systems; supporting video conferencing in the district courts across Montana, with its significant time and cost savings to courts, citizens, local law enforcement and others; and obtaining additional technology-related equipment for our courtrooms. To meet these needs, I respectfully request your strong support for our one-time-only technology proposals in HB 14.

MENTIONING COURTROOM technology needs leads me directly to district court safety and security. Courthouses and courtrooms are where Montanans come to resolve their legal disputes, and surely Montanans have a right to safe and relatively secure courts. During this past interim, thanks to a partnership with MACO, the sheriffs' and peace officers' associations and the Department of Justice, we identified many instances where Montana's courthouses and courtrooms are not providing the level of security and safety needed for citizens, staff and judges. Please assist all of our citizens, the courts and the counties in addressing this problem by supporting our modest request for one-time-only safety and security funds.

I have spoken with some pride about our recent accomplishments in improving court systems and services for the people of Montana in the trial courts. I want to recognize and thank each and every one of our district court judges and judges of the courts of limited jurisdiction for their dedicated and high-quality service to the people of Montana. I also simply must recognize and thank our outstanding Judicial Branch employees for their commitment to public service and to Montana's citizens.

LAST, BUT CERTAINLY not least, I respectfully call your attention to the Montana Supreme Court and its substantial need for additional resources. For those of you who remember, we were on the brink of an intermediate appellate court in Montana at the time you passed state assumption in 2001. That also was the last year in which direct staff for the Supreme Court was added – three law clerks. Since that time, I have given priority to the resource needs of the district courts, their staffing, and other state assumption matters which were not adequately funded at the outset of state assumption. It was the right thing to do; but the Supreme Court has resource needs as well.

We are one of the most productive high courts in the nation, and it's a good thing. From 1991 through 1995, our caseload increased 2 percent; from 1996 through 2000, an increase of 20 percent; from 2001 through 2005, an 11.2 percent increase. Last year we resolved 736 cases, 352 of them by written opinion. In contrast, the U.S. Supreme Court issues in the neighborhood of 80 to 85 opinions a year.

Your Supreme Court also has spent many hundreds of hours in revising various court rules – including the critically important water court claim examination and adjudication rules needed to “ramp up” the adjudication of water rights after the 2005 Session.

Other Supreme Court administrative-related duties also have increased since state assumption. I am proud of our Supreme Court and its commitment to both quality and timely

justice for Montanans, at a time of more complex cases, higher caseloads and increased administrative obligations. I believe you and all Montanans rightfully can be proud, too.

On behalf of the people of Montana whose cases too often wait too long for the “end of the legal road,” however, I simply must urge you to provide much-needed additional staff for the Supreme Court. We are requesting 2.5 additional FTEs for direct Court staff; 1.5 of those FTEs are for a new, in-house appellate mediation program that could resolve a significant portion of our caseload. The other FTE is for a pro se law clerk to significantly decrease the amount of time justices currently must spend on inmate petitions and other matters involving persons not represented by counsel. Please help us do a better and more timely job for the people of Montana by approving these proposals.

COMING AROUND to complete the circle, I've outlined for you just some of our most significant accomplishments in improving the Judicial Branch in the last two years. Our justices, judges and staff inspire me every day with their dedication and willingness to go the extra miles for our citizens. Together, and with your help, we have made significant improvements. Together, and with your help, we can and will do more.

I recall with pleasure a statement on the floor of this chamber during the last session. A representative said, “You can't put a price on justice” with regard to adding a judge, staff and operating costs in his county. I ask you all to remember that while – in the real world – it is necessary to put a “cost” on justice, justice is best served through a carefully managed statewide Judicial Branch that has at least minimally adequate resources to meet the needs of all the people of Montana.

Our overall Judicial Branch goals are to ensure that every Montanan can access our courts, so some day we will achieve truly equal justice, and to ensure that the administration of justice is fair, impartial and accountable to the people of Montana we serve. We strive to meet these goals every day.

I'D LIKE TO CLOSE my formal remarks to this Legislature the same way I did two years ago. I know that – like our branch—all of you aspire to goals on behalf of your constituents. As elected state level officials, we are all committed to serving our constituents with dignity and giving them the best that is in us. Let's remember together that we are part of the best system of government the world has ever seen – three separate branches with built-in checks and balances, a system that is the envy of people around the world. Let's remember together the sacrifices made to protect our form of government and individual freedoms. If we keep these basic ideas close to our minds and hearts, these will be our proudest moments – and we will have faithfully discharged our duties to the people we all serve.

Please know that the Judicial Branch recognizes your critical role in government and the sacrifices you make in being here; we applaud the work you do. We look forward to working with you in the future and, on behalf on Montana's justices, judges and staff, I wish you a productive and successful 60th Legislative Session. Thank you. ○

Securities law and raising capital in Montana

By **Karen Powell**, chair
Montana Tax Appeal Board

This article is designed for practitioners who are unfamiliar with securities laws, and are looking for a basic primer relating to the basics fundamentals of properly raising funds in Montana.

This article will discuss the three main filing choices used by small business – Form U-7 (SCOR); Reg. D, Rule 506; and CR-Equity.

While not all details of filing will be discussed, this article will give a general overview of certain considerations for practitioners. This article also will discuss the Montana specific exemption from filing in detail. This exemption allows for 10 offers without registration or filing; and an additional 15 offers with a very limited filing with the Commissioner.

Any time that a small business owner or operator asks a friend, family member or someone else to consider investing in a business, business idea or start-up venture, a serious understanding of securities law is needed to avoid registration violations and to avoid triggering fraud provisions of the securities laws.

This article addresses issues of Montana law only, and does not address federal laws and exemptions from registration. For information, check the SEC web site for small business¹.

Montana securities law is generally in line with other state and federal securities law. There are, however, a few key points that a person raising funds through securities transactions should recognize before raising capital in Montana, including the lack of a Montana-specific accredited investor exemption.

Prior to offering or selling securities, a practitioner or offeror is advised to contact the staff of Montana Securities Department for assistance.

Federal and state regulations

The securities regulatory field is a multi-jurisdictional arena. The offer and sale of a security is regulated on both the federal and state level. Although there is coordination and overlap in state and federal securities laws, a practitioner must thoroughly understand both federal and state securities laws prior to advising any business client. Therefore, when researching and utilizing securities statutes, a practitioner must understand both federal and state regulations. A businessperson raising capital must comply with both state and federal securities laws.

History of securities regulation

The Kansas Securities Act was passed in 1911, making Kansas the first state to regulate the securities industry. The law was an attempt to prevent the sale of useless securities which had no other backing than the Kansas “blue sky.” Today, state securities laws are referred to as “blue sky” regulations. Over the next few years, other states, including Montana, passed similar securities laws.

Carpetbaggers and scam artists, however, soon learned that they could sell securities across state lines and avoid state regulation. State securities laws were piecemeal and could not stem the tide of the fraud. Following the great Stock Market Crash of 1929, the states urged the federal government to intervene with a national system of securities regulation. The federal government began to regulate investment activity with the passage of the Securities Acts of 1933 and 1934 and the creation of the U.S. Securities and Exchange Commission. To date, the federal and state systems have worked together to protect investors.

Similar to the concepts of state securities laws, the 1933 Act had two overarching objectives: to require that investors receive significant (or “material”) information concerning securities being offered for public sale; and to prohibit deceit, misrepresentations and other fraud in the sale of securities.

Fundamental to the Securities Act of 1933 was the idea that a company or issuer of securities should provide potential investors with sufficient information about the issuer to make an informed decision. Requiring a company to provide such disclosure to investors was designed to discourage bad behavior. Supreme Court Justice Louis Brandeis coined the phrase “sunlight is the best disinfectant” which reflected the idea that disclosure to investors is the root of the securities law system.

Full disclosure is a critical concept for practitioners and issuers to understand. Disclosure of information to a potential investor, both good and bad, shifts the responsibility of investment to the potential investor. If an issuer has provided full, “material” disclosure to a potential investor, the issuer is not liable for any subsequent loss of funds.

In 1996, the federal government passed The National Securities Markets Improvement Act of 1996 (NSMIA) which made substantial changes to the dual system of federal-state regulation while preserving state anti-fraud authority. The SEC became the regulator of nationally based activities, while preserving the role of states over activities that were state-specific.

Among other things, NSMIA preempts state registration and

related requirements in the case of offerings of nationally traded securities and securities of registered investment companies. See Section 18 of the Securities Act of 1933 [providing that no state law requiring or, with respect to registration or qualification of securities or registration or qualification of securities transactions, shall directly or indirectly, apply to a "covered security".]

State securities regulators, however, still play a unique role in investor protection. For example, the state securities administrator is responsible for licensing securities firms and investment professionals, such as broker-dealers and investment advisers, registering certain securities offerings, reviewing financial offerings of small companies, auditing branch office sales practices and record-keeping, promoting investor education, and enforcing state securities laws.

In addition to protecting investors, many state regulators also help small businesses raise money and comply with securities laws. Because the state securities regulators are within the state boundaries, the state regulators are most likely to hear complaints from investors relating to local investments, including small businesses. In addition, because a state regulator has audit staff, the regulator uses site visits to inspect books and records of anyone offering or selling securities.

Montana-specific regulation for capital formation

The offer and sale of securities in Montana is governed by the Securities Act of Montana, §30-10-101, MCA, et seq. Montana securities laws stem from the 1956 Uniform Securities Act and are generally consistent with other state securities laws⁴. The Montana State Auditor⁵, who is also the Commissioner of Securities and Insurance, implements and enforces the Montana Securities Act.

Securities offered and sold in Montana and the persons selling the securities must be registered with the State Auditor's Office unless an exemption from registration exists. See § 30-10-202, MCA. For practitioners who have securities law expertise, it is most important to note that Montana does not recognize an accredited investor⁶ exemption. See §30-10-105, MCA.

What is a security in Montana?

A security is defined in §30-10-103(22) MCA. It includes all stocks, bonds, promissory notes and other financial investment vehicles. One of the most utilized definitions of a security is an investment contract; which is any investment of money or something of value, in a common enterprise, with the expectation of profits derived solely through the efforts of others. See *SEC v. Howey*, 328 U.S. 293 (1946); adopted by the Montana Supreme Court in

What to look for when reviewing financial statements

By Stanley I. Foodman

When reviewing a financial statement, how do you know if the numbers it contains are truthful and based on objective factual information, or if it is a work of fiction? The short answer is – you don't know without digging.

When viewing financial statements, Benjamin Disraeli's famous quote should always be kept in mind. He said, "There are three kinds of lies: lies, damned lies and statistics." And, that my friends, is the level of skepticism that should guide one when analyzing financial statements. Given today's computerized environment, any financial statement and its supporting documents can be manipulated to change an ugly duckling into a swan.

In my 35 years of practice, I've observed that most members of the legal profession are not qualified by training and experience to determine if a financial statement, on its face, reflects the real world status of a company or an individual. This is the realm of accountants.

SO HOW DOES the uninitiated view or analyze financial statements? One first requires the submission for consideration of a company's or individual's financial history over more than one fiscal period. By reviewing a financial history for multiple or sequential fiscal periods, an economic analyst is more likely to spot trends and anomalies leading to a more complete inquiry. These trends and anomalies are dependant on the business and activities of a company or private individual.

Each industry and activity has its unique genetic markers. The financial statements of a law firm will appear considerably different than the financial statements of an auto parts manufacturing firm. Although it seems obvious that there are differences between industries and individuals, capable financial analysis requires in-depth knowledge of the economic idiosyncrasies of each industry and individual or the knowledge of where to find the in-depth information before being able to issue a reliable report. This applies to every area of legal practice involving financial statements, tax returns, securities and insurance just to name a few.

One looks for trends and anomalies as an initial starting point for ultimately confirming the veracity of a financial statement. This may be as simple as understanding the relationships between certain balance sheet accounts or income statement accounts. If for example, over a period of three years the accounts receivable of a company are at least twice as large as the company's accounts payable, and in the fourth year that ratio changes in a material way, an anomaly is present that ought to be thoroughly investigated.

ANOTHER WAY of viewing trends and anomalies when analyzing financial statements is that the financial condition of a company or an individual for a given period should not be viewed in a vacuum. It must be viewed over a series of comparable time periods whenever possible. Numbers are the result of events and circumstances which are not obviously reflected by the numbers themselves. Amounts must necessarily be considered and understood in the context from which they arise. Combining a panoramic perspective with a vertical perspective is a requirement for effectively analyzing financial statements and the documents that provide for their foundation.

Using vertical thinking simply

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State v. Duncan, 181 Mont. 382, 593 P.2d 1026 (1979). The investment contract may include investments in partnerships, limited liability corporations, or investments in a small business. Thus, the investment in a small business is likely to trigger the need to review securities laws, including registration of the security and the salesperson prior to an offer or sale. In addition, any person or company involved in an offer or sale of a security may be subject to the anti-fraud requirements of the Montana Securities Act.

There are two general types of securities most often utilized in raising capital for a small business in Montana. Debt securities allow a company to raise funds by obtaining loans from investors. Equity securities involve selling a portion of the ownership interest in a company.

Registration of both the security and the salesperson

Once a company considers raising capital through soliciting investors, it must recognize the need to register the securities, as well as the “salesmen” who will be selling the securities. Failure to do so may lead to enforcement action by a state securities department. See §§30-10-201, 30-10-202, 30-10-301, MCA, et seq. The three main methods for offering securities by a small business in order to raise capital in Montana, including Reg. D, rule 506; Form U-7; and CR-Equity. The article also will discuss a method for small business to raise funds without registration.

Registration of salesperson. Securities sold in Montana must be sold by a registered or licensed securities salesperson, unless the individual is specifically exempted from the definition of salesperson, See §30-10-103(20)(a), MCA. See §30-102-1, MCA. A person may not act as a broker-dealer, a salesperson, investment advisor or investment advisor representative unless registered by the State Auditor’s Office, unless he can claim an exemption from registration. See §30-10-201, MCA. Certain persons may be prevented from registering to sell securities if they have engaged in dishonest or unethical practices in the securities business, or in issues with other related financial transactions. See §30-10-201(13), MCA.

Registration of a security in Montana. Most securities must be registered with the SEC and the State of Montana prior to an offer or sale of security in Montana. See §30-10-202 through 209, MCA. A small business interested in raising funds in Montana will generally register to sell securities if it needs to raise more than \$250,000 in capital.

The registration process involves filing an application with supporting documentation and payment of fees. See § 30-10-206 and 208, MCA. The registration of securities may be denied, revoked, or suspended on the basis of a merit review or for failure to provide full disclosure of material information pertaining to the security. See §30-10-207, MCA. There are three main types of registration:

■ Registration by notification, §30-10-203, MCA, is designed for high-quality users and allows for automatic effectiveness within 10 days. See 6.10.148, ARM for notice filing requirements for federal covered securities. This provides

issuers who have filed on a federal level to file notice with the state of Montana securities department. Once an issuer has “notice filed” with the state, the issuer may commence with selling the security.

■ Registration by coordination, §30-10-204, MCA, provides for the registration of securities that are also filed with the SEC. Issuers filing under §30-10-204 will have the same effective date at both the state and federal level.

■ Registration by qualification, §30-10-205, MCA, allows for registration of securities that are either not filed with the SEC or have been previously filed by the SEC but not at the state level.

Regulation D, Rule 506

The Securities and Exchange Commission’s Regulation D, “Rules Governing the Limited Offer and Sale of Securities without Registration Under the Securities Act of 1933” or as it is commonly known as “Reg. D, Rule 506” is a federal exemption that allows a small business to raise capital provided it follows certain guidelines and prohibitions. Reg. D Rule 506 is a private placement and does not allow for general solicitation. It is useful if a company knows its potential investors prior to raising capital.

There is a burgeoning use of Reg. D, Rule 506 for a variety of reasons. While this filing is useful for legitimate businesses interested in raising funds, there has been a great concern that it is being used by fraudulent entities due to the lack of state and federal substantive review. In addition, there are no “bad boy” provisions to prevent prior bad actors from re-entering the securities market.

For more information on the use of Reg D, Rule 506, see the SEC web site on capital formation at www.sec.gov. The filing requirements for issuers notice filing in Montana under Reg. D, Rule 506, are a consent to service of process and appropriate fees which must be filed within 15 days prior to any offer or sale to a person within Montana. See §30-10-211(2), MCA and 6.10.149 ARM.

Coordinated equity review

Montana participates with other states in a program designed to allow issuers to register in two or more participating states utilizing a coordinated review program. See §30-10-205, MCA. To date, more than 40 jurisdictions participate in this process.⁸ An issuer of common stock, preferred stock, warrants, rights, and units comprised of equity securities who is interested in registering in Montana and another participating jurisdiction, may consider participating in a coordinated review process. Coordinated equity review is generally used by issuers interested in raising over \$1 million dollars in more than one jurisdiction.

An issuer will submit a Form CER-1 to Montana, additional jurisdiction(s), and the Pennsylvania Securities Commission⁹. The Montana Securities Department, in addition to other jurisdictions, will submit comments regarding the offering to two lead states. The two lead states, one merit state and one disclosure state, will review the offering and apply guidelines and standards established by the North American Securities Administrators Association¹⁰ rather than Montana law or other

state law. The two lead states will issue one comment letter to the issuer, and work directly with the issuer to resolve any comments. Coordinated equity review is not available for registration of blank check, blind pool, or Regulation A offerings¹¹. Most coordinated equity review offerings file for federal registration using Form SB-2.

Form U-7 (Small Corporate Offering Registration)

The Form U-712, or SCOR (Small Corporation Offering Registration) is designed for companies seeking to raise capital through a public offering of securities exempt from registration with the Securities and Exchange Commissioner (SEC), using Regulation A, Rule 504 f SEC Reg. D or section 3(a)(11) of the Securities Act of 1933. The SCOR form is filed with the Montana Securities Department pursuant to §30-10-205, MCA and allows an issuer to raise up to \$1 million in a 12-month period through general solicitation.

Although the statutory system seems complicated, the SCOR form is designed to be a single form filing. In addition, the SCOR form is in a “question and answer” format designed to be used as a full disclosure form¹³. The SCOR form is generally used by issuers who are looking to raise in excess of \$250,000, due to the time and cost in using a SCOR form.

The SCOR form is accepted in 45 states, and may be used for a multi-state offering. In such case, the issuer may be able to take advantage of a regional filing process. Montana is in the CR-SCOR Western region. If an issuer is interested in pursuing a SCOR filing, more information is available through the Securities Department, via webpage, or through the North American Securities Administrators Association.

The SCOR form is an excellent option for those small companies interested in being involved with the registration process or looking to limit the expense associated with raising capital. Because the SCOR form is designed as a question and answer format, the officers or key employees of the company may be able to perform the majority of the drafting of the SCOR form before consulting with an attorney.

Exemptions from registration other than Reg D, Rule 506

There are a number of exemptions available for selling securities. A full list of exemptions may be found at §30-10-105, MCA. It should be noted, however, that in most cases, a person or company cannot use more than one exemption, and cannot “stack” exemptions. Knowing the full operation of the exemption in advance will prevent a company

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means drilling down to determine whether everything classified in a particular category belongs there. In exclusively vertical thinking, there is no perceived need for questioning or looking beyond the obvious.

Here is an example of vertical thinking in looking at a financial statement: Financial records for an individual show that he or she has been receiving and depositing \$5,000 per month into a bank account. The person's submitted personal income tax return reflects a total of \$60,000 as annual revenue. The individual's monthly bank deposits and reported annual income match. Under the vertical thinking scenario, the monthly income of \$5,000 is presumed to be correctly classified in the financial statements.

Panoramic thinking involves the connecting and disconnecting of information depending on how it both logically and intuitively relates to the numbers included in the financial statements. That means searching out logical sequiturs and non-sequiturs, which are all parts of the context from which financial information arises. The denotation, or dictionary definition, of “panoramic” is a picture exhibited one part at a time as it is unrolled to a spectator. This kind of thinking could be considered looking at the big picture. In another context, it can be considered a wider view of a narrow area in a financial statement.

VIEWING A financial statement using panoramic thinking requires examining one piece at a time in the context of the entire financial picture presented; thereby obtaining an unobstructed or a complete view of the financial statement, from every one of its angles. Using the same scenario as in the vertical thinking example, a completely different conclusion could be drawn.

In the vertical thinking scenario, a financial statement

reflects an individual receiving \$5,000 a month. The individual has also provided tax returns that show a reported annual income of \$60,000. Upon further inquiry, we may discover that the tax return on file with the United States government is materially different than the one provided to the bank or credit authorizing authority. The annual income included in the financial statement may be \$60,000, but that \$60,000 may in fact be loans or gifts instead of actual income. Any of these new facts will change the thinking of someone who is considering lending money based on the reported income.

SOUTH FLORIDA'S case of Gus Boulis and SunCruz Casinos at the turn of the millennium is a reflection of the necessity for forensically scrutinizing submitted financial statements and their supporting documents – particularly when using panoramic thinking.

According to the available public information, Jack Abramoff and Adam Kidan “purchased” SunCruz Casinos using “smoke and mirrors.” SunCruz Casinos was a fleet of 11 gambling ships that operated outside of U.S. territorial waters. At the time of its sale to Jack Abramoff and Adam Kidan, the financing package included a counterfeited wire transfer document purportedly demonstrating a down payment of \$23 million. On September 22, 2000, Jack Abramoff and Adam Kidan convinced Mr. Boulis to accept undisclosed promissory notes for \$20 million in exchange for a secret 10 percent interest in the newly reorganized SunCruz Casinos.

The deal was illegal in two ways. Messrs. Abramoff and Kidan were violating the terms of their purchase agreement with their financiers which required that they make a down payment of \$23 million of their own money,

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from limiting the ability to raise capital by exhausting an exemption before raising sufficient capital for the business venture.

The Montana Limited Offering Exemption exempts an offer and sale of security that is sold in compliance with Securities Act of 1933, Regulation D, Rules 230.501 through 230.503 and 230.505. Each person who offers or sell securities in Montana – as defined in Securities Act of 1933, Regulation D, rules 230.501(a)(5) through 230.501(a)(7) – must be registered to sell securities in accordance with §30-10-201, MCA. See 6.10.120, ARM.

While use of the Limited Offering Exemption is an excellent vehicle for raising funds, certain issuers are prevented from using this exemption. Pursuant to the rules set forth in 6.10.120, ARM, exemption is not available for any issuer who has been the subject of a stop order (cease and desist order) within the last five years. See 6.10.120(3)(a). Further prohibitions exist if the issuer has been convicted of securities fraud or felony fraud within the past five years, including but not limited to forgery, embezzlement, false pretenses, larceny and conspiracy. There are certain other prohibitions relating to administrative, civil and criminal actions that, if filed, will prevent an issuer from being able to access the Montana Limited Offering Exemption. For a full list, see 6.10.102, ARM.

Best exemption available for small businesses in Montana

Using the SCOR filing¹⁴ or a federal exemption filing such as Reg. D, Rule 506 is useful for many businesses who can afford the significant expense of legal advice and financial assistance. There are, however, a number of small businesses that do not need to raise enough capital to warrant designing a registered offering.

Montana has carved out a smaller exemption for businesses that do not need to raise extensive funds.

It must be noted that a security exempt from registration does not exempt a company from the fraud statutes found in §30-10-301, MCA.

The Montana Legislature implemented a simple statutory exemption to allow a very simple and inexpensive method for Montana small business to raise capital. During the 2001 Legislature, the Montana Securities Act was amended to provide a specific method for small business within Montana to raise capital without utilizing traditional methods such as the commonly used SCOR form or the federal Form 506 filings. The statute states:

30-10-105. Exempt transactions — rulemaking.

Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the

buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States Securities and Exchange Commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

This statutory scheme allows for 10 offers in a 12-month period under certain situations. It may be expanded to 25 offers if the Commissioner grants advanced written approval. Section 8(a) contemplates the ability for a seller of securities to provide a limited offering to no more than 10 people within a 12-month consecutive period. All of those purchasers must be buying for investment purposes, and the seller may not receive a commission on the sale.

Section 8(b) allows for a limited offering similar to 8(a) but further provides for offers to not more than 25 persons and issues must receive prior approval from the commissioner.

The Commissioner has further promulgated administrative rules so set forth the specific filing exemptions.

Designated as “Second Tier Limited Offering Exemption,” an issuer using the second tier limited offering exemption shall file an original manually signed copy of a second tier limited offering exemption form, with a \$50 filing fee and a consent to service of process form. See 6.10.103(1) and (2). Filing a consent to service of process form is a standard activity with any offer and sale of securities. The commissioner may grant or deny the Second Tier Limited Offering Exemption request. Any offeror who has been denied the Second Tier Offering Exemption may request a hearing pursuant to 6.10.130, ARM.

Section 8(b), enacted during the 2001 session, is designed to broaden the exemption available to small businesses looking to raise limited capital from Montana. The section is easy to understand, and limits the needs for extensive legal assistance.



Educating the lawmakers Retired University of Montana law professor Larry Elison, at the podium, gives an hour-long presentation on “The Parameters of Legislative Authority Under the Montana Constitution,” as one of four presenters at the 2007 Law School for Legislators on Jan. 4, the second day of the Legislative session. Seated next to him is Great Falls attorney John Parker, who is House minority leader and moderator of the Law School for Legislators. About 65 members of the Legislature attended.

New coordinator for LRE Center

A new Americorps-VISTA member has taken over as coordinator of the State Bar of Montana’s Law-Related Education Center.

Andrew Fox, from Raleigh, N.C., replaces Matt Baum, whose year of VISTA service to the State Bar ended in January. Mr. Baum, who with his wife, China, are the brand-new parents of a baby boy, will remain in Helena through March and help the Bar monitor legislative hearings.

Mr. Fox recently graduated from North Carolina State University. He received a bachelor of arts degree in Psychology with a minor in Sociology. He brings with him two years of experi-

ence as a research assistant to doctoral candidates at NCSU.

Mr. Fox also has a commitment to community service. During his college career, he was a regular tutor for the Wake Literacy Council and was an active volunteer with Habitat for Humanity, including a trip to Tosagua, Ecuador.

Mr. Fox said he is excited about the work at the Law-Related Education Center and also at the opportunity to work with the legal community of Montana. He already is busy coordinating Law Day activities statewide and providing support for the Model Supreme Court program for high school



Andy Fox in his massive office at the State Bar.

students (see his story on Page 25).

Mr. Fox can be contacted at (406) 442-7660 ext. 1205, or at afox@mtlsa.org.

State Bar of Montana Bookstore

These Montana legal manuals and videos are for sale or rent via this mail-order catalog. Other Montana Bar-produced video seminars, are available for download to your computer on the Online CLE catalog at www.montanabar.org.

LEGAL MANUALS

Montana Probate Forms

2006, 288 pages
Book plus CD \$150

Civil Jury Instructions

(MPI – MT Pattern Instructions)
1999 w/2003 Update, 400 pages
Book \$150 / CD \$150 / Both \$200

Criminal Jury Instructions

1999 w/2003 Update, 400 pages
Book \$180 / CD \$80 / Both \$105

Handbook for Guardians & Conservators

2005, 60 pages incl. 5 forms
Book \$120 / CD \$100 / Both \$150

2006 Lawyers' Deskbook & Directory

400 pages
Book and mid-year update CD \$15

MT Family Law Form Book

2005, 93 pages incl. 26 forms
Book \$95 / CD \$95 / Both \$150

MT Freedom of Information Guide

2003, 138 pages
Book \$25

Public Discipline Under MT Rules of Professional Conduct

2005, 104 pages annotated
\$35

Public Information Flyers

tri-fold brochures, \$10/bundle of 100
Bankruptcy
Client Bill of Rights
Dispute Resolution
Divorce in Montana
How Lawyers Set Their Fees
Purchasing Your Home
Renting a House or Apartment
Small Claims Court
After an Auto Accident
When You Need a Lawyer
Wills & Probate

Statute of Limitations Manual

1998, 95 pages w/2001 Update
Book \$25

Step-parent Adoption Forms

2003, 5 forms
Book \$20

U.S. & Montana Constitutions

2006, pocket-sized booklet
\$4 each

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For rentals, send 2 checks – one for \$50 rental fee, one for \$25 security deposit

2005 State Bar Annual Meeting

w/Tom Brokaw speech, Jameson Award Presentation & "On the Air" with Bar members
CD, free, please return

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Set of 4 CDs, rental
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Printed accompanying CLE materials available, see "CLE Materials" list on next page

2004 Equal Justice Conference

5.0 CLE credits, including 2.0 Ethics credits
Set of 4 CDs, rental

2004 Family Law CLE

5.0 CLE credits, including 1.0 Ethics credit
Set of 4 VHS tapes, rental
DVD, rental

Please send the item(s) circled above in Book ___ CD ___ Both Book & CD ___
Videotape ___ DVD ___ format to:

Name _____ Mailing Address _____

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Amount Enclosed \$ _____ (Payment must accompany all orders)

Credit Card: Visa ___ Mastercard ___ Account No: _____

Exp. Date _____ 3-digit PIN on the back of your card _____

Mail order & payment to: **State Bar of Montana, PO Box 577, Helena MT 59624**

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1.50 CLE credits
DVD, rental

2004 Law & Psychology CLE

5.0 CLE credits, including 3.5 Ethics
VHS tape, rental
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2005 Legislative Update CLE

5.0 CLE credits
VHS tape, rental

2005 MT Constitution & School Funding

5.0 CLE credits
Set of 3 VHS tapes, rental

2004 Montana Ethics CLE, Butte

5.0 CLE credits, including 5.0 Ethics
credits
VHS tape, rental
CD, rental
Printed accompanying CLE materials
available, see "CLE Materials" list
below

Steven Keeva, 2004 UM Blakenbaker Lecture on Professional Responsibility

CD, free, please return

CLE MATERIALS

CLE outlines for all January through June 2006 CLEs

CD only, \$35

2004 Montana Ethics CLE

300 pages, \$35

2005 Chapter 13 Bankruptcy CLE

150 pages, \$35

Dues, CLE mailing to members on March 1

The State Bar of Montana will mail annual dues statements and CLE affidavits to its members on March 1. The Bar reminds you that the Montana Supreme Court ordered an increase in the Office of Discipline Counsel assessment from \$75 to \$125 for all active Bar members.

Samples of this year's dues statements can be found on the Bar's web site at www.montanabar.org under the "About the Bar" tab.

All dues statements and CLE affidavits must be returned to the Bar by April 1.

Bar seeks replacement for resigning trustee

Robert S. Spoja, the Lewistown attorney who is State Bar of Montana trustee for Area E, is resigning from the Board of Trustees, effective March 1.

Mr. Spoja is resigning to work at the Yellowstone County Attorney's Office in Billings, which is not in Area E (see Lawyer Deskbook & Directory for Bar Area map).

The State Bar Board is searching for an attorney who resides in Area E to replace Mr. Spoja on the board. If you are interested and meet the residency qualification, you can send a letter of interest to State Bar Trusteeship, PO Box 577, Helena MT 59624. The board would like to consider applications for appointment to the position in its April meeting, and set up interviews with applicants accordingly.

MLSA offers material to law firms

The Montana Legal Services Association is making MLSA brochures and information cards available to law firms to help those firms direct low-income people to MLSA for legal help.

If you are a private law firm and wish to receive MLSA cards and brochures as a resource for clients you are unable to help, please contact MLSA at (406) 442-9830, ext. 29; toll-free at (800) 666-6124; or e-mail abiercev@mlsa.org.

Computer seminar to feature End of Life Registry

A 1-1/2 hour seminar to teach about Montana's new End of Life Registry will be beamed to computers on Feb. 27 by the Montana State University Extension Service.

The Service will help you make your computer compatible with Extension's new Breeze software package so you can tune in for the educational session.

Marsha Goetting, MSU Family Economics extension specialist and Joan Eliel, Office of Consumer Protection, will present the seminar on Feb. 27 starting at 2 p.m. If you would like to participate, follow the directions below:

- Prior to the meeting, conduct a test to be sure that your computer is set up with the appropriate tools to participate in a Breeze Meeting. To do this, click on the Test Meeting Connection URL located here: http://extn-breeze.msu.montana.edu/common/help/en/support/meeting_test.htm.

- 15 minutes prior to the seminar start time at 2 p.m. on Feb. 27 enter this URL: <http://extn-breeze.msu.montana.edu/meolr/>.

- After check-in, you'll be taken to the Breeze Meeting room. Login as a GUEST. (Please DO NOT login as a registered user.)

- Type in your FIRST and LAST name (Example: Marsha Goetting) in the field marked "GUEST," then click on the box that reads "ENTER."

By **John Anderson**
State Bar Technology Committee

Microsoft released its newest operating system – Vista – at the end of January.

According to Microsoft's web site, it promises "powerful new technologies that will help your people do their best work." While it will almost certainly be filled with an array of new features and functions that help businesses work more efficiently, the question in the mind of this overhead-sensitive shareholder is: Is it worth the investment?

As with any new software that touts its ability to make your firm more productive, those of us practicing in smaller firms struggle to reach economies of scale that justify a significant investment in technology. Lawyers practicing in larger firms, where economies of scale can have a significant impact, find themselves struggling with the sticker shock of upgrading an entire firm.

Recently, I was bemoaning the challenges of law-office management with a grizzled old litigation partner at a large firm. We were well into a discussion of how to analyze the financial impact of technology investments when he asked me if there were other considerations that I might take into account. I am not sure he meant it to be an epiphany, but he certainly got me thinking.

It has been said many times that the law is a jealous mistress. Lawyers find themselves having to schedule time for their kids' T-ball games like they were appointments with clients. The deadlines, client pressures, financial obligations and loyalty to our fellow partners

Suddenly, a new operating system: what does it mean to my law firm?

can blind us to another dividend of investing in technology. I am speaking of those intangible parts of our lives, such as family, health and friends, which help us to maintain the vitality we all had prior to entering law school.

I am old enough, just barely, to remember dictating legal documents and making corrections by hand. Forms were paper documents with little more than blanks for the names of the parties, and comparing versions of documents was a painstaking task that required such advanced techniques as holding up pages to the light to see if any differences showed through.

Thanks to the likes of word processors, laptops and wireless connections, we now enjoy the ability to edit legal briefs in our favorite chair, easily modify forms to fit the subtleties of a transaction, and electronically compare versions of contracts. Some of us even use voice-recognition Dictaphones, which I personally find among the most amazing advances in law firm technology.

Used correctly, law-office technology allows attorneys to better serve their clients, reduce overhead and free up time to spend on the more enjoyable pursuits of life. However, the challenge we face, even if the financial analysis

favors the investment, is to reap those intangible benefits.

For many of us, the benefit of new technology is to take on more clients. While this is no doubt the primary reason for investing in technology, lawyers might also consider other changes made possible by technology that help us to realize the intangible benefits. Those of us doing transactional and contingency work have the

ability to invest in forms and automating other areas of our practice. Those of us billing by the hour may find billing systems that reduce our time spent reviewing monthly statements to clients. Still others may find they can live and work where they want.

While the financial analysis associated with new technology is a critical first step for any law firm, I encourage you to examine the other benefits of investing in technology. With any luck, the right investment might just allow you to attend that T-ball game, that school recital or even spend the entire holiday with your family.

JOHNATHAN W. ANDERSON, an attorney with the Kalispell law firm of Kaufman, Vidal, Hileman & Ramlow, is a member of State Bar of Montana Technology Committee. He and other Committee members will present law-practice technology articles in upcoming Montana Lawyer editions.

See more technology advice on the State Bar's Technology Section web page under "Groups" at www.montanabar.org.

Montana's Lawyers Helping Lawyers Hotline

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Call if you or a judge or attorney you know needs help with stress and depression issues or drug or alcohol addiction

STATE BAR CALENDAR

February 19

President's Day, State Bar offices closed

February 22

Landlord-Tenant Teleconference Part 1, noon

February 25

Deadline for advertising and article content for March edition of *The Montana Lawyer*

February 26-28

Bar Exam, Great Northern Hotel, Helena

March 1

Application deadline for July Bar Exam

March 2

State Bar Executive Committee meeting, 10 a.m., State Bar offices, Helena

March 1

Landlord-Tenant Teleconference Part 2, noon

March 2

Attorney-Paralegal Practice Tips CLE, Holiday Inn, Bozeman

March 8

Landlord-Tenant Teleconference Part 3, noon

March 16

Ethics CLE, Copper King Hotel, Butte

March 15-17

ABA's Bar Leadership Institute, Chicago. Bar officers will attend.

March 30

Oil & Gas CLE, Billings Hotel & Convention Center, Billings

April 1

Completed dues statements and CLE affidavits due back at Bar offices

April 12

State Bar Executive Committee dinner meeting, Missoula

April 13

State Bar Board of Trustees meeting, 10 am, UM School of Law, Missoula

April 16

Board of Bar Examiners meeting, 10 am, State Bar offices, Helena

May 1

Law Day

Coming March 16

All Ethics, Nothing But Ethics

(Annual St. Patrick's Day CLE)

By the CLE Institute of the State Bar of Montana

at the Copper King Lodge & Convention Center
Butte

6.75 CLE credits, including 6.75 Ethics credits

Pre-register by March 2 at \$145, or after at \$165; discounts for attorneys practicing for fewer than five years and for law clerks; free for full-time judges

The program & registration brochure has been mailed to State Bar members, or check CLE:Upcoming CLEs at www.montanabar.org, or call (406) 447-2206

Topics include:

- Ethical Reasoning
- A Business View of Ethics
- Conflict of Interest
- Appearance of Impropriety
- Common Ethical Pitfalls – A View from the Disciplinary Counsel
- Flat Fees
- Impaired Practitioners
- A Field Guide to Engagement Letters

Upcoming CLE seminars for Montana lawyers

February 22 Teleconference

Basic Principles of Montana Residential Landlord-Tenant

Law: Part 1 1.0 CLE credit (3.0 including Parts 2 & 3).

Presented by the State Bar of Montana, (406) 447-2201. See registration form on facing page

February 22 – Videoconference to 9 Montana cities

Recent Developments Affecting the Criminal Law

Practitioner 2.0 CLE credits. Presented by the CLE Institute

of the State Bar of Montana and the UM School of Law, (406)

447-2206. See CLE/Upcoming CLEs at www.montanabar.org

February 27 Helena – Metcalf Bldg., Capitol Complex

Writing Administrative Rules of Montana

10.0 CLE credits. Presented by the state Personnel Division, 444-3985

February 27 – Videoconference to 9 Montana cities

What Every Practitioner Should Know About Copyright Law

2.0 CLE credits. Presented by the CLE Institute of the State

Bar of Montana and the UM School of Law, (406) 447-2206.

See CLE/Upcoming CLEs at www.montanabar.org

February 28 Helena – Holiday Inn Downtown

Understanding Easements

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

March 1 Teleconference

Basic Principles of Montana Residential Landlord-Tenant

Law: Part 2 1.0 CLE credit (3.0 including Parts 1 & 3).

Presented by the State Bar of Montana, (406) 447-2201. See

registration form on facing page.

March 2 Bozeman – Holiday Inn

Attorney-Paralegal Practice Tips: The Devil's in the Details

6.50 CLE credits. Presented by the CLE Institute of the State

Bar of Montana and the Bar's Paralegal Section, (406) 447-

2206. See details of registration, program and speakers at

CLE/Upcoming CLEs at www.montanabar.org

March 2 Helena – Great Northern Hotel

Access & Influence 1.25 CLE credits, including 1.25 Ethics credits. By the Helena Education Association, (406) 443-2545

March 2 Missoula – St. Patrick's Hospital

Domestic Violence & Parenting Plans 6.50 CLE credits.

Presented by Montana Legal Service, University of Montana,

and the state Board of Crime Control, (406) 543-6691

March 2 Missoula – DoubleTree Hotel

Legal Research on the Web 6.0 CLE credits. Presented by

National Business Institute, (800) 930-6182

March 6 – Videoconference to 9 Montana cities

Recent Developments Under the Montana Wrongful

Discharge Act 2.0 CLE credits. Presented by the CLE Institute

of the State Bar of Montana and the UM School of Law, (406)

447-2206. See CLE/Upcoming CLEs at www.montanabar.org

March 7 Great Falls – Heritage Inn

Understanding Damage Calculations & Valuation Principles

2.0 CLE credits. Presented by Anderson Zurmuehlen, (406)

442-1040

March 8 Teleconference

Basic Principles of Montana Residential Landlord-Tenant

Law: Part 3 1.0 CLE credit (3.0 including Parts 1 & 2).

Presented by the State Bar of Montana, (406) 447-2201. See

registration form on facing page.

Other web & phone CLEs for Montana credit are:

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

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

March 9 Great Falls – Holiday Inn

Pre and Post Trial Tips

6.0 CLE credits, including 1.50 Ethics credits. Presented by the CLE Institute of the State Bar of

Montana, (406) 447-2206. See details of registration, program

and speakers at CLE/Upcoming CLEs at www.montanabar.org

March 9 Bozeman – Microtel Inn

State Ethics Law

3.0 CLE credits, including 3.0 Ethics credits.

Presented by the state Personnel Division, (406) 444-3985

March 9 Missoula – Holiday Inn Express

Understanding Damage Calculations & Valuation Principles

2.0 CLE credits. Presented by Anderson Zurmuehlen, (406)

442-1040

March 12 Billings – MSU Billings, Downtown

Understanding Damage Calculations & Valuation Principles

2.0 CLE credits. Presented by Anderson Zurmuehlen, (406)

442-1040

March 13 Bozeman – GranTree Inn

Understanding Damage Calculations & Valuation Principles

2.0 CLE credits. By Anderson Zurmuehlen, (406) 442-1040

March 13 Great Falls – Holiday Inn

Defending Wrongful Discharge Claims

6.0 CLE credits, including 1.0 Ethics credit. By National Business Institute, (800) 930-6182

March 14 Helena – Great Northern Hotel

Understanding Damage Calculations & Valuation Principles

Basic Principles of Montana Residential Landlord/Tenant Law
\$20/session or \$45 for all three
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Please mark the program(s) you are registering for
and include check or credit card information

- Part I: February 22, 2007 (12 Noon - 1:00 pm)
 Part II: March 1, 2007 (12 Noon - 1:00 pm)
 Part III: March 8, 2007 (12 Noon - 1:00 pm)

Upon registration and prior to the conference, you will be given an 800 number to call, with a pass code. At 12 Noon, dial the 800 number. You will get a message welcoming you to the State Bar's teleconference system and will be asked to enter the pass code (which will be given to you prior to the conference).

The completed registration form must be received at the State Bar office no later than February 16th, 2007.

Mail or fax completed form. **If faxed, call 406-447-2201 to confirm receipt. Confirmation of registration and materials will be emailed or faxed.** You **MUST** provide either an email address or fax number.

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Phone (406)447-2201; Fax (406)442-7763

2.0 CLE credits. Presented by Anderson Zurmuehlen, (406) 442-1040

March 14 – Missoula Holiday Inn Parkside
Land Use & Planning Processes 6.0 CLE credits, including 1.0 Ethics credit. Presented by National Business Institute, (800) 930-6182

March 16 Butte – Copper King Hotel
Ethics 6.75 CLE credits, including 6.75 Ethics credits. Presented by the CLE Institute of State Bar of Montana, (406) 447-2206. See details of program, speakers and registration at CLE/Upcoming CLEs at www.montanabar.org

March 23 Missoula – Holiday Inn Parkside
Examining & Resolving Title Issues 6.0 CLE credits, including

1.0 Ethics credit. Presented by National Business Institute, (800) 930-6182

March 27 Miles City – Holiday Inn Express
Privacy & the Right to Know 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

March 30 Billings – Billings Hotel & Convention Center
Oil & Gas 7.0 CLE credits. Presented by the CLE Institute of the State Bar of Montana, (406) 447-2206. See details at CLE/Upcoming CLEs at www.montanabar.org

March 30 Billings – Crowne Plaza Hotel
The Art of Settlement 6.0 CLE credits, including 1.0 Ethics credit. Presented by National Business Institute, (800) 930-6182

Building-expansion project about to begin

The University of Montana School of Law is set to begin its building renovation and addition project in the late summer or early fall, "with the support of the 2007 Montana Legislature and the continued generosity of our friends and alumni," said Law School Dean Ed Eck earlier this month.

"Students, faculty and staff have worked with the architects to ensure a design that serves our current academic program and anticipates educating tomorrow's attorneys," a Law School statement said.

Once the project is completed, the Law School building will be accessible to students and visitors with physical disabilities. Small and mid-sized classrooms will accommodate the increasing number of elective courses designed to prepare lawyers to serve clients in specialized areas of the law. All classrooms

will have better acoustics and more desk space for laptop computers. The Law School clinics will include interview rooms and student workrooms. "Every student will have a study space," the Law School said.

The improvements are critical to the School's continued accreditation. The ABA Accreditation Committee found that the School failed to demonstrate its compliance with accreditation standards because of the inadequacies of the School's existing facilities. University of Montana President Dennison and Dean Eck are required to submit another written report to the Accreditation Committee by May 1, and to personally appear before the Committee on June 22.

Since 2002, Development Committee members, members of the School's Board of Visitors, and other friends and

alumni of the School of Law have raised more than \$4.4 million for the project, the Law School said. When added to two federal appropriations, a 2005 Montana legislative appropriation, and available bond proceeds, the Law School now has \$9 million for the project.

A \$3.45 million request submitted by the Governor's budget and now under consideration by the 2007 Montana Legislature in HB 5, together with additional gifts and grants, "would enable the School to commence the project and ensure our continued accreditation," the Law School statement said.

"We are grateful for the generous support we have received from many sources including the State Bar of Montana and our loyal and generous friends and alumni," Dean Eck said.

Law Class of 2006 establishes scholarship for slain law clerk

The University of Montana Law School Class of 2006 has created a School of Law scholarship to memorialize "the outstanding qualities" of Paul Raftery, the Montana Supreme Court law clerk who was slain during a robbery on a Helena street on Dec. 8.

And in a January order, Chief Justice Karla Gray appointed a committee to prepare "an appropriate Memorium" to Mr. Raftery. A memorium plan was to be given to the Court by March 6.

Mr. Raftery, 41, a former law enforcement officer, was a graduate of the UM Law Class of 2006 and passed the Montana Bar Exam in July. The memorial scholarship "acknowledges Paul's significance to the legal community and encourages law students to emulate the dedication and integrity Paul Raftery brought to the profession," a UM School of Law statement said.

"In addition to his extraordinary efforts in the School of Law Indian Law Clinic, Paul graduated with honors," the Law School said. He was clerking for Justice Warner of the Montana Supreme Court at the time of his death.

"Paul Raftery displayed a generous and helpful nature towards others in his professional and personal life, along with a wonderful sense of humor . . . His insight, strong advocacy skills, and concern for others will be greatly missed."

If you wish to contribute to this scholarship, send your check to The University of Montana Foundation, PO Box 7159, Missoula MT 59807-7159. The memo line should indicate that the donation is for the Paul Raftery Memorial Scholarship.



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Foundation hires development director

Amy Sings In The Timber, a 2005 graduate of the University of the Montana School of Law, has been hired by the Montana Justice Foundation to be its first, full-time Director of IOLTA Operations and Director of Development.

Ms. Sings In The Timber will oversee the Foundation's largest source of income, the Interest on Lawyers' Trust Accounts (IOLTA) program, a program which pools interest from state lawyer trust accounts to provide civil legal aid to the poor and support improvements to the justice system.

Ms. Sings In The Timber also will work to cultivate and enhance relationships within the banking community, will focus on private bar fundraising activities and will work to develop cy pres awards from leftover funds from class-action lawsuits.

"Organizationally, the Montana Justice Foundation carries an enormous responsibility – appropriately funding

the Montana access to justice community and ensuring justice is accessible to all Montanans," said Chris Newbold of ALPS Foundation Services, which provides strategic direction to the Montana Justice Foundation. "With Amy's hiring, this Foundation will take a major step forward in realizing its potential and strengthening its overall position. We are just thrilled to have an individual of Amy's talent and energy on board."

Ms. Sings In The Timber has been working the past year as the instructional coordinator of the Indian Education Division of the Montana Office of Public Instruction. Also, she worked as an attorney for the UM School of Law's Indian Law Clinic last summer.

She also served as a legal intern for Smith, Doherty & Belcourt in Missoula and for the Oneida Tribal Law Office in Wisconsin.

Ms. Sings In The Timber earned a bachelor of arts degree with honors in Anthropology and Native American Studies at the University of Wisconsin-Milwaukee in 2000, and attended the



Amy Sings In The Timber

Milwaukee Institute of Art & Design for two years.

While at the University of Montana School of Law, she was president of the Native American Law Students Association, and was on the moot court team that took second place in the 2004 Native American moot-court competition.

She will be based in Missoula and can be reached by phone at (406) 523-3890 or by e-mail at asings@mtjustice.org.

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COMMISSION APPOINTMENTS

The Montana Supreme Court has appointed the following people to Court commissions in recent weeks:

- **Gender Fairness Commission:** Reappointed to terms that will expire on Dec. 31, 2007, are Julianne Burkhardt, Helena, chair; Michael Best, Great Falls; Shelley Hopkins, Missoula; and Roger Barber, Havre. Commission member Carol Graham chose not to seek reappointment.
- **Criminal Jury Instructions Commission:** Appellate Defender Jim Wheelis was appointed to a four-year term, replacing William F. Hooks, whose term expired.
- **Commission on Courts of Limited Jurisdiction:** Barb Pepos was appointed to serve on the Commission in her capacity as the new president of the Montana Justice, City & Municipal Court Clerks Association.
- **Commission on Unauthorized Practice of Law:** Lee Berger was reappointed to a new three-year term.
- **Commission on Practice:** Ward E. "Mick" Taleff was appointed for a three-year term, to replace Micheal Lamb, who resigned.
- **Judicial Nomination Commission:** Secretary of State Brad Johnson appointed Shirley Ball of Nashua to be the public member, replacing Jack Galt.

By **Andrew Fox**, coordinator
Law-Related Education
State Bar of Montana

Attorneys can help students in local Model Court events

The Model Supreme Court of Montana will be meeting this year from May 13-16, but Montana attorneys can start helping high school student prepare for competition now.

The Model Court is one branch of the larger youth organization, YMCA Youth & Government. The organization was created nationally in 1936 and has existed in Montana since 1970. The philosophy of the program is that "Democracy must be learned by each generation."

The program offers high school students the opportunity to author, debate, and pass legislation as well as argue cases that are similar in nature to those heard by the actual Montana Supreme Court. In 1972, students were even provided the opportunity to parallel the actual Montana Constitutional Convention with a model convention of their own. From its charter class of 75 students, to its most recent class of more than 300, the Montana Youth and Government program offers students valuable exposure to the workings of democracy.

The Supreme Court element of the program was first created in the 1980s but struggled to catch on. It was due to the strong efforts by then program director Brenda Wahler and by justices of the Montana Supreme Court, that the program was reintroduced in 1998.

Current program director Susan Quinn has continued the new tradition of the Model Supreme Court. Youth participants from across the state gather once a year to take part in this valuable experience. The Supreme Court has generously allowed participants to use the Supreme Court chambers so that they might have a more meaningful experience.

Preparation for the Model Supreme Court begins months in

advance. In January, cases are announced to the student delegations. Last year, the issues of double jeopardy and illegal search and seizure were addressed. This year's cases will focus on child abuse and prayer in public schools. Typically in the months leading up to the event, high school delegations are coached by local attorneys. The attorneys teach students how to write briefs and present oral arguments.

By uniting students with members of the legal community, the Model Court program has drawn the attention of the State Bar of Montana's Law-Related Education Center, which hopes to provide more support to the program in the future.

When the delegations arrive in Helena in May, they are coached by a new set of attorneys who offer suggestions about oral arguments and review the students' final briefs. After the final touches are made, the Model Supreme Court begins. Justices of the Court are high school jun-

iors and seniors who have applied and been selected for the position.

Delegation teams are only required to prepare a brief for one side of each

case; however, their oral arguments must be ready for either side of the case.

Over the course of the week, attorney teams argue both sides of their cases in front of the Model Court.

Student attorneys who are not arguing cases are encouraged to serve as "visiting justices" on the Court. There is no elimination of teams and no tournament setup; the event is meant to enhance and encourage students' knowledge of the Court. However, at the end of the week an award will be presented to the best attorney team and to the team with the most well-written brief.

The Model Supreme Court offers students a unique understanding of the Montana legal system. Attorneys who are interested in volunteering for this year's Model Supreme Court – or are interested in serving as coaches for regional student delegations – should contact Andrew Fox at the State Bar's office at (406) 442-7660 x 1205 or at afox@mtlsa.org. ○

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The advertisement features a black and white photograph of a horse race in progress. Several horses and jockeys are visible, running on a track. The text is overlaid on the image, with the company name in a large, bold, serif font. The contact information is at the bottom.

Negotiation Theory & Practice

Alain Burrese

Strategy vs. tactics

I have spent over 25 years now studying, practicing, and teaching martial arts. This includes time spent in the U.S. Army and living in Japan and Korea studying martial arts there. Two important concepts that I have studied, taught and written about in a martial or military format are equally important when teaching negotiation. These concepts are strategy and tactics. Sometimes I see people mistakenly using one term when they actually mean the other.

In this short column, I want to describe the differences between strategy and tactics as well as illustrate the relationship between the two.

Strategy

Strategy is the overall, big-picture plan that includes goals or desired outcomes. In the military, strategy is the utilization, during both peace and war, of all of a nation's forces, through large-scale, long-range planning and development, to ensure security or victory. Another definition would be a plan, method or series of maneuvers or stratagems for obtaining a specific goal or result. A well-known strategy used by the Allies in World War II was that of strategic bombing in Europe. The Army Air Corps' strategic bombing doctrine was



based on the theory that a bombing force could pound the adversary until its industrial base was destroyed, and with it, its ability and will to wage war. While this example helps illustrate the concept of strategy, it is unfortunate that many of us have probably encountered negotiators that worked from a very similar strategic doctrine.

Strategic negotiation is simply the act of devising and carrying out a well-thought-out plan to achieve your desired outcomes. Often, it is your plan to convince another party to give you something that you want, and on your terms.

The first thing you must determine when developing a negotiation strategy is what do you really want? What is the purpose of the negotiation? Do you want to purchase a house or commercial building? Do you want a raise in your salary? Do you want to settle a matter that is being litigated? Once you know what you want, and have devised a strategy, you can implement the tactics that will help you achieve your desired outcome.

When one is developing strategy, it is often easier to break your planning into phases. Here is a simple model used with martial arts and warfare that you will notice fits with negotiating equally well:

1. Identify your strategic objectives.
2. Collect intelligence.
3. Plan for environment.
4. Program for engagement.

Tactics

Tactics are simply the means by which you carry out your strategy. In the military, tactics deal with the use and deployment of troops in actual combat. More specifically, it is the military science that deals with securing objectives set by strategy – especially the technique of deploying and directing troops, ships and aircraft in effective maneuvers against an enemy.

In our example above with the Army Air Corps, the tight formations employed by the bombers to make the best use of the bombers' heavy armament and prevent German fighters from singling out and swarming on lone planes is an example of a tactic used to help carry out the strategy. Another tactic was the employment of high-altitude bombing when low-level bombing proved too vulnerable to anti-aircraft fire.

One must be very careful not to focus upon activity, means or tactics at the expense of accomplishment, achieving goals or desired outcomes. Above all else, obtaining one's objectives in negotiations should be paramount.

Of course, the tactics, activities or means we use should always be appropriate and ethical, but we must remember they are merely the ways to attain desired outcomes. Examples of negotiation tactics include things such as:

1. Giving ultimatums.
2. Nibbling.
3. Displaying shocked or surprised looks.
4. Playing good cop/bad cop.

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5. Walking away

There are many tactics people use while negotiating. I will write about a number of these in future columns. There is nothing wrong with using certain tactics to carry out your strategy and obtain your objectives. It is not necessarily unethical, deceptive or unscrupulous to use negotiating tactics, even though some people may want you to believe this. Yes, some tactics may be unethical, and, as I stated above, we should always be appropriate and ethical, but there is nothing wrong with being competitive.

No, I have not forgotten the Principled Negotiation strategy taught by Fisher and Ury in "Getting To Yes." However, I also realize that sometimes we will be in competitive negotiations, and knowing various tactics can give us the edge. Face it, some clients hire an attorney to be their pit bull, and while win-win might be the ideal, some of these clients only care about a win in *their* column. Practically speaking, we must deliver for our clients if we want to stay in business. Additionally, knowing various negotiation tactics, and the counterattacks, prepare us for when others use them against us.

Conclusion

Strategy and tactics are concepts as old as conflict itself. By understanding the differences and relationships between the two, the successful negotiator can better plan and implement the strategies and tactics to reach specific desired outcomes. There is a reason so many successful business people study the ancient military classics such as "The Art of War" and "The Book of Five Rings." There is a reason why so many successful business people play strategic military games such as Go and Chess. The lessons learned from military sources, especially strategy and tactics, can easily be adapted to help us be better business people, better litigators, and better negotiators.

ALAIN BURRESE is a mediator and attorney with Bennett Law Office in Missoula. He conducts mediations and settlement conferences as well as speaking and training in negotiation and mediation. He can be contacted at: www.bennettlawofficepc.com or (406) 543-5803.

Senate reacting to the purge of U.S. attorneys

The measure allowing the Bush Administration – after firing seven U.S. attorneys – to hire new federal prosecutors without Senate consent may soon be repealed.

On Feb. 9, a Senate committee passed a revision of the measure, which had been slipped into the USA PATRIOT Improvement & Reauthorization Act by a member of Sen. Arlen Specter's (R-PA)

staff, acting on behalf of the Justice Department. Three Republicans, including Sen. Specter, voted for the repeal.

Sen. Harry Reid (D-NV) told The Associated Press he planned to "do everything I can" to bring the bill to the floor.

The Democrats continued to push the issue of the earlier purge of federal prosecutors in states across the county.

Deputy Attorney General Paul McNulty admitted in a February hearing that a U.S. attorney in Arkansas was removed for no reason except to install a former aide to Karl Rove, Timothy Griffin. On Feb. 9, Democratic leaders sent a letter to Attorney General Alberto

Gonzales wanting to know more.

Among other questions, they asked: "In light of the unprecedented nature of the appointment, we are especially interested in understanding the role played by Karl Rove. In particular, what role did Karl Rove, with whom Griffin was closely associated, play in the decision to appoint Griffin?"

One of the six prosecutors who were fired on the same day in December, John McKay of Washington state's Western District, said on Feb. 7 that he, too, was canned without any explanation: "I was given no explanation. I certainly was told of no performance issues." ○



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In addition, an attorney who does not practice in the securities arena can be confident in assisting a client in utilizing this limited exemption without being fully versed in federal filings.

This exemption allows for a small company to solicit sales in their business without fear of violating registration laws. Again, it cannot be emphasized enough that the anti-fraud provisions of the Securities Act will still apply.

One method to ensure that a small business has provided appropriate disclosure is to use the SCOR form previously discussed as a disclosure tool. A small business may utilize the SCOR form to ensure that proper disclosure is given to each investor prior to any offer or sale made.

Other exemptions from registration in Montana

There are a number of securities that are exempt from registration, including government-issued securities, those issued by banks, credit unions, public utilities, co-ops, and others. *See* §30-10-104, MCA. The commissioner further has authority to grant an exemption at his discretion. These exemptions are not discussed here due to the fact that small businesses will not generally be able to access these exemptions.

Anti-fraud provisions

All offers and sales must comply with the anti-fraud provisions set forth in §30-10-301, MCA, regardless of whether the security is exempt or a federal covered security. The anti-fraud statute prohibits:

- Employing any device, scheme, or artifice to defraud.
- Making any untrue statement of a material fact or omit to state a material fact necessary in order to make any statements made not misleading.

Fraudulent offers and sales often fail to disclose the intended use of the investment proceeds, the financial condition of the company, the background of the officer and directors, and the identity of the controlling shareholders. One of the simplest methods to ensure that disclosure to a potential purchaser has been accurate is to use the SCOR form as a basis for disclosure. Regardless of whether a company actually files a SCOR form, the form has been meticulously designed to ensure that an investor has the proper information to make a decision in a matter. Using a business plan or other materials in lieu of a well-researched prospectus or SCOR form will likely be a violation of the Securities Act. In addition, a company and salesperson should be wary of statements made in sales materials, including ads, brochures, newspaper articles, TV or radio ads. Not only may such ads trigger anti-fraud requirements, they may also require filing with the commissioner prior to using such sales materials. *See* 6.10.103, ARM.

Disclosure Requirements. Generally, the key to the anti-fraud statute is the notion that full disclosure is required in any securities transaction. Whether a security is registered prior to sale, or offered or sold through an exemption from registration, a company and salesperson must provide prospective investors with full disclosure about the investment and must inform them of the risks associated with the investment. It is

highly advisable, though not required by law, to provide disclosure in writing. This is typically provided through a document called a prospectus. Providing for full disclosure is a requirement of both state and federal law and will be required in any state in which securities are offered or sold.

Full disclosure will include a description of the security, a description of the issuer, names and salaries of company officers, current audited financial statements, the company's capitalization, long-term debt and other securities outstanding, and estimated net proceeds to be received in the offering and use of proceeds. The NASAA web site hosts the model rules – such as uniform disclosure guides for cover legends, impoundment proceeds, and promotional shares – which may assist with crafting standard disclosure language. *See* www.nasaa.org; click on corporate finance. *See* statements of policy/model rules.

Offer of Securities. Securities statutes require registration of securities before the offer or sale. *See* §30-10-202, MCA. The term “offer” should be fully understood by those considering selling securities. An “offer” of securities, without the completion of the actual sale, requires compliance with the securities laws in the same manner as a sale. Thus, merely making an offer of a security will open a company or an individual to liability. This makes it especially important that all salespersons understand the need for full disclosure prior to any offer to sell securities.

What happens if securities laws are violated?

Failure to comply with securities laws will open a company and the salesperson to liability for the illegal sale of securities. The Montana Securities Commissioner has authority to implement civil penalties up to \$5,000 per violation. *See* §30-10-305, MCA. The commissioner may also refer evidence for criminal prosecution pursuant to §30-103-6, MCA. Criminal penalties for willful violation of the securities act include up to 10 years imprisonment.

In Montana, a purchaser of a security also has an independent civil right of action against an issuer and salesperson pursuant to §30-10-307, MCA.

If Montana securities laws have been violated through the offer and sale of securities without proper registration or exemption, a company may be able to cure the defect through a rescission offer. *See* §§30-10-307 and 309, MCA. If federal securities laws have been violated, additional administrative, civil and criminal penalties may exist.

Conclusion

When a small business owner or operator asks a friend, family member or someone else to consider investing in a business, business idea or start-up venture, a serious understanding of securities law is needed to avoid registration violations and to avoid triggering fraud provisions of the securities laws. There are relatively simple methods for compliance with securities laws. But a practitioner must be aware of both state and federal requirements. A practitioner should contact the Montana Securities Department for assistance prior to offering or selling securities in Montana, and be aware of both state

and federal regulations.

KAREN POWELL, a Helena attorney, is a former deputy securities commissioner and deputy state auditor for Montana. She is currently the chair of the Montana Tax Appeal Board. **LYNNE EGAN** assisted with this article.

NOTES

1. See www.sec.gov
2. CITE check: "Justice Louis Brandeis, Other People's Money, and How the Bankers Use It," 1933
3. Covered securities include the following:
 - Nationally traded securities – for example, securities listed or authorized for listing on the NYSE or included or qualified for inclusion in NASDAQ.
 - Securities of a registered investment company (i.e., mutual funds).
 - Offers and sales of certain exempt securities. See the National Securities Markets Improvement Act of 1996.
4. The majority of state securities statutes are based on the 1956 Uniform Securities Act, which was enacted in 37 states. Six states implemented a later 1988 Act, which was not well received. The Uniform Securities Act of 2000 has been implemented in 12 states as of the date of publishing. More information is available at www.nccusl.org.
5. The Montana State Auditor web site is www.sao.mt.gov. The office is located at 840 Helena Ave., Helena MT 59601. The phone number is (406) 444-2040.
6. An accredited investor is one with a high-level net worth, as defined under the Securities Act of 1933. See SEC, Rule 501. To qualify as an accredited investor, an investor must either be:
A) a financial institution; B) an affiliate of the issuer; or C) an individual with a net worth of at least \$1 million or an annual income of at least \$200,000, and the investment must not account for more than 20 percent of the investor's worth. In states that have recognized the accredited-investor exemption through statute or rule, offers or sales to accredited investors may be exempt from registration.
7. United States Securities and Exchange Commission Regulation D, Rules Governing the Limited Offer and Sale of Securities without Registration Under the Securities Act of 1933. Rule 506 of Regulation D is considered a "safe harbor" for the private offering exemption of Section 4(2) of the Securities Act.
8. See nasaa.org under capital formation, or the Pennsylvania Securities Department's web site at www.coordinatedreview.org.
9. <http://www.psc.state.pa.us/corpfinance/index.html>
10. www.nasaa.org
11. See Statements of Policy, North American Securities Administrators Association, www.nasaa.org
12. The SCOR form may be found on the Montana Securities Department web site, www.sao.mt.gov, on the nasaa.org website, or on the sec.gov web site.
13. The SCOR form may not cover disclosure necessary for all types of companies and further disclosure may be listed at Item 117, "Other material factors".
14. Information and application for SCOR is found on the NASAA website at http://www.nasaa.org/industry_regulatory_resources/corporation_finance/535.cfm

FINANCIAL STATEMENTS, from Page 13

and Mr. Boulis was violating the terms of his settlement with the government, which required that he separate himself entirely from his company. The sale of SunCruz Casinos was forced by the U.S. Government because a non-U.S. citizen is not permitted to own U.S. commercial vessels. Mr. Boulis was not a U.S. citizen.

In early 2001 Mr. Boulis was murdered in his car. His murder appears to have been the result of a dispute involving what was later proved to be the counterfeiting of the \$23 million wire transfer down payment along with a clash over his retained undisclosed illegal ten percent ownership of SunCruz Casinos. During the subsequent investigation of the murder of Mr. Boulis, Abramoff and Kidan admitted their falsification of the \$23 million wire transfer and failure to disclose that a condition of their purchase was Mr. Boulis retaining an unlawful ten percent interest in SunCruz Casinos.

Based on the falsified \$23 million wire transfer documents, Kidan and Abramoff were able to dupe their lenders into providing 100% of the funds required to close on what was actually a \$124.5 million purchase of SunCruz Casinos.

Simply requiring the production of banking documents and records proving the receipt and retention by Mr. Boulis of \$23 million and directly contacting the remitting


and receiving banks, would have been enough to prevent the implementation of this lending fraud and may have prevented the subsequent murder of Mr. Boulis.


THE CASE OF SunCruz Casinos is by no means unique. The IRS, FBI and other federal and state agencies routinely investigate various forms of lending fraud that are the result of falsified financial statements and documents.

Accepting a financial statement at its face value for one period in a vacuum is potentially problematic. Prudence dictates obtaining financial statements for a period of three to five years, studying the trends, and investigating inconsistencies.

Not forensically reviewing the underlying documentation that allegedly provides the support for the numbers in the financial statements can be unfortunate. While taking a closer look may pleasantly or unpleasantly surprise you, not doing so may prove disastrous.

DANIEL FOODMAN is an attorney, CPA and certified anti-money laundering specialist. He is a partner at Ferrell Law in Miami and a former Miami-Dade assistant state attorney. Reach him at daniel@foodman.com.





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Lawyer opposes the death penalty, but argued for client's execution

When Helena public defender Ed Sheehy Jr. spoke about Montana's death penalty on Feb. 7, his story rang with painful irony.

In a crowded legislative hearing, Mr. Sheehy, an opponent of the death penalty, told how, for the first time, he found himself fighting for his client's right to be executed.

"I was nearly in tears when I argued" the case in a Helena court," said Mr. Sheehy at a hearing on a bill to abolish Montana's death penalty. The argument was on behalf of David Dawson, who in August became the 74th person executed in Montana, according to the *Great Falls Tribune* story covering the legislative hearing. Mr. Sheehy fought legal challenges to halt Dawson's execution on the basis that lethal injection was unconstitutional in Montana, the *Tribune* said. Mr. Sheehy has defended eight capital punishment cases in Montana during his career as a public defender, the *Tribune* said.

Only three death-row inmates have died by lethal injection in the state. The other 71 were hanged. Montana has two inmates on death row.

Supporters of the bill brought a new argument to the decades-long death penalty debate, the *Tribune* said – that lethal injection can be cruel and unusual punishment. Twelve states have abolished the death penalty while six have halted executions pending rules and studies.

At the hearing in the Capitol in Helena, the *Tribune* reported, lawmakers heard from families of murder victims; as well as Unabomber Ted Kaczynski's

brother, David Kaczynski; former U.S. Senate candidate Paul Richards; clergy members; former state Supreme Court justices and a former Texas prosecutor who sought the death penalty against a man, only to later see a key witness recant his testimony. Most testified in favor of eliminating the death penalty.

Opponents to the bill argued that the death penalty can be used as leverage for prosecutors, is an eye-for-an-eye punishment and will keep criminals from re-offending.

According to the *Tribune*, the hearing in Montana took place the same day that a Colorado House committee voted to abolish the death penalty and use the money saved in legal wrangling over death penalty cases to pursue unsolved

murder cases instead.

Whether or not a person is totally unconscious when the third and fatal drug is administered in Montana's lethal-injection process is the crux of the issue, said Helena attorney Ron Waterman, who represented Duncan McKenzie, who was executed in 1995.

Mr. Sheehy, the *Tribune* reported, said he watched Dawson begin snoring before the third drug was pumped into his veins. "Any medical examiner would tell you that with asphyxiation ... snoring is a clear indication that that person is suffering and trying to regain their breath."

U.S. District Judge Donald Molloy already expressed concern regarding the constitutionality of lethal injections in Montana, and Mr. Waterman predicted that once all the courts rule, executions will no longer occur in the state.

"We should, for no other reason, abolish the death penalty now because it will never again be carried out in this state," the *Tribune* quoted him as saying. ○

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NEWS ABOUT MEMBERS

Wittich Law Firm of Bozeman announced that **Hertha L. Lund** is now associated with the firm. She received her BA from Temple University in 1989, and her JD from the University of Montana School of Law in 1995. Ms. Lund clerked for the chief judge of the U.S. Court of Federal Claims in Washington, D.C., and now represents clients throughout the western United States. Her practice focuses on property law, agricultural law, water law and litigation.

The law firm of Crowley, Haughey, Hanson, Toole & Dietrich said that **Danielle Coffman** will become associated with the firm pending the February Bar Exam. Ms. Coffman graduated from the University of Kansas in 1997 with a BA in History and a BA in French. She graduated with honors from the University of Wisconsin School of Law in 2001. Prior to joining Crowley, Haughey, Hanson, Toole & Dietrich, she practiced in the litigation group of Winston & Strawn in Chicago. She will practice in the litigation department in the Crowley Kalispell office.

Dylan E. Jackson, a former Missoulian and a 1996 graduate of the University of Montana School of Law, has been named a director in the Seattle law firm of Wilson Smith Cochran Dickerson, where he practices in a variety of matters relating to products liability, insurance coverage, personal injury and commercial litigation. Mr. Jackson was selected as a 2006 Rising Star in *Washington Law & Politics* magazine. He is available for association with counsel on matters affecting Montanans in the greater Puget Sound area and can be reached at (206) 623-4100 or at jackson@wscd.com.

Joel E. Silverman has joined the Montana Department of Revenue. Mr. Silverman spent the past three years practicing corporate, partnership and individual tax law in Butte. His practice will focus on pass-through entity taxation and individual taxpayer compliance.

Michael L. Rausch has become a partner with the law firm of Smith, Walsh, Clarke & Gregoire in Great Falls. Mr. Rausch practiced criminal law as a deputy county attorney for the Cascade County Attorney's Office from 1994 to 2001 when he became an associate with the firm. Mr. Rausch earned his law degree from the University of Montana in 1994 after graduating in 1991 from Concordia College in Moorhead, Minn., with BA degrees in Business Administration and French. He is a native of Great Falls and graduated from Great Falls High School in 1987. Mr. Rausch has a general law practice with an emphasis in insurance defense litigation.

Glenn E. Tremper has formed The Law Office of Glenn E. Tremper in Great Falls. A 1987 graduate of the University of

Montana School of Law, Mr. Tremper served as law clerk to Chief Judge James R. Browning of the U.S. Court of Appeals for the 9th Circuit before entering a litigation practice in San Francisco and later in Great Falls. Since 1993, he has been an attorney and shareholder at Church, Harris, Johnson & Williams. His practice, located at 104 4th Street North, Suite 301 in Great Falls, will continue to emphasize personal injury and business litigation, including insurance coverage and bad faith, breach of fiduciary duties and construction law. **Lori J. Hester** will join him as his paralegal. He may be contacted at PO Box 2263, Great Falls MT 59403; (406) 761-9400 or at glenn@tremperlaw.com.

Christopher G. Miller has opened an office for the general practice of law in Deer Lodge. Mr. Miller is a 1979 graduate of the University of Montana School of Law. From 1980 to 1987 he served as a deputy county attorney in Butte. In 1987 he was appointed as Powell County attorney, and won election to the office five times. He retired from the position on Dec. 31. Between 1979 and 1989 he maintained a limited private practice. During his career, Mr. Miller was involved in numerous high profile criminal and civil cases. He has extensive trial experience as a prosecutor and as counsel for the county. He also has advised Powell County's officers, employees, and citizen boards on a broad range of matters including contracts, employment law, land use and planning regulation, real estate, public roads and access, and administrative law. He is a past president of the Montana County Attorney's Association and a visiting faculty member for trial advocacy and cross examination courses at the National College of District Attorneys in Columbia, S.C. Mr. Miller will provide general legal services to the residents of Deer Lodge, Powell County and the surrounding area. His practice will focus on real estate matters, wills and probate, family and elder law, criminal defense and personal injury litigation. He may be contacted at (406) 846-0081 or by e-mail at cmillermt@yahoo.com. His office is located at 302 Missouri Avenue in Deer Lodge.

Chris A. Johnson has become a principal of the law firm Sullivan, Tabaracci & Rhoades. Mr. Johnson's practice emphasizes all aspects of real property law, transactional and business matters. He has been with the firm for more than three years. He previously worked in Missoula for Montana Legal Services Association, implementing a trial videoconferencing program and representing low-income clients using that medium. Before that, Mr. Johnson practiced in Spokane for close to 10 years, where his practice included general litigation, representation and advising of real estate brokerages, real estate developers, and the management of real estate closing offices. He is secretary of the Western Montana Bar Association. He is admitted to practice in Montana and Washington, and is an honors graduate of Gonzaga University School of Law. Mr. Johnson may be contacted at (406) 721-9700 or cjohnson@montanalawyer.com.

Jackson, Murdo & Grant of Helena announced that **Kelly A. Casillas** has joined the firm as an associate. Ms. Casillas was admitted to the State Bar of Montana in 2003. A 1989 Helena High School graduate, she received her BA in Environmental Studies in 1993 from the University of California at Santa Cruz, her MA in Urban Planning in 1997 from the School of Public Policy & Social Research at UCLA, and her JD in 2001 from UCLA School of Law. Ms. Casillas was admitted to the State Bar of California in 2001 and will retain her California license. Prior to her association with Jackson, Murdo & Grant, Ms. Casillas was deputy county counsel for Santa Barbara County, Calif., specializing in land-use and planning law, and was an associate with the Los Angeles law firm of Richards, Watson & Gershon. Ms. Casillas's practice in Montana will continue to focus on land use, planning, subdivision, zoning, and water law.

Missoula Bar members **Martin W. Judnich** and **Mathew M. Stevenson** have combined their individual law practices and formed Stevenson, Judnich & Associates. University of Montana School of Law 2006 graduate **Peter Lacny** is an associate with the firm. The practice will have an emphasis on criminal defense and personal injury law. Mailing address is: 523 S. Orange St., Missoula MT 59801; phone (406) 721-7000; fax (406) 721-3783.

Four new partners have been added to the law firm of Crowley, Haughey, Hanson, Toole & Dietrich. They are:

■ **David L. Charles**, who joined the Billings office after practicing many years in Des Moines, Iowa, most recently with the firm of Belin, Lamson, McCormick, Zumbach, Flynn. Mr. Charles's practice includes civil jury trial work, both plaintiff and defense, with types of cases including general commercial, personal injury, product liability, employment, trade secret, Lanham Act, medical malpractice and condemnation disputes. He graduated with high distinction from the University of Iowa College of Law in 1974. Mr. Charles is admitted to practice before the state and federal courts in Montana and Iowa. He was certified as a civil trial advocate by National Board of Trial Advocacy in 1989; is listed in "The Best Lawyers in America," and "America's Leading Business Lawyers." He practices in the Litigation Department in the firm's Billings office.

■ **Gary G. Broeder** graduated with honors from the University of Montana School of Law in 1974, and was the editor in chief of the *Montana Law Review* during his third year of law school. Since 1974 he has been engaged in private practice in Billings, primarily in the area of oil and gas law, including title examinations, property acquisitions and divestitures, and representation of clients before regulatory agencies. He is listed in "The Best Lawyers in America." He joined the firm in 2005, and practices in the Natural Resources Department in the firm's Billings office.

■ **Kiely S. Keane** graduated magna cum laude from Carroll College in 1996 and with honors from the University of

Montana School of Law in May 2000. She practices in the Litigation Department in the firm's Helena office.

■ **Nathan Haney** graduated from MSU-Billings in 1996 with a B.S. in English and Spanish, the University of Montana School of Law in 1999 and New York University School of Law in 2000 with an LL.M. in Taxation. After graduating from NYU, Mr. Haney served a two-year clerkship for Judge Herbert L. Chabot, U.S. Tax Court, Washington, D.C. before joining the firm. He practices in the Commercial Department in the firm's Billings office.

Crowley, Haughey, Hanson, Toole & Dietrich announced that **Matthew Brahana** will become associated with the firm pending the February Bar Exam. Mr. Brahana graduated from the University of Montana School of Law in December 2006. He earned his bachelor's of Journalism (Photojournalism) from the University of Missouri-Columbia School of Journalism in 1999. Mr. Brahana will practice in the Litigation Department of the firm's Billings office.

The Missoula law firm Boone Karlberg announced two new position holders:

■ **Scott M. Stearns** has become a shareholder of the firm. Mr. Stearns has a BA degree from the University of Notre Dame, a JD (1998) from the University of Montana School of Law, and an MS from the University of Montana (1998). His practice focuses on civil litigation and commercial transactions.

■ **Cristine M. Boschee** has become an associate of the firm. Ms. Boschee has a BS degree from the University of Nebraska, and a JD (2006) from the University of Montana School of Law. She will concentrate in general practice with an emphasis in commercial and transactional matters.

Randy Dix Law Office of Helena announced the association of **Graden Hahn**. Ms. Hahn earned her law degree at the University of Montana School of Law in 2005 and was admitted to the State Bar of Montana that year. She recently completed an 18-month clerkship with Montana Supreme Court Justice Patricia Cotter before joining Randy Dix representing injury victims in his law practice. Ms. Hahn attended and skied for Middlebury College in Vermont before returning to Montana to compete for Montana State University's NCAA Division I Ski Team. She earned a bachelor's degree with honors in Geography from MSU in 1995. Prior to law school, she worked as a public-interest organizer for the Montana Environmental Information Center (MEIC), advocating for regulatory protections for low-income citizens, energy conservation, and renewable energy development. She also worked to protect the Blackfoot River from degradation related to a proposed gold mine near Lincoln. She now serves on the MEIC Board of Directors. As a criminal defense clinical student at UM Law School, she represented clients in city court under the student practice rule, and functioned as a civil litigation intern with the plaintiffs' firms of Rossbach, Hart, Bechtold, and Tuholske Law Office in Missoula. ○

Dale Cox, former district judge

Dale Cox, 79, of Billings, formerly of Ennis and Glendive, died on Dec. 8 in Billings.

Mr. Cox was born in Great Falls and attended schools in Shelby. He served as a Navy corpsman and then attended the University of Montana, and Washington University and St. Louis University, both in St. Louis. Mr. Cox obtained his law degree from the University of Montana in 1952.

After graduation from law school, Mr. Cox and his wife Jackline spent most of their adult life in eastern Montana where he practiced law in Wibaux and Glendive. He served as district judge for the 7th Judicial District from June 1987 until July 1998, after which the Coxes retired to Ennis and Billings.

Mr. Cox is survived by his wife and two of his three sons.

Norbert Donahue, Kalispell attorney

Norbert Francis Donahue, 88, died on Jan. 21 at Brendon House in Kalispell of natural causes.

Mr. Donahue was born in Spokane. His family lived in Cut Bank, and he attended schools in Great Falls, Havre, Cut Bank and Missoula. He received his bachelor's degree in Philosophy from Gonzaga University in 1939 and a juris doctorate from Gonzaga Law School in 1941. He was most proud of the fact that he passed the Montana Bar Exam between his junior and senior years of law school and, at age 22, was one of the youngest persons to become eligible to practice law by examination in the state, his obituary said.

Shortly after graduation from law school, Mr. Donahue was appointed as a special agent for the Federal Bureau of Investigation. After completing the FBI training school, he was assigned to the Knoxville, Tenn., field office. He subsequently served in Washington, D.C.; Detroit; Jackson, Mich.; Los Angeles; Butte and Missoula before his final transfer, in 1948, to Kalispell.

In August 1942, while working in the Washington, D.C., office, Mr. Donahue married Ruby Ecklund of Denison, Iowa. They were married for 64 years and had four children.

In 1968, Mr. Donahue retired from the FBI and joined the law firm of Rockwood, Murray & Donahue. In addition to his private practice of law, he soon became the city attorney for Kalispell on a part-time basis. In 1977, he left his law firm and moved into the city attorney position full-time, which he held until retiring in 1982. He was then appointed to complete the term of a deceased justice of the peace for Flathead County, which ended in 1983.

Mr. Donahue served on board of directors for the Conrad Mansion of Kalispell and the Buffalo Hill Golf Course. He was active in the Kalispell Ski Club, was a longtime member of its board of directors, and ran the Club's Junior Learn to Ski program for about 10 years. In the late '70s, he wrote a weekly skiing column for the Kalispell *Daily Inter Lake* called "Slope Dope." He was finally forced to quit skiing at the age of 83 by failing eyesight.

Mr. Donahue served on term on the Kalispell City Council.

Mr. Donahue is survived by his wife and two sons.

Patrick F. Hooks, Townsend attorney

Patrick F. Hooks, 80, a Montana native and attorney for more than 50 years, died on Dec. 23 from complications related to cancer.

Mr. Hooks was born in Bozeman and attended schools in Townsend. He entered active duty in the Naval Reserve Officers' Training Corps at Idaho State University in Pocatello, Idaho, in 1944. He graduated from the University of Colorado with a commission as an ensign in the U.S. Navy, and served in the Pacific Theater. In 1946, his ship was involved in Operation Crossroads, and Mr. Hooks witnessed the detonation of two atomic bombs off the Bikini Atoll in the Marshall Islands.

After completing his naval service, Mr. Hooks returned to the University of Colorado, and earned bachelor of arts degrees in Economics and Political Science in 1948. He then entered law school at Georgetown Law Center, Washington, D.C., and graduated with an LL.B. degree in 1951.

Mr. Hooks returned to Montana and practiced law in Helena with the firm of Loble & Picotte. He and his family later moved to Townsend, and Mr. Hooks practiced law as a solo practitioner, and also with partners Jeff Sherlock and Tom Budewitz. He served two terms in the Montana House of Representatives, representing Broadwater County in 1953-1957, and served as chairman of the House Judiciary Committee in 1955. He was a 50-year-plus member of the Montana Bar Association, the American Bar Association, the American Trial Lawyers Association, and the Montana Trial Lawyers Association. He was also a 60-year member of the American Legion.

Mr. Hooks is survived by his wife, a daughter, and two sons, including Helena attorney William Hooks.

Other deaths

● **Dorene Gadde Lindstrom**, 88, a retired Billings legal secretary, died on Dec. 9 following a car accident. She was a legal secretary at the Billings firm of Anderson, Symmes, Forbes, Peete & Brown until her retirement in 1982.

● **Leonard Johnson**, 87, of Red Lodge, a former clerk of the Carbon County District Court, died in Red Lodge on Dec. 11.

● **Renaë Bench Harris**, 89, who worked for 40 year as a legal secretary in Missoula, died on Dec. 13 at a Missoula hospital. She worked for the law firms of Worden; Worden & Worden; Worden, Thane & Haines; Worden, Thane, Haines & Robb; and Boone, Karlberg & Haddon.

● **Ellen Kay Kelly**, 55, deputy clerk of court for Silver Bow County, died on Dec. 22 at her parents home in Butte after a four-year battle with cancer.

● **Calmer Ernsness Sr.**, 86, thought to have been the oldest court reporter in Montana, died at his cabin in Fort Peck on Jan. 8. Mr. Ernsness, a Wolf Point resident, was a district court reporter at the Roosevelt County Courthouse for 44 years.

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From review for *Scribes Journal*

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LETTERS

My experience with unauthorized practice of law

This letter is concerning the analysis – that appeared in the December/January issue of The Montana Lawyer – of the Montana Supreme Court ruling against Jerry O’Neil of Kalispell for unauthorized practice of law:

I recall my own near miss with an unauthorized practitioner.

We had purchased a house in Billings from the estate that owned it. We appeared for the closing and engaged in the usual flurry of signing and initialing. Almost as an afterthought, I asked to examine the warranty deed. To my surprise the grantor was “J _____ E _____, deceased.” And “J _____ E _____, deceased,” it appeared from the deed, was more than happy to grant us all of

his right, title and interest to the real property described in the deed.

I reminded the closing agent that “J _____ E _____, deceased,” being, well, “deceased,” no longer had any right, title or interest in the property and that it would be better, perhaps, if his estate transferred its interest to us. The bank was more than happy to correct the error.

I also asked who had prepared the deed. I was told that the bank had used an independent paralegal to save costs. I knew her. She was very experienced and was employed by one of the larger law firms in Montana (but was working freelance on this occasion). Nevertheless she made a rookie mistake, spotted by an attorney who did not practice real property law.

This is why we establish standards for the practice of law.

– *Professor Jeffrey T. Renz*
University of Montana School of Law

Law firm opens department to handle global warming

The Denver-based law firm of Holland & Hart announced a new Global Climate Change Practice Group. The firm is the first and only law firm based in the Rocky Mountains to organize a practice group concentrating on this rapidly emerging area of law and policy, the firm said.

The new group consists of attorneys who counsel clients on the climate change aspects of energy and natural resources development, industrial energy use, regulatory compliance, renewable energy and energy infrastructure projects, corporate disclosure and governance, carbon markets, litigation, and government relations.

“Climate change has quickly become a complex area of law and public policy affecting a wide array of client industries,” said Lawrence Wolfe, managing partner of Holland & Hart.

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CLASSIFIEDS POLICY: There is a minimum charge of \$35 for all ads, even for State Bar of Montana members. All ads over 50 words are charged at 70 cents per word.

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 March issue is Feb. 25. Call (406) 447-2200 for more information.

ATTORNEY POSITIONS

DEPUTY COUNTY ATTORNEY: The Sanders County Attorney's Office is seeking an attorney to fill a full-time position. Applicants must be currently licensed to practice law in Montana or preparing to take the Montana bar exam. Experience in criminal law and trial experience are preferred, including experience as a legal intern. The position requires knowledge of criminal law and procedures, rules of evidence and civil procedures and familiarity with legal research and word processing. Salary \$42,000 - \$50,000, depending on experience, with benefit package. Submit a letter of interest, resume and references to the Sanders County Attorney's Office, PO Box 519, Thompson Falls MT 59873.

CIVIL LITIGATION ATTORNEY:

Butte law firm seeks attorney to practice civil litigation. The firm's practice emphasizes trials of personal injury, medical malpractice and insurance disputes. Strong research and writing skills required. Competitive salary and benefits. Applicants must be admitted to practice in Montana. Send letter of application, resume, three references and a writing sample to *The Montana Lawyer* #1-24, PO Box 577, Helena MT 59624.

ASSOCIATE: Northcentral Montana law firm with strong ag business and general practice seeking associate attorney. Requires individual with strong work ethic, communication and writing skills, willing to work in various areas of general practice with multiple attorneys and staff. Please forward resume, writing sample and references to: Hiring Partner, PO Box 7152, Havre MT 59501.

IN-HOUSE ATTORNEY: The Coeur d'Alene Tribe is expanding its In-House Legal Department and is seeking another full-time attorney. Applicants must be currently admitted to a state bar, preferably the Idaho Bar, or willing to become a member of the Idaho Bar. Experience in Indian law, hunting and fishing rights, water rights, environmental and natural resources law is preferred but not mandatory. Competitive salary depends on experience, full benefits. Send cover letter, resume and references to: Office of Legal Counsel, PO Box 408, Plummer ID 83851.

DEPUTY COUNTY ATTORNEY: The Blaine County Attorney's Office is seeking a deputy county attorney to fill a full-time position. Applicants must be licensed to practice law in Montana. Experience in criminal law and civil law relating to local governments preferred. The position requires knowledge of criminal law and procedure, rules of evidence and civil procedure, and familiarity with computerized legal research and word processing. Competitive salary and benefits. Position available immediately and open until filled. Submit a letter of interest, writing sample, and two letters of recommendation to: Blaine County Attorney's Office, PO Box 1567, Chinook MT 59523.

MOUNTAIN WEST BANK, N.A. is expanding its legal department and hiring another attorney, who will be located in Helena. This position reports to Mountain West Bank's general legal counsel, and applications will be

accepted immediately. Duties will include providing legal advice to management and personnel on lending, contracts, commercial law issues, employment law issues, and other corporate matters. The position will also involve litigation and some travel. All applicants must have a JD degree, and be a member of, or seeking membership to, the Montana Bar. Applicants should have a working knowledge of the Uniform Commercial Code, contract law, property law and bankruptcy law. Applicants must be hard-working, with excellent communication and interpersonal skills, and a demonstrated ability to prioritize projects and complete multi-task assignments. Salary will be competitive and will depend on experience. Additionally, Mountain West Bank provides an excellent benefit package. All inquiries will be kept confidential. Send a cover letter, resume and writing sample to: Amy Randall, Esq., Mountain West Bank, N.A., PO Box 6013, Helena MT 59602-6013; amyr@mtwestbank.com.

ASSISTANT GENERAL COUNSEL:

MDU Resources Group Inc. is seeking an individual for an assistant general counsel position. Requirements for this position include a bachelor's degree and juris doctorate from an accredited law school and the ability to obtain license to practice law in North Dakota. A minimum of 10 years experience in natural resources law, including oil, gas, and water is required. Litigation experience is preferred. Apply online at <http://jobs.mdu.com> or send resume to: MDU Resources Group Inc. Corporate Human Resources Department, PO Box 5650, Bismarck ND 58506-5650. Application deadline is Feb. 28, 2007.

ATTORNEY: The Department of Environmental Quality in Helena seeks an attorney to provide senior attorney level advice and representation to mining and major facility siting programs. \$62,483 to \$78,106. Extensive knowl-

edge of legal research methods and techniques and administrative and judicial processes. Contact jderosier@mt.gov; (406) 444-4218; or visit <http://deq.mt.gov/NowHiring.asp> for hiring criteria.

ASSOCIATE ATTORNEY: Snyder Law Office in Bigfork seeks a full-time associate in general practice, emphasizing real estate, business, estate planning and probate, and community service. Experience is preferred but not essential. Please send application, resume and writing samples to PO Box 717, Bigfork MT 59911.

ASSOCIATE ATTORNEY: Wold Law Firm PC in Whitefish seeks a full-time associate attorney, emphasizing in litigation, real estate development, business, and limited criminal matters. Experience is not essential, but would prefer 1 to 3 years of practice experience. Please send letter of interest, resume and writing samples to Wold Law Firm PC, PO Box 2050, Whitefish MT 59937.

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 application. 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 peteronc@co.hill.mt.us. Salary \$38,000 - \$46,000 depending 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 St., Havre MT 59501. Deadline: open until filled.

LEGAL WRITING FELLOWSHIP: The University of Montana School of Law invites applications for a 2-year Legal Writing Fellowship to begin Fall Semester 2007. More information about this position and the hiring criteria are posted on our website: www.umt.edu/law. In addition to a cover letter specifically addressing the hiring criteria, applicants should also include an official law school transcript; a current resume; and the names,

addresses, and telephone numbers of three references. Application materials should be sent to Chair, Faculty Appointments Committee, The University of Montana, School of Law, 32 Campus Drive #6552, Missoula MT 59812-6552. Applications will be reviewed beginning Feb. 15, 2007, and the application period will remain open until the position is filled.

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BRIEF WRITING SERVICE: Most issues, but focus on criminal law. Eight years experience prosecuting and eight years defending. References available. Day: 323-3801, evening: 323-2377.

DON'T FORGET YOUR BRIEFS! I'll write them for you. Quality results at reasonable rates. Local references available. Credentials: 22 years of practice in Boston, most recently at Bingham McCutchen (financial restructuring, bankruptcy); admitted in Montana May 2005; CLE veteran; former federal law clerk; Boston College Law Review (1981). Mary DeNevi, 2309 Cloverdale Drive, Missoula MT 59803; mdenevi@bresnan.net; (406) 541-0416.

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VACATION RENTALS: Italy/France. Tuscany - 18th Century house, 3 bedrooms, 3 baths, beautiful swimming pool, 20 miles south of Florence, 1,500 to 2,000 euros, with adjacent two-bedroom, two-bath apartment, 1,400 to 1,800 euros. For photos, information: www.lawofficeofkenlawson.com. Email: kelaw@lawofficeofkenlawson.com, (206) 632-1085, representing owners of historic properties (from studios to castles).

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NATIONAL ID CARD, from P. 6

knowledge.

"There are too many privately owned information dossiers that already track what we do, and we're very leery of creating another way to do that," Wiseman said.

Larry Fasbender, deputy director of Montana's Department of Justice, says states were already working in concert with the federal government to improve driver's license security, but in May 2005 Rep. James Sensenbrenner, R-Wis., derailed the process by attaching the Real ID Act onto an appropriations bill funding Hurricane Katrina relief and the Iraq war. The Real ID passed Congress with no debate and little discussion.

With her attempt to void the federal law, Rice raises the specter of nullification debates in the historic South, where South Carolina and the federal government neared the brink of war in 1832 over that state's insistence that it could refuse to recognize a federal tariff law.

The importance of Rice's inclusion of the word "nullify" is debatable. Some, like Schweitzer adviser Hal Harper, say the word is simply a synonym for "repeal" and carries little significance beyond demanding that the federal government reverse its law. Others, like UM political science professor Jim Lopach, aren't so sure, given the substantial role the nullification principle has played in American history. "When a state confronts the federal government like this, I think it's a big issue – so much of our government is based on daily cooperation among the two levels of government," he said.

Mandates such as this are tied to federal funding, Lopach says, which gives states the ability to reject them if they can bear the financial loss. In this case, the Department of Justice's Fasbender says besides residents losing their ability to use state IDs for federal purposes, Montana also stands to lose five percent of its federal highway funding unless it implements Real ID.

Others, like the ACLU's Crichton, would rather keep the current debate on Real ID, rather than on states' rights rhetoric. "Nullification is something we all need to learn more about," he said.



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