

# Lawyer

THE STATE BAR OF MONTANA



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*An important reason  
the Bar is seeking  
a dues increase*

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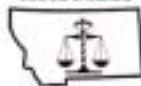
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## THE MONTANA LAWYER

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## PRESIDENT'S MESSAGE

# Preventing train wrecks

## *Why I'm signing a dues-increase petition*

Jock Schulte

As I enter the final months of being president, I have been wondering if I will leave any meaningful legacy. It is quite likely that I may be remembered as the president who petitioned the Montana Supreme Court for a Bar dues increase. Lawyers may think of me as that "tax and spend" president. I hope not.

As you will read in the following pages of *The Montana Lawyer*, the Bar is preparing to petition the Supreme Court to raise dues by \$75 for active members and \$50 for inactive members. Dues for new admittees that have not practiced elsewhere will remain at \$50 for their first year. Additionally, a separate petition will be filed requesting an application fee increase for pro-hac vice lawyers to \$200, plus the annual Disciplinary Counsel Assessment and the Lawyers' Fund for Client Protection fee.

I can assure you of this: I would not sign the dues increase petition if I was not absolutely certain that it is necessary. And, this certainty is not based on faulty intelligence or trumped-up scenarios. It is based on a thorough and detailed financial analysis and projection that the Bar prepared and submitted to the Supreme Court, a report required every three years.

In my February 2008 article, I wrote about the probability that a dues increase would be necessary in order to fund the Bar's Supreme Court mandated responsibilities if the recently established Lawyers Assistance Program (LAP) is going to continue in its current form. The cover story of this *Montana Lawyer* issue is all about the LAP and the important work it does for Montana lawyers. Take time to read and learn about the LAP. I believe that you will agree with the Board of Trustees that it is a valuable and necessary resource of the Bar.

The State Bar is at the forefront of our region in developing the LAP. I have been quizzed by many leaders of other state bars about the substance and workings of Montana's LAP as they attempt to create their own programs. Bar associations now recognize that a working and relevant LAP is essential for their members.

In addition to assisting lawyers who are in crisis, LAP Director Mike Larson is developing programs that will help lawyers avoid the crisis in the first place. This proactive approach will help lawyers recognize when things may be getting out of control and provide resources and advice

about how to manage their issues so the train wreck can be avoided. Then, the LAP helps keep them on the tracks, often short of disciplinary action being instituted.

Certainly, though, the wrecks will continue to occur. That is when it is necessary for the LAP to step in and deal with the damage, whether it be closing a practice and referring stranded clients to other attorneys, or directing the lawyer to the appropriate places that address the particular issues of the lawyer in crisis.

Remember that the Bar's Mission Statement is "... to lead the legal profession and serve the public interest." We are serving the public interest, i.e., our clients, by continuing to ensure that impaired and otherwise ill or non-functioning lawyers are not harming the public through their actions or inactions. This is accomplished through education, identification, and, where necessary, intervention. Our LAP is filling this crucial function in an exemplary way, in large part because of the work of Director Mike Larson.

The Board of Trustees has determined that the LAP is a vital component of necessary Bar services provided for our members. That is why the vote was unanimous to spend Bar financial reserves to continue the LAP. Considerable effort has been expended in attempts to get contributions from Bar-related groups. While extremely supportive of the LAP, all of these groups (except ALPS) have declined to contribute financially, essentially stating that the LAP should be funded by the Bar. ALPS has been generous in its financial assistance to the LAP, but the program needs further funding from the Bar.

Of course, all costs related to operating the Bar have gone up. The need to keep providing all of the other Supreme Court mandated programs and services to Bar members is also factored into the request for a dues increase. But the LAP is a new program. It is a relatively bare-bones program, but it still costs money. Thus, for the LAP to be continued, a dues increase is necessary.

I hope that after reading this issue of *The Montana Lawyer*, you not only understand the need for a dues increase, but also support it. And, because of the purposes for which the money will be used if the Supreme Court approves the dues increase, I do not think I will leave a legacy as the last of the big-time spenders. Your constructive comments and suggestions are always welcome. ○

# Waterman says he'll continue race vs. McGrath

Helena attorney Ron Waterman, running for chief justice of the Montana Supreme Court against Attorney General Mike McGrath, said on June 16 that his campaign will continue despite his almost 4-to-1 loss to McGrath in the June 3 primary.

"[W]ith less than 3 months to introduce myself to the public and running against a long-time career politician, I was satisfied that the campaign had an

excellent start with fundraising and that my candidacy was well received throughout the state," Mr. Waterman said in a letter to *The Montana Lawyer*.

Mr. McGrath received 182,473 votes in the primary, compared to 47,560 for Mr. Waterman.

Since only two candidates appeared on the ballot, McGrath and Waterman both will appear on the general election ballot in November.

Mr. Waterman said that the five months left in the race "is ample time... to have this important discussion [about the judiciary] with voters across the state."

He said he was surprised at the reluctance of the press to cover the primary campaigns for chief justice, and especially decried the lack of coverage of his attempts to depoliticize the non-partisan race.

## Now Bullock and Fox for AG

Steve Bullock won the Democratic nomination for Montana attorney general and Republican Tim Fox captured the Republican nomination, setting the stage for the two Helena-area lawyers to face off in November's general election.

Mr. Bullock won 42 percent of the vote. He defeated Mike Wheat of Bozeman, who received 36 percent of the vote, and John Parker of Great Falls, who got 21 percent.

Mr. Fox received 57 percent of the vote in the Republican primary, to 43 percent for Lee Bruner.

Bullock, 42, and Fox, 51, will vie to succeed Democrat Mike McGrath as attorney general.

Mr. Fox's background includes legal work for Mountain West Bank and the Montana Department of Environmental Quality, plus three years as environmen-

tal coordinator for the Montana Board of Oil and Gas Conservation.

Mr. Bullock operates a private law practice in Helena and directed the successful 2006 campaign to raise the minimum wage in Montana. He has held staff positions in offices of the secretary of state and the attorney general, worked at law firms in New York City and Washington, D.C., and taught at George Washington University as an adjunct professor of law.

As of May 17, when the latest campaign-finance reporting period ended, Bullock led in campaign funds — collecting about \$183,765, including a \$26,836 loan he made to his campaign. He had twice the amount raised by Fox, who was second in fundraising with about \$92,475 and a personal donation of just over \$5,000.

## Attorneys Hunt and Kelleher receive surprises

Two Montana attorneys were shocked by the outcome of the primary for Congressional seats — Butte attorney Bob Kelleher because he won, Helena attorney Jim Hunt because he lost.

Mr. Kelleher, 85, was a long-shot candidate, pulled off a stunning upset in Montana's Republican primary for U.S. Senate, beating five other candidates for the nomination to challenge incumbent Democrat Max Baucus this fall.

Kelleher, who has run for office 16 times since 1972 without a general-election victory, has more often ran as a Democrat than a Republican, and ran six years ago as a Green Party candidate. His political views are generally left-of-center, such as supporting a single-payer, government-run health system for all, and converting the U.S. political system to a parliamentary system.

Montana's Democratic U.S. House primary also featured a shocker, as former state Public Service Commissioner John Driscoll, who didn't campaign and purposely raised no campaign funds, defeated the much-better-financed Jim Hunt, who is the son on former Montana Supreme Court Justice William Hunt. Driscoll will take on U.S. Rep. Denny Rehberg, R-Mont.

Driscoll won with 49 percent of the vote to Hunt's 42 percent. Richey farmer Bob Candee was third with 8 percent.

## Two district-judge races narrowed

District Court senior law clerk Steve Frankino and state prosecutor Kathy Seeley were the top two vote-getters in the six-person primary for an open bench in Helena's District Court.

Frankino led with a tally of 5,269. Seeley had 4,481.

Mr. Frankino and Ms. Seeley will square off Nov. 4 in the nonpartisan General Election for the open seat now held by Judge Thomas Honzel, who is retiring after nearly 25 years on the bench.

Attorney Dennis Loveless was third with 3,828 votes. Deputy County Attorney K. Paul Stahl was fourth with 2,817; attorney Greg Duncan was fifth with 2,023; and City Attorney Dave Nielsen netted 1,665 votes.

In a two-person race for 20th Judicial District judgeship in Polson, incumbent Judge C.B. McNeil bested attorney-legislator Joey Jayne 6,586 to 3,912. Both will go on to the general election.



# Forging a future for the Lawyers Assistance Program

## Why the Bar is seeking a dues increase

State Bar Counsel Betsy Brandborg has on her office bookshelf a broken lock.

"I had borrowed bolt cutters from a hardware store," she said, "to get into a storage unit."

Why? An attorney had walked away from the practice. The attorney was eventually disbarred; the clients were set adrift.

"We had learned where the files went, got the appropriate court orders, and the clients got their files back," Ms. Brandborg said. "Of course, this took a lot of time on the part of an amazing volunteer." Lawyer Assistance Program Director Mike Larson has done this twice since then.

"If we don't get a dues increase," Ms. Brandborg said, "this care protecting the integrity of the legal system stops."

In 2006, after a string of lawyer suicides tore through Great Falls, Billings and Missoula, the State Bar of Montana decided to get serious in its attempt to help attorneys impaired by stress or addiction to alcohol or drugs.

The result was the Lawyer Assistance Program.

As details below show, the LAP has greatly expanded on the work of its predecessor program, Lawyers Helping Lawyers, which relied on one part-time contract psychologist, volunteers, and a

lot of work on the part of Bar staff who were unprepared or limited in time for such duties. LAP has hired a full-time attorney (with a bachelor's degree in Secondary Education and an associate degree in Chemical Dependency Counseling), Mike Larson of Dillon, who with a number of attorney volunteers is operating a statewide program that includes a hotline, intervention, counseling, referrals, and CLEs.

But as the aid he is called upon to give has increased, and inflationary pressures severely squeeze the State Bar, new money is needed to operate the Lawyers Assistance Program – a program whose importance was deemed by the Bar Board of Trustees as "so serious that it has drawn upon the Bar's general-

fund reserves to fund."

In a March 2008 special report to the Montana Supreme Court, the Bar said it was ready to petition the Court for a dues increase to keep the Lawyers Assistance Program operating at full capacity. The rec-

ommendation to the Court is for a membership dues increase of \$75 for active, \$50 for inactive members and no increase for first-year members who have not been admitted or practiced in another jurisdiction. The increase also would help preserve its general-fund reserve (see item below).

Preserving an effective Lawyers Assistance Program has its roots in the 1974 Montana Supreme Court order unifying a mandatory bar in Montana. The order said that among the objectives of the new State Bar of Montana would be ones:

*... to maintain on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard proper professional interests . . . and to insure that the responsibilities to the legal profession and to the public are more effectively discharged.*

A dues increase in 2002 enabled the State Bar to initiate efforts to address the

## Inflation is the other reason a dues increase is needed

The second reason for a State Bar of Montana dues increase, beyond the needs of the Lawyers Assistance Program, are the inflationary cost increases for Bar administration and support.

The monthly expenses of the State Bar are approximately \$100,000. It is the policy of the Board of Trustees "that the

State Bar of Montana shall endeavor to maintain a general-fund cash reserve sufficient to operate the Association for a three-month period of time."

The Bar's general-fund cash reserve peaked at about \$503,000 in Fiscal Year 2007. In Fiscal Year 2008, the reserve dropped to \$438,000. The projected reserve for Fiscal Year 2009, with the LAP and inflationary costs, would be at \$346,000, dangerously close to the three-year expense minimum allowed by the Board. The minimum level "is not sustainable without a dues increase," said the Bar's special report to the Montana Supreme Court.

needs of impaired attorneys, who adversely affect the practice of law and damages the attorney's clients and the credibility of the profession, the special report to the Court said. "However, in addressing this issue the State Bar has learned the problems are more pervasive and their solutions are more complex than originally thought."

"No greater example exists than the high number of Montana attorneys who have taken their own lives, not unlike national trends," the report said. "These deaths emphasize the dire need to address the stresses of our profession and to assist us all in achieving a balance in our lives." As a result, the State Bar aggressively instituted the Lawyer's Assistance Program, explained in greater detail below.

The cost of LAP "is beyond the costs of programs maintained under the 2002 dues increase," the report said, and are more than the current dues structure can support. The State Bar's general fund reserves are not sufficient to continue to fund this program.

### Some actual cases

LAP Director Mike Larson provided the following examples of the kinds of casework he handles:

■ The Lawyers Assistance Program received a call regarding an attorney that had been placed in a detox unit. That evening, Mr. Larson traveled to the town where the detox center is and talked to the attorney. He helped make treatment arrangements so that when attorney was discharged from detox, he could immediately go into treatment program.

■ Mr. Larson received a hotline call from an attorney regarding another attorney. "I called the second attorney to see if there was problem," Mr. Larson said. "When I explained who I was and what our program was about, the attorney immediately broke into tears, saying he was relieved to find out there was someone he could turn to about his personal problems." The lawyer told Mr. Larson that "my clients keep turning to me with their problems, but no one was out there for him to turn to." After working with the attorney for a year and a half, "he

seems to be doing better than ever," Mr. Larson said.

■ Mr. Larson was working with an LAP client for four months when the client vanished. Using Google and other methods, LAP found him in Montana still practicing law. Mr. Larson then went to his office and found him drunk. "I started to ask him questions," Mr. Larson said. "He told me he is a criminal defense attorney and knows he doesn't have to answer, so I simply told him my opinion about his behavior." On his next visit to the attorney's office, Mr. Larson not only found him sober, but discovered that he had restarted his recovery program. "He said my stopping by earlier and finding him drunk had motivated him."

■ An attorney called LAP after being arrested for shoplifting. It was determined that the attorney had a gambling addiction. LAP helped the attorney into a residential treatment program.

■ So far, four attorneys who have planned to commit suicide or had actually attempted suicide have received treatment assistance from LAP.

### The LAP's accomplishments

The Montana Lawyer Assistance Program exists to protect the interests of clients and the general public from harm caused by impaired lawyers or judges, by confidentially assisting impaired members of the profession to begin and continue recovery, and to educate the bench, the bar and the public to the causes of and remedies for impairments affecting members of the legal profession.

In a report to the State Bar Board of Trustees on May 30, LAP Director Mike Larson provided the following of some of the program's accomplishments:

■ There were seven LAP Hotline calls in May, which is consistent with the average of previous months (about 80 calls in the past year). Of the seven calls in May there were two self-referrals, one judge calling in regards to an attorney, and four attorneys calling about other attorneys. Mr. Larson met with two

## What the Court requires the Bar to support

*The Montana Supreme Court requires the State Bar to staff and support from the Bar's annual budget the following Court commissions:*

Board of Bar Examiners and twice-yearly Bar Exams

Commission on Character & Fitness, investigations, conditional admissions monitoring and mentors

Civil Jury Instructions Guidelines Commission, and publication of Civil Jury Instructions

Commission of Continuing Legal Education (accreditation)

Criminal Jury Instructions Commission, and publication of Criminal Jury Instructions

Equal Justice Task Force

Commission for Self-Represented Litigants

Commission on Technology

Commission on Unauthorized Practice

### State Bar Programs include:

Equal Justice Coordinator/Pro Bono

Fee Arbitration

Lawyers Fund for Client Protection

Mandatory IOLTA

Ethics (Ethics committee, Bar counsel)

CLE Institute (programs)

Publications (Deskbook & Directory, CLE rentals, magazine, legal manuals)

Pro Hac Vice applications

Lawyer Referral & Information Service

Membership records

Office of Disciplinary Counsel support

## How to comment on the dues proposal

You may send comments on the dues increase proposal presented on these pages to Dues Comments, Montana Lawyer magazine, PO Box 577, Helena MT 59624 or to [cwood@montanabar.org](mailto:cwood@montanabar.org)

The comments will be published in the August and September editions of the magazine.

The Bar hopes to have filed the dues petition with the Montana Supreme Court by the end of August or early September. The Court will establish a formal comment period on the petition after it is filed, with comments to be sent to the Court.

Meanwhile, *The Montana Lawyer* will pass comments it has received on to the Court.

### In addition . . .

*The State Bar will file a separate petition with the Montana Supreme Court for an increase in pro hac vice application fees. The Bar proposes that the fee should be increased to \$200 per application (from the current \$100), plus the \$125 Office of Discipline Counsel assessment and \$20 for the Lawyers Fund for Client Protection; or to a \$100 annual fee with the \$125 ODC annual assessment and \$20 for the Fund for Client Protection until the case is closed.*

new clients in May and was making arrangements to meet with three more in June. This is in addition to several meetings, calls, and e-mails with existing clients.

■ In the past year, early education and intervention was one of the LAP priorities. One of the main efforts toward this goal was the creation of a support group for law students and local attorneys at the law school in Missoula. The first support group was conducted on Feb. 1, 2008, and has been regularly attended since. The average number of participants is three students and two lawyers per session. The group will continue to be held on the first Wednesday of each month and anyone with any interest in this area is encouraged to attend. The May session “proved to be a good venue for processing exam-induced stress,” Mr. Larson said. “At some point, it is my hope that the group will become self-supporting, without the need of the LAP director to facilitate.” One of the goals of the program is to begin support groups in other cities across the state.

■ Continuing legal education (CLE) presentations were conducted across the state to hundreds of attorneys. The LAP CLE was a segment of many CLE programs, the State Bar Road Show, and at standalone CLEs at various meetings. The CLE reporting cycle is only entering the second of three years, but well over half of the Montana attorneys have satisfied the LAP CLE requirement (1.0 CLE credit every three years) set by the Montana Supreme Court. The LAP CLE

credit was requested by the Court’s CLE Commission without prompting by the State Bar.

There are also two new CLEs that have been developed to more particularly address suicide and mental-health requirements, along with the ethics component.

■ New treatment referral sources are continuing to be developed on a regular basis. In the past year, three residential programs, four outpatient programs, and numerous individual counselors were utilized across the state to provide services for impaired lawyers. Additionally, there are many other programs Mr. Larson now feels comfortable referring clients to, after visiting with representatives of those programs. He also continues to develop a database of programs that serve targeted populations.

■ The LAP Hotline (1-888-385-9119) continues to bring new clients to the LAP on a regular basis. There have been more than 80 calls during the past year from lawyers and others about possibly impaired attorneys or judges. Approximately one-third of those calls were self-referrals from the impaired attorneys or judges themselves.

The primary issues were chemical dependency and mental-health problems, which each comprised approximately one-third of the calls. The remaining calls addressed many issues, including general stress and burnout, co-dependency, gambling addiction and inappropriate sexual behavior.

There were also several calls from

## How our dues compare to other states

State Bar of Montana membership dues are \$150, and would increase to \$225 under the Bar’s proposal to the Montana Supreme Court.

Membership dues of the states adjacent to Montana, all of which are unified bars and similar in size, are:

- State Bar of North Dakota – \$380.
- State Bar of South Dakota – \$315.
- Idaho State Bar — \$360.
- Wyoming State Bar - \$250.

The total annual cost to a Montana

lawyer to practice in Montana is \$335 (including mandatory dues and such fees as the License Tax, Lawyers Fund for Client Protection fee, Disciplinary Counsel assessment, and CLE filing fee – see the sample dues statement at the top of the next page). The total costs to practice in the adjacent states are:

- North Dakota - \$380 (\$25 every three years for CLE).
- South Dakota - \$315.

● Idaho - \$380 (includes \$20 Client Security Fund).

● Wyoming - \$255 (includes \$5 CLE).

If the \$75 proposed dues increase for Montana Bar members is approved by the Montana Supreme Court, total annual cost for active Montana attorneys would be \$410.

Nationally, Membership dues for all state bar associations range from \$125 to \$540. Total costs to practice range from \$125 to \$550.



# Copy of current dues statement (without dues increase)

## Membership Dues

• 305 Mont. 279, 53 P.3d 854 (2001)

Current Membership Category: **Active Attorney Member**

**\$150.00**

If changing to inactive or Senior status, please sign here. Only active members may practice law in Montana.

Adjustments, if needed:

TO CHANGE TO INACTIVE OR SENIOR STATUS:

Signature \_\_\_\_\_

Date \_\_\_\_\_

Returning to active status from inactive or senior status requires petitioning the Montana Supreme Court (Bylaws of the State Bar of Montana, Article I, Section 3(e).)

## Other Assessments

Status	State Bar Dues	State of Montana License Tax	Lawyers' Fund for Client Protection	Disciplinary Counsel Assessment	CLE Filing Fee
ACTIVE	\$150.00	\$25.00	\$20.00	\$125.00	\$15.00
INACTIVE	\$75.00	\$25.00	X	X	X
ACTIVE MILITARY	X	\$25.00	\$20.00	\$125.00	X
SENIOR*	\$50.00	X	X	X	X

\*members must be 70+ years to qualify for senior status (senior status is equivalent to inactive status)

### State of Montana License Tax

• § 37-61-2111, MCA

**\$25.00**

### Lawyers' Fund for Client Protection

• 165 Mont. 1, 530 P.2d 765 (1975)

**\$20.00**

### Disciplinary Counsel Assessment

• MT Supreme Court Order November 8, 2006

**\$125.00**

### CLE Filing Fee

• Active Members: Return enclosed affidavit by April 1, 2008.

**\$15.00**

Adjustments, if needed:

## Voluntary Section Dues

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Bankruptcy Section (\$20.00)                                 | <input type="checkbox"/> Federal Practice Section (\$20.00)                      | <input type="checkbox"/> Paralegal Section (\$60.00)   |
| <input type="checkbox"/> Business, Estates, Trusts, Tax & Real Property Law (\$20.00) | <input type="checkbox"/> Health Care Law Section (\$20.00)                       | <input type="checkbox"/> Public Law Section (free)     |
| <input type="checkbox"/> Child & Family Law Section (\$10.00)                         | <input type="checkbox"/> Indian Law Section (\$10.00)                            | <input type="checkbox"/> School Law Section (\$20.00)  |
| <input type="checkbox"/> Construction Law Section (\$20.00)                           | <input type="checkbox"/> Natural Resources & Environmental Law Section (\$10.00) | <input type="checkbox"/> Womens' Law Section (\$20.00) |
| <input type="checkbox"/> Criminal Law Section (\$15.00)                               | <input type="checkbox"/> New Lawyers' Section (\$10.00)                          |  |

**\$0.00**

Adjustments, if needed:

**Total Due April 1, 2008:**

**\$335.00**

**With proposed \$75 dues increase:**

**\$410.00**

attorneys requesting general information about addictions and referral sources for their clients. Mr. Larson said LAP also has gotten reports about attorneys' family members who are having mental-health issues, and that LAP has helped them get into treatment programs. "I don't turn anyone away," he said.

■ In the past year, Mr. Larson has conducted approximately 25 field assessments. These consist of face-to-face meetings with attorneys who have self-reported, or had others call on their behalf. Some of the sessions determined that an impairment problem does not exist. In other circumstances, a determination was made that the individual needed assistance. The appropriate level

of help varies from counseling with Mr. Larson or an individual counselor, support groups, outpatient treatment or residential treatment. Others have also been referred back to their own primary physician to address issues, while a few have been referred for psychiatric help.

■ The program has also been called upon to review and destroy client files that were discovered years after the law office had been closed, and to destroy them or return them to the clients. Additionally, the program has assisted in closing an attorney's office and will likely be helping close another office in the near future. This service not only helps the impaired attorney, but also the clients of the attorney.

Mr. Larson closed down the office of a solo practitioner who is impaired to the point of not being able to practice. The primary remaining issues are billing and the possible refund of trust funds. A volunteer is assisting with those accounting issues. A procedure is being developed for future cases where an office needs to be closed.

■ During early May, Mr. Larson had a client complete a one week, intensive inpatient program for professionals in Lewistown, the first LAP client to do so. The client will continue to receive assistance from Mr. Larson and outpatient aftercare in his hometown. Though this program is somewhat unconventional, in some circumstances it provides a very

useful treatment option.

■ In the middle of May, Mr. Larson attended the spring conference of the ABA Commission on Lawyer Assistance Programs in Tennessee. A large part of the meetings focused on working with law schools and the judiciary. The ABA commission committed to hold next year's spring meetings in Montana.

### What if dues hike is rejected?

Other funding sources for the Lawyers Assistance Program have been explored, including getting private donations, having other legal organizations contribute for a period of years and even looking at grants, said State Bar Executive Director Chris Manos.

"None of these are sustainable," he said, "and the response from private and legal organizations is that a dues increase or assessment from the Supreme Court is the only logical option."

Mr. Manos provided several scenarios for a dues increase or if the Court rejects a dues increase.

First, if the State Bar has no dues increase and the funding for LAP continues at the current level, those funds will come from one of two sources: (1) the Bar's reserve fund that will be exhausted



The lock that had to be cut away from the storage unit in which a Montana attorney, who walked away from her practice, had stored client files.

within a 2-3 year period; or (2) other programs which will have to be reduced or eliminated. "The entire Lawyer Assistance Program budget will not be met with such reductions or eliminations," he said.

Also, which of the programs are reduced or eliminated depends what are

essential programs, as defined by either the Board of Trustees or the Supreme Court, Mr. Manos added.

"Certainly no increase in the LAP budget will be possible, even with the increases with travel expenses (gas) and personnel expenses (salary)."

Another choice, he said, would be to return to the former Lawyers Helping Lawyers program, less than the current Lawyer Assistance, consisting of volunteers and a part-time person, only offering some education and assistance but not addressing the broad range of needs that are now currently being handled. That former approach was determined not acceptable to the Board of Trustees and bar members and judges who were looking for assistance from the State Bar.

"If there is a dues increase as recommended, LAP can be a sustainable program," Mr. Manos said, "and staffing will continue to provide the services that have already taken place – direct assistance to bar members, CLE programming and protection of the clients and the public from the consequences of lawyer disabilities."

○

## COMMENTARY

By **Betsy Brandborg**  
Bar Counsel

I see and hear about it every day: Good lawyers who are tapped out. They can't sleep nights because of a client's issue, only to have that same client turn ugly when the client's calls aren't immediately returned. Malpractice and the Office of Discipline Counsel are threats clients wield, while at the same time saying, "lawyer, you can't quit me now."

When asked why they went to law school, many lawyers say they went to help people. But then they comment that somehow that goal has slipped away. The clients' neediness is beyond the lawyer's ken. It's overwhelming and depressing.

Then there are the lawyers who ignore our phone

## A ray of hope

messages and raise our blood pressure. Every community has some – lawyers and judges know who these people are.

Instead of saying "I don't know what to do about that" and turning away, we now have an effective place to turn. The Montana Lawyer Assistance Program is

able to offer concrete suggestions and ideas to help balance these day-to-day challenges.

In an effort to avoid a dues increase, the State Bar has approached more than a dozen other Montana bar entities and volunteer organizations. Their general response has been that they believe so deeply in the value of the LAP that they support a general dues increase.

The Lawyers Assistance Program isn't hand-holding, but it is life-saving. And for many of us, the program is life-restoring.

# The county attorney with the cowboy image

*John Flynn often trades his horse for scientific prosecution tools*

By **Marga Lincoln**  
Helena Independent Record

It was 30 years ago this past week that John T. Flynn first strode into the job of Broadwater County attorney in Townsend. He was 25 years old, the youngest county attorney in office at that time.

Just a few years out of the University of Montana law school, he was appointed to the position in May 1978 by the county commissioners. He's gone on to be elected to the office eight times.

Over the years, others have come to respect his intelligence, honesty and sense of humor.

He's also good at putting criminals behind bars.

His job offers, if nothing else, variety. "I've literally argued a homicide case in the morning," he said, "and a dog-at-large case in the afternoon."

The job can also be demanding. At the end of April, he took a two-week trip to Europe for his daughter Meagan's wedding. It was the first time Flynn had taken more than nine days off in a row since starting the job. To prepare for it, he'd bought a satellite phone, so county officials could stay in touch with him.

**IN THE PAST THREE DECADES**, he has seen notable changes in both the lawbreakers and law enforcement.

The volume of cases rises steadily – from DUIs to partner-family assaults to bad checks. There's also more road rage, he said, and more people reporting it via cell phone.

And as penalties stiffened for DUIs, so did people's resistance and their efforts to fight these charges. As a result, the costs and hours to prosecute such cases steadily climb, he said.

What started as a very part-time job has grown into a full-time workload.

He's seen a change in people, as well.

"I think people had more responsibility for their own actions," he said, "including getting along with neighbors and family members. Now they turn to law enforcement.

Previously they would have worked things out on their own.

Now they're looking for an umpire or referee."

**MOST TROUBLING** for him are the child-molestation cases. Cases such as these led Flynn to press the county to hire a crime victims' advocate to help victims as they move through the court system.

"He fought very hard to get the victim's advocate," said Lynne Arensmeyer, Flynn's former and longtime secretary. "She (Brooke Dolan, the advocate) has made it a lot easier for the victims."

Some cases caused sleepless nights. "Am I making the right decision?" can be a haunting question. He has found, "You can't beat yourself up over a decision five years ago. The only peace you can find is knowing that based on the law, facts and what I know (on that day)...I made the best decision. That's as good as it gets."

**FLYNN'S LAW** enforcement tools have also changed. Computerized databases, such as Westlaw, are replacing county law libraries – saving hours of research – that is when one's computer is functioning. Alas, that was not the

case the day of this interview.

And there are now more sophisticated scientific ways to gather evidence. Flynn was a pioneer in using DNA tests in a Montana criminal case.

"We had the second DNA case in the state," recalled Arensmeyer, referring to a sexual assault case against Michael R. Weeks in 1992. "We had to invent the wheel," she said. "At that time it was challenging, we had to call experts from all over the country."

And Flynn, who admits that as a student he avoided taking science classes, found himself cramming to understand the science, and even how to pronounce the terms – such as "restricted fragment length polymorphism" – in order to lay out the factual foundation for the trial.

Flynn successfully convicted Weeks, and the conviction was upheld on appeal.

**IN ANOTHER HIGH-PROFILE** case, an unidentified



Photo by Eliza Wiley, Helena Independent Record

John T. Flynn was state's youngest county attorney when he started 30 years ago.

body was found north of Townsend.

"We had nothing," recalled former Sheriff Richard Thompson.

Through careful detective work, Flynn and investigators pieced together the evidence to convict Roy Lee Duncan in 1989 for murdering Larry Beckwith, who was passing through the area on his way to Alaska.

Breaking the case involved the fluke discovery of Beckwith's wallet in Las Vegas, the painstaking tracking of calls through phone records, discovering a convenience store clerk in Bozeman with an uncanny photographic memory, and stumbling upon a Texas inmate who heard Duncan confess to the crime.

"He was all over that," recalled Thompson, describing Flynn's role in the investigation.

The jury found Duncan guilty. Three other suspects pleaded guilty. Two more who were arrested weren't involved in the crime, but turned state's evidence, said Thompson.

Flynn also put Julian P. Rodriguez behind bars in 1988 after he killed Tom Meng with a .357 magnum and wounded Tom Massa during a dispute at what was then the Pines Bar in Townsend.

**PERHAPS IT WAS THESE** high-profile cases, or perhaps it was a youthful diet of adventure and cowboy stories that sparked Flynn's interest in writing.

He's published two Montana murder mysteries, "Montana Pursuit" and "Montana Mirage," in 1994 and 1998, and just completed a third, "Montana Justice." All are set in mythical Headwaters County, which bears a striking similarity to Broadwater County, and all feature County Sheriff Ben Green and District Attorney Jefferson Kirk, who bears a resemblance to a well-known local county attorney.

The books are more than whodunnits. They explore contemporary Montana themes – hunting traditions, rich celebrities buying huge tracts of Montana ranch land, the impacts this trend has on family ranching and the efforts of animal-rights organizations to ban hunting.

"I try to paint a picture," he said. "This is what's going on in

Montana and this is how people talk. If Charlie Russell were alive today he'd paint an old flatbed truck with two border collies."

**TOWNSEND MAYOR** Mary Alice Upton has worked with Flynn, who also serves as Townsend's city attorney, for many years.

"I value his sense of humor and his familiarity with this county and its people," she said. "I value his insight. If he doesn't know, he'll find it out for you. I find a certain number of attorneys to be arrogant. John isn't. He kept a common touch. Maybe it's a small-town attorney thing."

Arensmeyer appreciates Flynn's honesty and humor. "He's been an outstanding county attorney. He stood up for what's right. He's one of the most honest men I've known – to a fault – and has a great sense of humor."

She recalls having to call him out of his first county-attorney convention because of a crisis. She told him before he left that she wouldn't call him unless there was a sniper on the rooftops in Townsend. Well, instead, an irate husband took his wife and her lover hostage at the White Beaver bar in Toston.

It took Arensmeyer, the sheriff, and several deputies talking to Flynn on the phone to convince him that the hostage situation wasn't a joke, she said.

After that, she would tell Flynn that she wouldn't call him unless there were snipers on the rooftops of Townsend or a hostage situation at the White Beaver.

**WHEN THERE'S NOT** a trial or a crisis or a court brief needing Flynn's attention, a visitor to his office just might find a "gone hunting" sign hanging on the doorknob.

Having grown up on the Flynn Ranch south of Townsend, he still lives within sight of the family ranch with his wife, Debbie. He has two grown daughters, Meagan and Molly.

Flynn also guides fishing and hunting trips and is a host of Montana High Country Cattle Drive, a local cattle drive in the Big Belt Mountains that welcomes wanna-be cowboys and cowgirls from around the world. ○

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## Public Land Law Conference scheduled

The annual Public Land Law Conference, set for Missoula on Sept. 22-24, will focus on a "Federal Lands Agenda for the 21st Century: Options for the Next Administration."

In preparation for the program, conference partners will prepare a policy report identifying critical issues related to governance of federal lands in the West, and offer a set of options for how they might be addressed. The conference will expand on those ideas with interactive discussions with experts from a variety of backgrounds and affiliations.

Conference panels and discussions will focus on current law and policy perspectives and changes that need to be made. A final report, based upon feedback, discussion, and presentation at the conference will be presented to the new administration, members of Congress, and other key stakeholders.

The conference will feature such topics as:

- Managing Beyond Traditional Boundaries
- Valuing Species on Public Lands:

Is There a Need for Endangered Species Act Reform?

- Keeping the Public in Public Lands
- Forest Management for a Changing West
- Mining Law Reform

The conference, to be held on the University of Montana campus, will be worth about 11.0 CLE credits to Montana lawyers.

For additional information visit: [www.publiclandlawreview.org](http://www.publiclandlawreview.org).



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# Board tackles big agenda at retreat

*Dues, invigorated committees, character & fitness just few of long list of topics*

*The following is a summary of the May 30-31 meeting of the State Bar Board of Trustees, held in Fort Benton.*

## **BAR PRESIDENT'S REPORT** – *Jock Schulte*

Mr. Schulte explained that a special report, requested by the Montana Supreme Court every three years, was filed with the Court. A major item in the report is the Bar's request that the Court approve a \$75 dues increase for active members, a \$50 dues increase for inactive members, but no increase for first-year members who have not practiced in other jurisdictions. The report also requests an increase in pro hac vice application fees (see box on Page 8). Mr. Schulte said that after meeting with justices and others, it appeared to him that the dues and pro hac vice requests should be split into two petitions. That proposal was later approved by the Bar Board (see discussion below), but the petitions have yet to be filed. Mr. Schulte also said a 90-day comment period is required after the dues-increase petition is filed. He said the petition will be one of the topics of the Road Show events being planned for various Montana cities in July and August.

Mr. Schulte said he has nominated Missoula attorney Jim Taylor to the state for reappointment to the state Public Defender Commission.

## **SECRETARY-TREASURER'S REPORT** – *Joe Sullivan*

Mr. Sullivan explained that the Bar needs to provide the Montana Supreme Court with a longer, more detailed financial report with the special report outlined above. He said some of the justices were unclear about the breadth of the Bar's commitments and how much work is mandated by the Court.

## **BOARD CHAIR'S REPORT** – *Cyndy Smith*

Ms. Smith recounted her attendance at the recent national Equal Justice Conference.

She announced that the next Board of Trustees meeting will take place in Butte in September, along with the Bar Annual Meeting, although a conference call among trustees will occur in July to further discuss the dues-increase petition.

## **REPORTS REQUIRING BOARD ACTION**

- **Indian Law Section.** The Indian Law Section reports that it has been "reinvigorated" under the naming of two co-chairs, Maylinn Smith and Amy Sings In The Timber. The Section proposed that the Section's dues be increased

by \$20 to help pay for an expanded Indian Law program. The Section also requested a Section by-law change to allow the Section's annual meeting to occur on Indian Law Day instead of at the Bar's Annual Meeting. The Bar trustees approved both requests.

- **Character and Fitness Investigations.** The Board held a lengthy discussion on an earlier proposal to turn the initial character and fitness investigations of Bar applicants, now being handled by Bar staff, over to the National Council of Bar Examiners. Objections continued to be raised over the need for a \$200 admission-fee increase for law students to pay the NCBE for the service. There were concerns about whether the proposed investigation system would actually provide substantial benefits over the present Bar-staff investigations. Board Chair Cyndy Smith called for further study, and the topic was continued to future meetings.

- **Trustee resignation.** Bozeman-area Trustee Carl Borquist has resigned effective July 1, and Board Chair Cyndy Smith encouraged trustees to search for candidates to run for his position in the August Bar elections. The Board approved a motion to have Mr. Borquist's replacement elected by his area's membership rather than be appointed by the Board, since there was such a short period between the resignation and election in August.

- **Professionalism Awards.** Bar Executive Director Chris Manos reminded the Board that Bar members have been called upon to nominate members for the Bar's George L. Bousliman Professionalism Awards, which will be presented at the Annual Meeting in September. The Board approved a motion to review the nominations and select winners in a conference call this summer.

## **MONTANA JUSTICE FOUNDATION REPORT** – *Damon Gannett*

Mr. Gannett said the \$754,000 in grants to legal organizations this year (see Page 23 of the *May Montana Lawyer* for list) set a record for the Foundation. However, he said, interest rates on IOLTA accounts that help fund the Foundation's grants are beginning to decrease with the general decline of all the country's interest rates. He said the Foundation has guaranteed that it will fund the Montana Legal Services Association at least \$300,000 each year in the near future if the money is available. He added that the tightening IOLTA situation will require more aggressive fund-raising efforts from the

**More BOARD SUMMARY, Page 31**

# **IMPORTANT UPDATES\***

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\*Updates are in .PDF format and will be available and distributed after July 5, 2008.

If you are unsure whether or not you have already pre-purchased a copy, or for more information, call (406) 442-7660



# Volunteers needed!

## Request for committee assignment State Bar of Montana

Member participation in the organization and management of the State Bar of Montana is essential to its success as a professional association. The most effective way lawyers and legal assistants can participate is through volunteer service on the many committees that compose the Bar.

Committees meet two to six times per year, usually in Helena, although many meetings are via conference call. Expenses associated with attending meetings are reimbursed by the State Bar.

Every effort is made to assign volunteers according to their choices.

Your name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Most recent committee assignments \_\_\_\_\_

For each committee assignment you request, note whether it is your first, second or third choice:

<input type="checkbox"/> CLE Institute	<input type="checkbox"/> Lawyer Referral & Information Service
<input type="checkbox"/> Dispute Resolution	<input type="checkbox"/> Lawyers' Fund for Client Protection
<input type="checkbox"/> Elderly Assistance	<input type="checkbox"/> Lawyers Helping Lawyers
<input type="checkbox"/> Fee Arbitration	<input type="checkbox"/> Resolutions
<input type="checkbox"/> Judicial Relations	<input type="checkbox"/> Technology
<input type="checkbox"/> Law Education & Information	

Please return this form no later than **July 15** to:

**Committee Assignments  
State Bar of Montana  
PO Box 577, Helena MT 59624  
Fax (406) 442-7763 or e-mail [jdiveley@montanabar.org](mailto:jdiveley@montanabar.org)**



# Road Show to take ‘dilemma’ to 4 cities

The State Bar will present an interesting mystery to Bar members in Kalispell, Hamilton, Great Falls, and Livingston during its annual Road Show – titled “Survival: Deal or No Deal” – in July and August.

The Road Show, allowing local Bar members to meet with Bar officers, trustees, and staff, will also feature “The Prisoner’s Dilemma,” a mystery in the form of a game show that tests the members’ legal values and logic. The game, presented by the Bar Professionalism Committee, will follow a discussion on lawyer values, which is a follow-up to a recent Bar task force discussion initiating a process in which the Bar will identify a core set of lawyer values in Montana.

Attendees at the Road Show will receive 3.50 CLE credits, including 3.50 Ethics – for free!

The Road Show will stop at:

- **KALISPELL** – 1-4:30 p.m., Thursday, July 10, at the Red Lion Hotel, 20 North Main.
- **HAMILTON** – 8:30 a.m.-noon, Friday, July 11, at the Banque Club, 225 West Main.
- **GREAT FALLS** – 1-4:30 p.m., Thursday, Aug. 28, at the Quality Inn Ponderosa, 220 Central Ave.

- **LIVINGSTON** – 8:30-noon, Friday, Aug. 29, at the Best Western Yellowstone Motor Inn, West Park St. There is no need to sign up in advance or RSVP.

## Resolutions due by July 23

Proposed resolutions that will be considered at the State Bar Annual Meeting in September must be submitted to the State Bar by July 23 so that they can be published on our web site and in the August *Montana Lawyer*. Board of Trustees policies say a resolution proposal must reach the Bar 45 days in advance of the annual meeting. Before proposals can become an official State Bar resolution, they must be approved by the Resolutions Committee and by Bar members who attend the Bar’s business meeting at the Annual Meeting.

To present a resolution, consult the requirements in Board of Trustee Policy 1-108 on Page 204 of the 2008 Lawyers’ Deskbook & Directory. The Policies were recently amended to limit resolutions to reflect only the Bar’s purposes listed in Article III of the State Bar Constitution (see Page 194 of the 2008 Deskbook & Directory).

## STATE BAR CALENDAR

### July 7

**Filing deadline** for State Bar elections of president-elect, trustees and ABA delegate. Nomination forms (see May *Montana Lawyer*) must be returned to bar on this date.

### July 10

**State Bar Road Show**, 1-4:30 p.m., Kalispell, Red Lion Hotel, 20 N. Main.

### July 11

**State Bar Road Show**, 8:30 a.m.-noon, Hamilton, Banque Club, 225 W. Main.

### July 25

**Content and advertising deadline** for August edition of *Montana Lawyer* magazine.

### July 28-30

**Bar Exam**, Doubletree Hotel, Missoula.

### August 5-12

**ABA Annual Meeting**, New York City.

### August 6

**State Bar election ballots** mailed to Bar members.

### August 25

**Board of Bar Examiners** meeting, 10 a.m., State Bar offices, Helena.

### August 25

**Content and advertising deadline** for September edition of *Montana Lawyer* magazine.

### August 26

**State Bar election ballots** must be returned by this date to Bar offices.

### August 28

**State Bar Road Show**, 1-4:30 p.m., Great Falls, Quality Inn Ponderosa, 220 Central Ave.

### August 29

**State Bar Road Show**, 8:30 a.m.-noon, Livingston, Yellowstone Motor Inn, West Park Street.

### September 5

**State Bar election ballots** counted.

### September 18-19

**State Bar Annual Meeting**, Copper King Hotel, Butte.

# Upcoming CLE seminars for Montana lawyers

June 24 Kalispell – Flathead Valley Community College  
**School, Labor & Employment Law Workshop** 5.0 CLE credits.  
Presented by attorney Michael Dahlem, (808) 214-9255

June 24 Missoula – Ruby's Inn  
**Investigating Personnel Issues** 6.50 CLE credits. Presented  
by the state Personnel Division, (406) 444-3985

July 10 Kalispell – Red Lion Hotel, 1-4:30 p.m.  
**State Bar Road Show** 3.50 CLE credits, including 3.50 Ethics  
credits. No charge (see details on Page 17). Presented by the  
State Bar and its Professionalism Committee. No pre-registra-  
tion needed

July 11 Hamilton – The Banque Club, 8:30 a.m.-noon  
**State Bar Road Show** 3.50 CLE credits, including 3.50 Ethics  
credits. No charge (see details on Page 17). Presented by the  
State Bar and its Professionalism Committee. No pre-registra-  
tion needed

July 16 Missoula – County Courthouse, Room 374  
**The Law, the Guardian & the Chronically Ill Child** 1.0 CLE  
credits. Presented by Missoula District Court, (406) 258-4742

July 17 Big Sky – Big Sky Resort  
**Uniform Law Commission Annual Meeting** 40.50 CLE credits.  
(312) 450-6600

July 28 Big Sky – Big Sky Resort  
**NRECA 2008 Legal Seminar** 9.50 CLE credits, including 1.0  
Ethics credit. Presented by the National Rural Electric  
Cooperative Association, (703) 907-5656

August 13 via satellite  
**Workplace Regulations for Business Owners – Part II** 2.75  
CLE credits. Presented by Edward Jones Company, (314) 515-  
5848

August 14 Helena – Metcalf Building, Capitol Complex  
**Privacy & the Right to Know** 6.50 CLE credits. Presented by  
the state Personnel Division, (406) 444-3985

August 15 Missoula – Hilton Garden Inn  
**Family Law Litigation** 6.0 CLE credits, including 1.0 Ethics  
credit. Presented by National Business Institute, (800) 930-  
6182

August 20 Missoula – Holiday Inn Express  
**Montana's Wrongful Discharge Act** 3.0 CLE credits.  
Presented by the state Personnel Division, (406) 444-3985

August 21 Helena – Colonial Hotel  
**Practicing Legal Ethics in the Electronic Law Office** 5.0 CLE  
credits, including 5.0 Ethics credits. Presented by HalfMoon

## 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](http://www.seminarweblive.com/mt/index.cfm?showfullpage=1&event=showAppPage&pg=semwebCatalog&panel=browseLive)

■ Lorman Education Services' teleconferences at  
[www.lorman.com/teleconferences/](http://www.lorman.com/teleconferences/)

LLC, (715) 835-5900

August 28 Great Falls – Quality Inn Ponderosa, 1-4:30 p.m.  
**State Bar Road Show** 3.50 CLE credits, including 3.50 Ethics  
credits. No charge (see details on Page 17). Presented by the  
State Bar and its Professionalism Committee. No pre-registra-  
tion needed

August 29 Livingston – Yellowstone Motor Inn, 8:30 a.m.-noon  
**State Bar Road Show** 3.50 CLE credits, including 3.50 Ethics  
credits. No charge (see details on Page 17). Presented by the  
State Bar and its Professionalism Committee. No pre-registra-  
tion needed

September 18 Miles City – Holiday Inn Express  
**Preventing Harassment** 3.0 CLE credits. Presented by the  
state Personnel Division, (406) 444-3985

September 18-19 Butte – Copper King Hotel  
**State Bar Annual Meeting CLEs** Details to be announced at  
[www.montanabar.org](http://www.montanabar.org) and in August *Montana Lawyer*

September 22-24 Missoula – Castles Center, UM Law School  
**Federal Lands Agenda for the 21st Century** 11.50 CLE credits.  
Presented by the *Public Land & Resources Law Review*, (406) 243-  
6568

September 24 Helena – Metcalf Building, Capitol Complex  
**Documenting Disciplinary Action** 3.0 CLE credits. Presented  
by the state Personnel Division, (406) 444-3985

September 25 Helena – Metcalf Building, Capitol Complex  
**Ethical Issues in Public Service** 6.50 CLE credits, including  
6.50 Ethics credits. Presented by the state Personnel Division,  
(406) 444-3985

October 21 Billings – Holiday Inn Grand  
**Montana Human Resource Conference** 8.25 CLE credits.  
(406) 444-3982

November 1 Cozumel, Mexico  
**CLE & Sea: General Practice** 15.0 CLE credits, including 5.0  
Ethics credits. Presented by CLE & Sea and the State Bar of  
Montana, (406) 677-6789. See ad on Page 13



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### **Montana Probate Forms**

2006, 288 pages  
Book plus CD \$150

### **Civil Jury Instructions**

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

### **Criminal Jury Instructions**

1999 w/2003 Update, 400 pages  
Book plus CD \$105

### **Handbook for Guardians & Conservators**

2005, 60 pages incl. 5 forms  
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# Justice Foundation funds grants at record levels

By **Jordan Lyons**  
MJF Americorp VISTA Member

At its April board meeting, the Montana Justice Foundation (MJF) awarded \$754,023 in grants to legal aid providers from around the state, more money than MJF has awarded in any previous year.

Despite the record funding level, the grant process was as competitive as ever. Fourteen organizations submitted grant proposals; another new record for the MJF, which has served as the charitable arm of the legal community since 1979.

Montana Legal Services Association (MLSA) received the largest grant, totaling \$593,000, (\$300,000 of which represents MJF's rolling commitment to MLSA operating costs).

"With the stagnant funding from the Legal Services Corporation and the sunseting of several other funding sources," said MLSA Deputy Director Alison Paul, "MJF plays a critical role in continuing MLSA's ability to deliver services across the state."

MJF also awarded grants to the following service providers:

- \$7,000 – CASA of Missoula Inc.
- \$15,000 – Cascade County Law Clinic, plus a \$5,000 match option
- \$6,000 – Center for Restorative Youth Justice, Kalispell
- \$5,000 – Community Dispute Resolution Center of Missoula County
- \$15,000 – Community Mediation Center, Bozeman
- \$3,323 – Domestic Violence

Education and Services (DOVES),  
Polson

- \$13,700 – Eastern Montana CASA/GAL, Miles City
- \$8,000 – Network Against Sexual and Domestic Abuse, Bozeman

● \$8,000 – The Nurturing Center,  
Kalispell

● \$75,000 – Montana Supreme Court to fund the pro bono coordinator

A number of factors led to record fund-raising levels and grant awards in

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Fiscal Year 2008. Most significantly, Interest on Lawyers Trust Accounts (IOLTA) rates were high throughout much of last year, bolstered by outreach to banks on the part of local attorneys, MJF's board of directors and executive director, Amy Sings In The Timber.

"Our bank outreach efforts have resulted in true partnerships between the MJF and Leadership Banks," said Ms. Sings In The Timber, referring to banks that have kept interest rates on IOLTA

accounts as high as possible, and waived service fees. "These partnerships make a real difference for our grantee organizations and the access to justice cause in Montana."

Donations from law firms and individual attorneys have also increased. Private donations were made through MJF's website and in response to direct mail appeals and board member asks.

While it has been a banner year for the Justice Foundation, federal interest

rate cuts have the potential to significantly reduce IOLTA revenue in FY09. Preparing for the downturn, MJF board members are redoubling their efforts at fund-raising in the legal community, and plan to hold special events and organize a major donor society.

---

**FOR MORE INFORMATION** about the *Montana Justice Foundation* and how you can help please visit: [www.mtjustice.org](http://www.mtjustice.org) or call (406) 523-3920.

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# A vacation from taxation?

By **Cris Anderson**  
and **Michael S. Brady**

For years, real estate investors and tax advisors have wrestled with the question whether the sale or purchase of a residential property that they could use as a vacation or second home is property held for investment within the meaning of Internal Revenue Code (“IRC”)

Section 1031. Indeed, what investor could resist the thought of swapping a five-family house, with an equal number of tenants, trash and toilets to take care of, for a luxury condo near a turquoise sea and a crystalline beach?

Unfortunately (or fortunately in those cases in which the investor is now sitting on her veranda at the end of a white sand beach following a tax deferred exchange), prior to 2007, there was very little guidance concerning whether a taxpayer could complete an IRC §1031 Exchange involving the sale or purchase of property that is used as a vacation home property. This issue has recently caught the interest of both the IRS and the Treasury, resulting in some clarification, though a gray area still exists for many of these types of exchanges.

## IRC §1031

Section 1031 (a) provides that “[n]o gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.” Key to the section is the requirement that the exchange properties must be “held either for productive use in a trade or business or for investment.” A personal residence would not qualify as it “is antithetical to its being held for investment.” *Starker v. United States*, 602 F. 2d 1341, 1350 (9th Cir. 1979). The IRS and Treasury have adopted this reasoning. See Rev. Rul. 59-229, 1959-2 C.B. 180; and Rev. Proc. 2005-14, 2005-1 C.B. 528. Obviously, some taxpayers hold properties for multiple reasons and it is often difficult to discern which reasons predominate, let alone which reasons would be considered predominate by the IRS.

## PLR 8103117 and *Rivera v. Commissioner*

Before the issuance of more recent rulings or procedures to be discussed below, there was very little guidance in the law concerning how investment intent was measured. Even worse, what little guidance that existed could not be cited as precedent. In Private Letter Ruling (“PLR”) 8103117 the IRS advised a taxpayer that “the house and lot you acquire in this trade will be held for the same purposes as the properties

exchanged therefore: to provide for personal enjoyment of the community and to make a sound real estate investment.” [emphasis added] PLR 81031 17 (October 27, 1980). In obtaining the ruling, the taxpayer represented to the IRS that during the six or seven years prior to the contemplated sale, the house had not been rented and had been occupied by the taxpayer approximately 10 days each

year for “maintenance purposes.” Some tax practitioners (and others) have pointed to PLR 81031 17 as support for the broad proposition that a taxpayer’s personal use and enjoyment of a vacation property was permissible, despite the fact that a private letter ruling may not be relied upon as precedent by taxpayers other than the taxpayer who requested it, and is limited solely to the particular transaction for which the PLR is issued.

In a 2004 case, the United States Tax Court concluded that “[t]he term ‘profit’ . . . encompasses the appreciation in the value of the assets used in the activity. [citation omitted]. The term ‘income’ . . . is not confined to recurring income’ but may also apply to gains from the disposition of property.” *Rivera v. Commissioner*, T.C. Memo. 2004-81 (June 23, 2004). In that case, the court construed IRC §1.183-2(b) which contains nine “nonexclusive” factors for determining whether a taxpayer’s objective from participating in a venture is to earn a profit. Some taxpayers and their advisors have relied on this language to justify a tax deferred exchange of vacation properties involving minimal or no rental activity. Note that *Rivera* may not be treated as precedent for any other case under IRC 7463(b) and the court did not address IRC §1031. Accordingly, *Rivera* also provided no precedential value.

## *Moore v. Commissioner*

In 2007, 27 years after the IRS issued PLR 8103117, the Tax Court decided a case dealing squarely with a tax deferred exchange involving a vacation property. *Moore v. Commissioner*, T.C. Memo. 2007-134 (May 30, 2007). In that case, the taxpayer exchanged a lakefront vacation property with a mobile home in Lincoln County, Georgia (the Clark Hill property) for a lakefront property with a larger five bedroom and 4.5 bath house on 1.2 acres in Forsyth County, Georgia (the Lake Lanier property). During the time the properties were held by the taxpayer, the taxpayer’s family used the properties as vacation homes and for recreation. The IRS challenged the exchange, arguing that the neither the relinquished property nor the replacement property was held by the taxpayer for investment, and therefore the exchange did not qualify for tax deferral under Section 1031.

As would be expected, the taxpayer argued that both of the

properties were held for long-term appreciation and the exchange therefore qualified for tax deferral under IRC §1031.

In analyzing the facts, the Tax Court focused on the taxpayer's use of the property. The court pointed out that the taxpayer never rented or attempted to rent either property to others, deducted mortgage interest as home mortgage interest rather than as an investment expense, the owners did not take (and probably did not qualify for) depreciation or other tax benefits associated with investment properties under the Internal Revenue Code such as deductions for maintenance expenses.

The court also pointed out that during the last two years of their ownership of the Clark Hill property, a time during which the taxpayers had no personal use, they also stopped maintaining the property. The court found this lack of upkeep to be "inconsistent with a professed intention to protect their investment in, and maximize their profit on, the sale of the property, but consistent with an attitude that upkeep and maintenance were warranted only in connection with petitioners' regular, personal use of the property." In short, the court found no evidence that either property was held as an investment.

While the court accepted that the taxpayers "hoped" that both the relinquished and replacement properties would appreciate, it concluded that "...the mere hope or expectation that the property may be sold at a gain cannot establish investment intent if the taxpayer uses the property as a residence."

In disallowing the taxpayers' tax deferred exchange, the court concluded that "[t]he evidence overwhelmingly demonstrates that petitioners' primary purpose in acquiring both the Clark Hill and Lake Lanier properties was to enjoy the use of those properties as vacation homes, i.e. as secondary personal residences."

## The TIGTA Report

Subsequent to *Moore*, the Treasury Inspector General for Tax Administration (TIGTA) issued a report entitled "Like-Kind Exchanges Require Oversight to Ensure Taxpayer Compliance." The report addressed several areas of concern, including like-kind exchanges of second and vacation homes. The report stated that "While second and vacation homes used exclusively by owners are not eligible for like-kind exchanges, the rules for like-kind exchanges of second and vacation homes not used exclusively by owners are complex and little exists with respect to a published position by the IRS on like-kind exchanges involving such properties. The absence of clarification leaves un rebutted the sales pitch of like-kind exchange promoters who may encourage taxpayers to improperly claim deferral of capital gains through tax-free exchanges."

## Revenue Procedure 2008-16

The IRS agreed with the recommendations of the report and in February 2008, they issued Revenue Procedure 2008-16, which created a "Safe Harbor for Like-Kind Exchange of Dwelling Unit". In establishing the safe harbor, the IRS relied heavily on IRC §280A, which governs the deductibility of certain expenses related to the rental of vacation homes.

The Revenue Procedure is applicable to exchange transactions closing after March 10, 2008, that involve the transfer of

property consisting of a dwelling unit and/or the acquisition of a dwelling unit as replacement property. In short, the IRS will not challenge whether a residential property or vacation home property is held for productive use in a trade or business or for investment if certain specified ownership and use requirements are met.

This safe harbor procedure provides useful guidance on the characterization of vacation property and may also be useful for planning purposes such as the conversion of a principal residence into a qualifying relinquished property.

A dwelling unit is defined as any real property improved with a house, apartment, condominium, or similar improvement that provides basic living accommodations including a sleeping space, bathroom and cooking facilities (e.g., a residential property).

The IRS will not challenge whether a dwelling unit qualifies as § 1031 exchange property held for productive use in a trade or business or for investment if: (1) the relinquished property is owned by the taxpayer for at least 24 months immediately prior to the exchange and a replacement property is owned for at least 24 months immediately after the exchange (the "qualifying use period") and (2) within each of the two 12 month periods constituting the qualifying use period, the taxpayer must:

- (a) Rent the property to another person or persons at a fair rental for 14 or more days; and
- (b) The taxpayer's personal use of the dwelling unit cannot exceed the greater of 14 days or 10 percent of the number of days during the 12 month period the dwelling unit is rented at a fair rental.

Under the Procedure, personal use of a dwelling unit occurs on any day in which the taxpayer is deemed to use the property for personal purposes under IRC §280A(d)(2) (taking into account §280A(d)(3) but not §280A(d)(4)). Thus, personal use includes: (1) use by the taxpayer or any other person who has an interest in the property or by a family member; (2) use by any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit (whether or not a rental is charged for the use of such other unit); or (3) use by any other individual if rented for less than fair market value. A taxpayer can rent the property to a family member if the family member uses the property as a primary residence and the family member pays fair market rent. Whether a dwelling unit is rented at a fair rental is determined based on all the facts and circumstances that exist when the rental agreement is entered into. All rights and obligations of the parties to the rental agreement are taken into account.

## Safe harbor but not a 'brightline' test

The Procedure provides a safe harbor for purposes of characterizing investment property for purposes of Internal Revenue Code §1031. Property that does not meet the terms of the safe harbor may nevertheless constitute qualifying relinquished or replacement property under current law. Whether or not an exchange outside of the safe harbor of Revenue

Procedure 2008-16 will qualify for non-recognition of gain under IRC § 1031 will be fact specific and will depend on both the amount of personal use and the amount of rental time the taxpayer can demonstrate for their particular property. Of course, any exchange must meet all

other applicable legal requirements, and of course, every taxpayer should consult with their legal and tax advisor before engaging in any §1031 exchange.

**CRIS ANDERSON**, an attorney, is the Northwest Division Manager and a mem-

ber of the Washington State Bar Association, and **MICHAEL S. BRADY** is vice president and eastern regional manager, for Asset Preservation Inc., a leading national qualified intermediary. They may be contacted at (360) 359-8830 or (866) 394-1031 respectively.

## DISCIPLINE

### Billings lawyer publicly censured

Billings attorney Roy W. Johnson was publicly censured by the Montana Supreme Court on May 6 for violating the Montana Rules of Professional Conduct.

Mr. Johnson filed a conditional admission to the violations, and under the disciplinary rules the details of the violations are kept confidential.

The May 6 censure order said that Mr. Johnson violated Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication), and 3.2 (expediting litigation).

The Court's censure was delivered in the Montana Supreme Court chambers in Helena with Mr. Johnson present.

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# The Workers' Compensation Court's trial dates for 2009

## WORKERS' COMPENSATION COURT 2009 TRIAL DATES

VENUE	WINTER	SPRING	SUMMER	FALL
<b>GREAT FALLS</b>				
Petition Deadline	October 13*	December 29*	March 9	June 15
Pretrial Week	December 22	March 9	May 11	August 17
<b>TRIAL WEEK</b>	January 5	March 23	May 25*	August 31
<b>MISSOULA</b>				
Petition Deadline	October 20	January 12	March 23	July 6
Pretrial Week	December 29*	March 16	May 25*	September 7*
<b>TRIAL WEEK</b>	January 12	March 30	June 8	September 21
<b>BILLINGS</b>				
Petition Deadline	November 3	January 26	April 6	July 20
Pretrial Week	January 12	March 30	June 8	September 21
<b>TRIAL WEEK</b>	January 26	April 13	June 22	October 5
<b>HELENA/BUTTE</b>				
Petition Deadline	November 24*	February 9	May 18	August 3
Pretrial Week	January 26	April 13	July 20	October 5
<b>TRIAL WEEK</b>	February 9	April 27	August 3	October 19
<b>KALISPELL</b>				
Petition Deadline	December 15	February 23	June 1	August 17
Pretrial Week	February 16*	April 27	August 3	October 19
<b>TRIAL WEEK</b>	March 2	May 11	August 17	November 2

\* State holiday falls during the week.

NOTE: PETITION DEADLINE IS THE DATE THE PETITION MUST BE RECEIVED IN THE COURT.

# The law-practice trends you can't afford to miss

The following information was included in a report to the ABA's Bar Leadership Institute in March, presented by Fred Urey, past-president of the Connecticut Bar Association, and Thomas Lyons, past president of the Rhode Island Bar Association. Both men are members of the NCBP's executive council.

The report listed the following current trends:

## Demographics

- Approximately 55 percent of lawyers nationally are baby boomers, the oldest of whom are reaching retirement age.
- Fewer lawyers are coming into the profession than are approaching retirement age.
- Bar associations may have to plan for reduced memberships.
- Historically, the number of lawyers in legislatures has been declining. However, a recent survey in the *Wall Street Journal* said 42 percent of law school applicants would "definitely" or "probably" consider a political run.

## Legal education & law-school debt

- After years of decline, law school enrollments increased slightly last year.
- Female enrollments are declining.
- Minority enrollments appear to be declining.
- Law school tuitions are up 267 percent since 1990.
- Starting salaries are up 60 percent since 1990.
- Graduates of private law schools have debts of about \$80,000 or more, not including undergraduate debt.

## Career mobility

- 1 in 4 workers have been on the same job for 1 year.
- 1 in 2 less than 5 years.
- Today's grads will hold 10-14 jobs by their 38th birthday.

## Leadership development among young lawyers

- Many bar associations have difficulty getting young lawyers involved.

## Technology & the economics of the practice

- More than 50 percent of U.S. 21-year-olds have created content on the web.

## **Starting salaries for UM law grads**

*These figures were presented by University of Montana School of Law Dean Ed Eck at a recent State Bar of Montana Board of Trustees meeting.*

### **The latest surveyed annual starting salaries of UM Law School graduates:**

- The average nationwide — \$51,333
- Montana starting salaries — \$44,000-\$45,000
- Law clerks — \$38,000
- Government attorneys — \$38,000

- 70 percent of 4-year-olds have used a computer.
- There were more text messages sent today than there a people on the planet.
- Today, information is doubling every 2 years. It is predicted that by 2010, information could double every 72 hours.

## Globalization

- 1 million lawyers in India are willing to work for \$6 to \$12 per hour.
- Indian lawyers are trained in the Common Law and they speak English. The Internet connects them directly to you and your clients.
- Some clients are insisting on outsourcing to save costs.
- Some 40,400 American attorney jobs will be outsourced to India by 2015, CNN predicted.

○



## Family Law Matters

Corbin Howard

### ‘Symbolic’ property



I have a spent 20-gauge shotgun shell casing on the shelf behind my desk. It has no monetary value. But written on the casing are the words:

**CORBIN**  
New Year’s Eve  
1959  
1st Shotgun Shot

When I was a kid, my family had a New Year’s tradition of firing off shotguns into the air from our back porch. We lived outside the city limits then and it was just pasture land below us. New Year’s Eve that year was the first time my dad thought I was big enough to hold a shotgun and fire it off safely. It was important to him to teach me skills his father had taught him when he was young. After I shot, he picked up the ejected casing and wrote upon it the words I can still read.

**MANY YEARS AGO** I was trying a divorce case to a no-nonsense judge. My opposing counsel and I had attempted to get our clients to settle, but they could not agree on even the smallest of issues. The first spouse took the stand and began listing the individual household items she wished to be allocated. The judge gave both of us attorneys a withering look, interrupted the testimony, recessed the trial and directed the attorneys to join him in chambers for a brief conference. Both of us had this premonition that the judge would not be asking us to enlighten him with our legal theories of the case. Clearly incensed, the judge insisted that he was not going to spend his time listening to our clients disagree about such matters and directed us in no uncertain terms to get the tangible personal property items divided – now – and without any further testimony.

Despite the closed door between the courtroom and the judge’s chambers, our two clients could clearly hear his

instructions to us, as well as his tone. They promptly divided the household items during the remainder of the recess. Thereafter the testimony was confined to who got the marital residence, how the retirement plans were to be allocated and so forth.

**WHAT DO YOU TELL** your client when they inform you some tangible personal property item is really important to them? You can certainly truthfully tell them that unless such items have significant monetary value, the judge is unlikely to devote much time to allocating them – although some judges have more tolerance for this than others. See, e.g. *In Re Marriage of Engen* 1998 MT 153 at ¶ 44. Various tactics are used. The judge may direct one party to make two lists of these kinds of things and order that the other party gets to pick whichever list they want. Or, as my earlier experience illustrated, the judge could just yell at us.

But instead of greeting their statements with an eye-roll, you might start by asking them what it is that is important about the item. It is a natural human enterprise to invest things

with symbolism. Many of the world’s great religions use physical things to instruct us about spiritual matters. The Menorah is a candleholder – and a symbol of the nation of Israel. The cross is a symbol of Christianity. While physical things can evoke meaning, the danger is that individuals will focus too much on the thing and miss the meaning or the memory the object points toward. The Quakers, for example, refuse to use physical symbols in the expression of their religious beliefs for this very reason.



The old shotgun shell that goes, for the author, beyond monetary value.

**SO WHEN ADVISING CLIENTS** in a family law or probate matter about such items that can get short shrift by the courts, you might conclude by reminding them that the item is not identical to the memory it evokes – that they will not lose a treasured memory with their father even if they lose the item that reminds them of that memory. Small solace perhaps, but your empathy for what they are going through might make the medicine go down easier.

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**W. CORBIN HOWARD** has had a private law practice in Billings since 1981. He graduated from the University of Montana School of Law in 1976. He served as a deputy county attorney in Yellowstone County from 1977 to 1981. Mr. Howard is past chair and current secretary-treasurer of the State Bar of Montana’s Child & Family Law Section, and is past president of the Yellowstone Area Bar Association. He received the Professionalism Award from the State Bar in 1999.

## BOARD SUMMARY, from Page 14

Foundation. Board member Shane Vannatta commended the Foundation for funding the state's new pro bono coordinator position in the Supreme Court Administrator's Office.

### LAWYER ASSISTANCE PROGRAM REPORT – *Mike Larson*

Mr. Larson that the Lawyers Assistance Program received seven calls for assistance with troubled attorneys in May. He also described the difficulty he has been having closing out an office for an attorney no longer able to practice (See Page 7 for more details on recent LAP activities.)

### ACCESS TO JUSTICE COORDINATOR REPORT – *Ann Gilkey*

Ms. Gilkey described a questionnaire by the Bar's Access to Justice Committee that was mailed to candidates for Montana Supreme Court chief justice and attorney general. The responses are to be presented to Bar members via *The Montana Lawyer* and the Bar website. Only two responses had been sent by the primary election, so primary winners' responses will be presented before the November general election.

### BAR COUNSEL'S REPORT – *Betsy Brandborg*

Ms. Brandborg outlined the upcoming State Bar Road Show (details on Page 17). She also said a petition to the Supreme Court to change fee-arbitration rules has been drafted (see Page 18 of the May 2008 *Montana Lawyer*). She also recently attended a national conference on mentoring.

Ms. Brandborg also said that recent revisions of the Rules on Unauthorized Practice of Law mean that it turns the UPL Commission into a "paper tiger." When the Commission upholds an initial complaint it will then, under the new rules, turn the complaint over to the Office of Discipline Counsel, Office of Consumer Affairs, the Attorney General's Office or elsewhere for further action.

### BAR EXECUTIVE DIRECTOR'S REPORT – *Chris Manos*

Mr. Manos said the Lawyers' Fund for Client Protection has reviewed and approved payments for "significant claims" from wronged clients in the past year. "The Fund did exactly what it was intended to do," he said.

A new trust-account software provided by ALPS will be made available to small practices to help them improve their trust-account tracking.

The Law-Related Education Center's new "Guide to Turning 18" has been printed and will be mailed to teachers and others who requested copies. The 24-page Guide will be made available for free on the State Bar's website later this summer.

On April 16, a Bar-sponsored presentation was made to UM law students, giving them practical practice-management advice from a panel of new lawyers, with five lawyers participating, including one via

videoconference.

The Bar is working on providing "webinars" (seminars via the Internet) to Bar members for CLE credit. The first webinar is now in the "pilot" stage.

### REPORT FROM STATE LAW LIBRARY – *Judy Meadows*

Ms. Meadows explained the importance of the state's new Self-Help Program for Montanans who wish to do their own legal work. She said the program is considering putting together a CLE to teach lawyers how to use "discreet representation" to support the program.

Ms. Meadows, who is co-chair of the Privacy Rules Task Force, said the group has sent new document-privacy recommendations to the Supreme Court after hearing comments, especially from family-law attorneys who had objections to the initial set of recommendations. She said the Court website will soon have a "Privacy Rules" button at which visitors can find "20 Suggestions on How to Keep Information Confidential."

### TECHNOLOGY COMMITTEE REPORT – *Randy Snyder*

Mr. Snyder presented a slide presentation of his recent attendance at the ABA Technology Show in Chicago. He said the State Bar's Technology Committee has been "restarted" with a new three-year plan that includes a website newsletter to which Bar members can subscribe to for free on its web page under "Groups" at [www.montanabar.org](http://www.montanabar.org).

### ANNUAL MEETING COMMITTEE REPORT – *Peggy Probasco*

Ms. Probasco gave a progress report on the planning for the September 2008 State Bar Annual Meeting in Butte. She said the CLE portion of the meeting will go back to the short-presentation format (30 minutes or less per presentation) first used in the 2001 Annual Meeting in Missoula. Details of the meeting should be posted on the Bar website in July, and published in *The Montana Lawyer* in August. She said the Copper King Hotel, where the meeting will take place, has a new executive

*Saturday*  
**DEPOSITIONS IN BILLINGS AREA**

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chef who is cooking up “marvelous” food for such meetings.

### JUDICIAL SALARIES REQUEST

After a long discussion, the Board rejected a request by the ABA to support the ABA’s recommendation that federal judicial salaries be increased. Although some trustees thought it was probably needed for federal judges in high-cost-of-living areas like New York City, others felt it was more of a political issue in which the Bar shouldn’t get involved without the vote of all its members. Board Chair Cyndy Smith was asked by the trustees to appoint a committee to examine whether the State Bar should be involved in such request for support from the ABA.

### THE BOARD OF TRUSTEES RETREAT

About six hours of the two-day meeting in Fort Benton was given over to the Board’s annual “retreat,” which involves an in-depth discussion of a topic chosen by the Bar’s president-elect. This year, President-Elect Chris Tweeten chose to discuss the unification of Montana’s bar since next year marks the 35th anniversary of the 1974 Montana Supreme Court

order unifying a mandatory bar in this state. Mr. Tweeten presented a global history of attorney guilds and bars, including those in ancient Greece and Rome and the Inns of Court in Britain. He also explained the five previous petitions to unify the Montana Bar, starting in 1939, that failed to get Supreme Court approval.

Chief Justice Karla Gray and Kalispell attorney Marshall Murray, who was the unified State Bar of Montana’s first president, gave their thoughts about the strengths of a unified bar for improving the practice of law in Montana. And a panel – made up of Klaus Sitte, Shane Vannatta and John Warren – also discussed the Bar’s importance to the legal profession. These discussions will be presented to Bar members at meetings, CLEs and in *The Montana Lawyer* during the Bar’s 35th Anniversary year in 2009.

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**OTHER COMMITTEE AND AREA-TRUSTEE REPORTS** were submitted to the Board in writing and can be found under *Groups/Board of Trustees* at [www.montanabar.org](http://www.montanabar.org).

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## BAR-BENCH BRIEFS

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### Warning of an IOLTA account scam

A variation of the Internet scam successful at getting Americans to wire funds to exotic locations is now targeting lawyers in the U.S.

The scam is apparently fooling a growing number of lawyers. If the lawyer ends up sending money from his trust account that is unrecoverable because of a scam, the lawyer has to fund the loss.

For more information, contact the American Bankers Association at 1-800-BANKERS.

### Get the State Bar’s technology E-newsletter

Interested in reading about technology and how it affects your practice? Or how about a few tips and tricks on free downloads, shortcuts, and more? Sign up to receive the *Tech Briefs*, a monthly e-newsletter brought to you by the State Bar of Montana’s Technology Committee.

For more information or to get your -mail added to the list, contact Jill Diveley at [jdiveley@montanabar.org](mailto:jdiveley@montanabar.org).

### Bankruptcy Section aids judge’s lectures

Montana Bankruptcy Judge Jack Peterson has presented the CARE (Credit Abuse Resistance Education) program to several Montana high schools, including Butte Central and Helena Capital (covering about 352 seniors), Sentinel, Big Sky, and alternative schools (covering about 424 seniors), Hellgate, Whitehall, and Billings.

The CARE program was created to educate students (high school and college) and parents nationwide concerning credit and financial matters. The State Bar of Montana’s Bankruptcy

Section has financially support Judge Peterson with the CARE program.

Meanwhile, the Bankruptcy Section made a donation to Montana Legal Services Association in order to aid in its pro se Chapter 7 bankruptcy clinics, and has tentatively scheduled at bankruptcy CLE for Oct. 16-17 at the Billings Wingate Inn.

### District Bar hosting July 3 events in Choteau

The 9th Judicial District Bar Association will hold a free CLE, luncheon, and scramble golf tournament on Thursday, July 3, at the Choteau County Club northeast of Choteau.

The morning CLE will include talks on business and estate planning, title problems in oil and gas law, practice before the Blackfeet Tribal Court, and water and wind energy law.

A 12:30 p.m. luncheon will include a District Bar meeting. It will be followed by a golf scramble tournament at 2 p.m. Contact Bob Olson to sign up for the golf scramble at 873-2263

Attendees also are eligible to win tickets for the Tim Montana concert being held at the Choteau Rodeo Grounds that evening.

### Two big western law firms merge

Holland & Hart, the largest law firm based in the Mountain West, and Hale Lane Peek Dennison & Howard, Nevada’s largest law firm, announced that they are merging.

The combined firm will result in a total of 63 attorneys in Nevada, and a total of 415 attorneys firm-wide. The firm will maintain the name Holland & Hart have offices in Reno, Carson City, and Las Vegas.



## NEWS ABOUT MEMBERS

Helena law firm Doney Crowley Bloomquist Payne Uda has announced recent associate hires:

■ **Sarah E. Rupp** joined the Dillon office in January 2008. She received her juris doctorate from Northwestern School of Law of Lewis & Clark College in 2007. While at Lewis & Clark Law School, Ms. Rupp was influential in the formation of the Lewis & Clark Small Business Legal Clinic, a pro bono law clinic assisting low-income business owners with transactional legal matters. Her practice will focus on water law, real estate, business, and natural resource law.



■ **Suzanne F. Bessette** began working in the Helena office in March 2008. She received her juris doctorate from the University of Michigan Law School in 2004. In 2006, she earned a master of Urban Planning degree with a concentration in environmental planning from the University of Michigan Taubman College of Architecture & Urban Planning. Ms. Bessette has conducted environmental and legal research for many national environmental groups, focusing on water law, NEPA compliance, federal



land management, and urban/environmental conflicts. She will practice in the areas of energy, water law, and land use.

The Great Falls law firm of Church, Harris, Johnson & Williams announced that Mike Talia and Joe Schumacher have joined the firm as associate attorneys.

■ **Mike Talia** is a member of the firm's litigation team. His focus is on trust and estate, real property, commercial and international commercial litigation. Mr. Talia was raised in Patterson, Calif. He earned a BA in 2005 at San Jose State University, with honors, in History. As a university student, he enlisted in the Army Reserve, eventually breaking from his studies to serve as a military policeman in Iraq in 2003 and 2004. He moved to Missoula and graduated from the University of Montana School of Law in December 2007. As a law student, he was an elected member of the Student Bar Association. Mr. Talia also was hired by the School of Law to work as a junior partner – a teaching assistant supervising the lab component of the first-year course work in legal writing, legal analysis, and pretrial advocacy. He also is a co-founder of the School of Law's Military Law Society. In 2006, Mr. Talia spent six weeks in Dubrovnik, Croatia, learning international business law and exploring his Dalmatian heritage. He is currently involved in the Great Falls Chamber of Commerce Military Affairs Committee, and the Committee of 80. He also serves as an alumni volunteer with the Kappa Sigma Fraternity at the University of Montana.

■ **Joe Schumacher** received his law degree from the

University of Montana School of Law. Prior to attaining his law degree, Mr. Schumacher, along with his wife Shawn, farmed for 20 years in Chouteau County. He brings with him a solid working knowledge of the complexities, subtleties, and nuances involved in many family-owned businesses and other small businesses. Mr. Schumacher's practice focuses on agricultural law, business planning, and real estate transactions. A native of Idaho, he adopted Montana as his home state when he moved here in 1982. He attended Montana State University in Bozeman and received a bachelor of Business Administration from the University of Great Falls. He, his wife, and two children live near Fort Benton.

■ **Bruce A. Fredrickson** has joined the Kalispell law firm of Kalvig & LeDuc as senior litigation counsel. Mr. Fredrickson spent nearly 20 years as a commercial litigation attorney with the Crowley Law Firm, both in its Billings and Kalispell offices where he tried many cases, both jury and non-jury. He left the Crowley firm in 2004 to pursue some outside business interests in North Dakota. Those matters are now completed and he has resumed the full-time practice of law. Mr. Fredrickson's practice will focus primarily on commercial and business litigation, real estate litigation, including subdivision and zoning matters, general civil and product liability litigation. He is also available for mediation services.

Petit & Strauch of Missoula announced that **Gregory D. Birdsong** has joined the firm as an associate. He attended the University of Wyoming, earning a bachelor of science, with honors, in Economics, and a master's degree in Computer Science. He worked in computer and information sciences for nearly 20 years as an associate professor, a programmer, a systems analyst, and a small business owner. Mr. Birdsong and his wife owned and operated Tailor Made Computers in Missoula for over nine years, selling the business in 1999. He attended the University of Montana School of Law, earning a JD in 2003. He practiced law in central coast area of California for over two years, returning to practice in Montana in 2006. Mr. Birdsong's practice emphasizes civil litigation, real estate litigation, and commercial litigation.

### CORRECTION

A News About Members item in the May 2008 *Montana Lawyer* described the founders of the new Billings law firm of **Karell Dyre Haney** as "partners of Crowley, Haughey, Hanson, Toole & Dietrich. Allan Karell, Mary Scrim Dyre, and Nathan S. Haney should have been described correctly as "former partners" of the Crowley firm. It was an editing error by the magazine.

## DEATHS

### Robert Phillip Ryan, former judge

Former administrative law judge Robert Phillip Ryan, 83, of Great Falls, died of diabetic complications on May 16 at Peace Hospice in Great Falls.

Mr. Ryan was born and raised in Billings. He attended MSU-Bozeman where he studied Electrical Engineering and potato farming. Mr. Ryan enlisted in the Navy and trained in the F6F Hellcat fighter plane. He received an honorable discharge and returned to school in Bozeman where he secured a crew to serve on his tugboat in Barrow, Alaska. He returned to Montana and continued his education at UM-Missoula, graduating with his juris doctorate.

Mr. Ryan began his 50-year membership with the Montana Bar Association in 1955 in Phillipsburg, then joined Keeley, McElwain in Deer Lodge, where he worked until 1961. He moved to Billings and became an associate at Kurth, Connor, Jones & Ryan. He later formed the partnership of Ryan & Conner. Mr. Ryan established an office with lifelong friend Bill McAllister, with whom he worked until closing his practice in 1994.

In October 2001, Mr. Ryan began his lifetime appointment as an administrative law judge with the Office of Hearings & Appeals in Stockton, Calif., where he served until October 2006, when he and his wife Phyllis returned to Great Falls.

During his career he was chief counsel for the Montana Bar Association, a city attorney for four Montana Counties, the Liaison Committee of Montana Bar Association to the Montana Citizen's Conference on Judicial Reform, and served on the Commission on Unauthorized Practice of Law. Survivors include his wife Phyllis, two sons, and three daughters.

### Conde Mackay, Anaconda attorney

Conde Francis Mackay, 79, of Anaconda, died June 2 at Community Hospital of Anaconda after a long struggle with Alzheimer's disease.

Mr. Mackay was born and raised in Anaconda. He joined the Army following high school graduation in 1946 and was stationed in Italy. He later attended the University of Montana where he majored in Law. He passed his bar exam and was awarded a license to practice in Montana in March 1955.

In 1956, he wed Lois Jean Tarnowski of Duluth, Minn. The couple resided in Hibbing, Minn., Great Falls, and Seattle. In 1965 they returned to Anaconda with their children and have lived here since.

Mr. Mackay practiced law at Knight, Dahood, Mackay & McLean until 1979. He was the district public defender of



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Deer Lodge, Granite, and Powell counties until his retirement in 1993.

He was a member of the Elks Club and Anaconda Country Club, where he served as president in 1979-80. He was also president of the Kiwanis in 1970-71. He supported the Anaconda A's by providing transportation for the team. In 1971, he received a certificate of appreciation from the president of the United States for service contributed to the nation and the Selective Service System.

Mr. Mackay is survived by his wife and seven children.

## Jack Carr, Miles City attorney

John R. "Jack" Carr, 83, longtime lawyer in Miles City, died June 2 at the Billings Clinic in Billings.

Mr. Carr was born in Minneapolis. He attended Gonzaga University in Spokane to study law. He later enlisted in the Army Air Corp as a B17 ball turret gunner with the 100th Bomb Group, where attained the rank of Sergeant. He was stationed at Thorpe Abbots, England, where he completed 35

missions over Nazi-occupied Europe, including dropping provisions to the Polish underground resistance and the Warsaw Ghetto.

On Sept. 3, 1947, he married his high school sweetheart, Margaret T. Leonard, in Miles City. They made their home in Spokane while Mr. Carr completed his law degree at Gonzaga. After his graduation in 1949, they moved to Butte and then Sidney before returning to Miles City, where Mr. Carr practiced law with his father-in-law, P.F. Leonard, and brother-in-law Dan Kelly. He was later joined by his nephew Patrick Kelly, and later Kenneth Wilson, Dennis Corbin and Gary Bunke. Mr. Carr practiced law with his son Jim for the last 17 years.

Mr. Carr was county attorney, city attorney, and federal magistrate for Eastern Montana. He also served on the Sacred Heart School board, Sacred Heart Parish Board, the Holy Rosary Hospital Board, the Eastern Montana Cancer Foundation board, and was a fourth degree member in the Knights of Columbus.

Mr. Carr is survived by his five children.

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to practice law in Montana. Experience in criminal law and trial experience is preferred, including experience as a legal intern, and familiarity with computerized legal research and word processing. Entry Level Salary - \$40,000 per year, depending on experience, plus excellent benefits. Position is available Oct. 1, 2008, and is open until filled. Submit a letter of interest, Public Sector Job Application, and two letters of recommendation to: Kootenai Job Service, 417 Mineral Ave., Suite 4, Libby MT 59923. (406) 293-6282.

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**ASSOCIATE:** Brekke & Hoskins PLLC, of Billings, seeks associate attorney with excellent academic record and strong research and writing skills for practice in areas of taxation, real estate, private companies, mergers and acquisitions, estate and succession planning, probate and trust administration, and general business and commercial transactions. Please e-mail letter of application (with resume, transcripts, references and writing sample) to [Brekke@BrekkeHoskinsLaw.com](mailto:Brekke@BrekkeHoskinsLaw.com). All inquiries will be kept confidential.

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## **LEGAL ASSISTANTS & OTHER PROFESSIONALS**

**AMERICORPS LEGAL FELLOW:** The Montana Legal Services Association has an opening in its Helena office for an AmeriCorps legal fellow to work on its Housing Law Project. The legal fellow will work with and recruit law students and pro bono attorneys to provide assistance to low-income clients in housing matters. Requires travel within Montana. Position starts August 2008. MLSA is



funded in part by the Montana Justice Foundation. Salary depends on experience. Mail, fax or e-mail a letter of interest, resume, three references and a writing sample to: Montana Legal Services Association, 616 Helena Ave., Suite 100, Helena MT 59601. Fax: (406) 442-9817, e-mail [hir-ing@mtlsa.org](mailto:hir-ing@mtlsa.org).

#### **KALISPELL LEGAL ASSISTANT**

**(OFFICE/TRIAL):** Computer savvy, motivated, innovative, organized individual capable of multi-tasking. Document management skills imperative—office & trial; computer and tech support. Fun firm! Real estate, transactional, commercial litigation. bookkeeping and accounting skills a plus. Salary depends on experience. Benefits provided. Send resume and cover letter to Kalvig & LeDuc PC, Attn: Angela LeDuc, PO Box 1678, Kalispell MT 59903.

#### **AMERICORPS LEGAL FELLOW:**

The Montana Legal Services Association has an opening in its Billings office for an AmeriCorps Legal Fellow for its Indian Wills Project. The AmeriCorps Legal Fellow will work with law students and pro bono attorneys to develop resources for creating wills and other estate planning documents for residents of Montana's seven Indian reservations. Requires travel within Montana. The position starts August 2008. MLSA is funded in part by the Montana Justice Foundation. Salary depends on experience. Mail, fax or e-mail a letter of interest, resume, three references and a writing sample to: Montana Legal Services Association, 616 Helena Ave., Suite 100, Helena MT 59601. Fax: (406) 442-9817, e-mail [hir-ing@mtlsa.org](mailto:hir-ing@mtlsa.org).

**PARALEGAL:** Kalispell law firm seeking motivated energetic paralegal to assist with Social Security and personal injury claims. Come join our team! Applicant must possess strong writing skills, proofreading, attention to detail, ability to problem solve quickly and appropriately and must have excellent customer service skills. We offer great benefits. Wage depends on experience. Please send cover letter and resume to Attn: Scott Anderson 278 4th Ave. EN, Kalispell

MT 59901, fax to (406) 755-6829 or e-mail to [scott@anderson-bliven.com](mailto:scott@anderson-bliven.com). No calls or walk-ins please.

**IMMEDIATE OPENING:** Fast paced and growing Kalispell Law firm seeks motivated and energetic person to join our team. Computer knowledge, strong writing skills, proofreading, attention to detail and excellent customer service skills necessary. Prior paralegal skills helpful. Salary depends of experience. Benefits. Please send cover letter and resume to Attn: Scott L. Anderson 278 4th Ave. EN, Kalispell MT 59901; fax to (406) 755-6829; or e-mail [scott@anderson-bliven.com](mailto:scott@anderson-bliven.com). No calls or walk-ins please.

### **LEGAL RESEARCH & PARALEGAL SERVICES**

**PROCESS SERVER:** Ace in the Hole Process Service for all your service needs in and around Gallatin County. We are licensed and bonded. We are accurate and efficient and in most cases can serve documents the same day that we receive the information. Boxes in Gallatin County justice and district courts. Please call 556-8100 for more information.

### **LAW PRACTICES FOR SALE**

**WELL-ESTABLISHED LAW FIRM IN OIL COUNTRY:** S. Thomas Darland, attorney-at-law, has operated his successful practice in Plentywood, Montana, for over 40 years. He is offering his legal practice for sale to a well-qualified individual. Will consider new graduates. Please contact Fred Darland at (707) 937-1296 or [fdarland@darland.net](mailto:fdarland@darland.net).

### **OFFICE SPACE/SHARE**

**MISSOULA:** Recently remodeled and close to downtown. Offices for attorney and assistant with common reception area and conference room. Sharing of receptionist, internet and copier services negotiable. (406) 541-2200 (ask for John).

**BOZEMAN:** Southside office space. Convenient location near Law & Justice Center. Two office spaces, with access to conference room. Possible sharing of secretarial services. (406) 585-0440.

**MISSOULA:** One or two professional offices for lease in historic building in downtown area. Three blocks to Missoula County Courthouse. Share use of reception area; two conference rooms; file room; copy machine; library; secretarial space; basement storage; locker room with shower; and private yard. Call Mark Connell / Connell Law Firm at (406) 327-1517.

### **CONSULTANTS & EXPERTS**

**NATURAL RESOURCES EXPERT:** Co-counsel and/or associate counsel: oil & gas - water - environmental - tribal. 25 years federal and state litigation in seven western states. Top academic credentials. Dan Israel, (303) 246-9027; [adamatronics@comcast.net](mailto:adamatronics@comcast.net).

#### **WATER RIGHTS LITIGATION**

**SUPPORT:** Surface & groundwater evaluations, expert witness testimony, modeling and permitting. Geomatrix Consultants. Contact: Cam Stringer PG, (406) 542-0129 (Missoula Office); or Larry Brown, hydrologist, (406) 442-0860 (Helena Office). [www.geomatrix.com](http://www.geomatrix.com)

#### **FORENSIC ARCHITECT – EXPERT**

**WITNESS:** On-site investigation, document review, written reports, expert testimony for matters involving construction failures, water infiltration, construction disputes, and personal injuries occurring in the built environment. Recognized as expert in various courts in New York, New Jersey and Pennsylvania. Forensic/expert services are based on over 30 years as a principal in a general architectural practice involving almost every building type. The services offered also include litigation support, review of issues, standards of care and code review. Testimony can include demonstrations, models and graphics, as required. For case review call Ira Berliner, A.I.A. (406) 690-0036. Located in Billings.

**CERTIFIED LEGAL NURSE CONSULTANT:** Professional, affordable

assistance with medical lawsuits. Certified Legal Nurse Consultant, Registered Nurse, 20-plus years' experience. Specialties: screen cases for merit, assess causation/damages, interpret medical records, facilitate communication. Accept cases involving health, illness, injury, worker's compensation, general negligence, defendant or plaintiff. Marni Allen, RN, CLNC. (406) 690-4314; [www.medicallegalprofessional.com](http://www.medicallegalprofessional.com).

#### **INTERPRETING & TRANSLATIONS SERVICE:**

English into Spanish or Spanish into English. Over 15 years of experience. Simultaneous, consecutive, interpreting and translations of documents, in the legal and medical fields, workers' comp or any miscellaneous documents. References upon request. Call: (406) 370-6049 or (406) 777-2802. See web site: [www.spanishinterpretingservice.com](http://www.spanishinterpretingservice.com).

#### **FORENSIC DOCUMENT EXAMINER:**

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

#### **FORENSIC DOCUMENT EXAMINER:**

Specialization: Identification / elimination through examination and comparison of handwriting, typewriters, photocopiers, printing processes, paper and inks. Forensic document apprenticeship through the Colorado Bureau of Investigation. Plum Creek Forensic Laboratory LLC, Darla McCarley-Celentano, PO Box 21, Castle Rock CO 80104-0021; phone / fax (303) 663-2450; e-mail [rdacelentano@att.net](mailto:rdacelentano@att.net).

#### **INSURANCE CONSULTANT /**

##### **EXPERT WITNESS - BAD FAITH:**

20 years multi-line claims experience, including Montana claims. JD & CPCU credentials. (425) 776-7386, [www.expertwitness.com/huss](http://www.expertwitness.com/huss).

#### **COMPUTER FORENSICS & DATA**

**RECOVERY:** Retrieval and examination of computer and electronically

stored evidence by certified computer examiner. Expert testimony on findings. Practice limited to civil and administrative matters. No charge for preliminary review. Contact Jimmy Weg, CFCE, Weg Computer Forensics LLC, 512 S. Roberts, Helena MT 59601. (406) 449-0565 (evenings); [jimmyweg@yahoo.com](mailto:jimmyweg@yahoo.com). Web site at [www.wegcomputerforensics.com](http://www.wegcomputerforensics.com).

### **MEDIATION**

#### **SARAH H. SEILER, LCSW, LAC:**

Specializing in family dispute resolution, child-centered divorce mediation, guardian ad litem representation and custody investigations. Contact Resolution Consultants Inc., PO Box 604, Townsend MT 59644; (406) 980-1615 or 266-5475; [sseiler@wildblue.net](mailto:sseiler@wildblue.net)

#### **J. MICHAEL YOUNG:**

Experienced mediator specializing in personal injury, construction claims, and commercial litigation for 35 years. Mediation facilities available at our Great Falls office. Willing to travel statewide upon reasonable notice. Contact at (406) 761-4800 or P.O. Box 3169, Great Falls MT 59403, or [michael.young@ablawmt.com](mailto:michael.young@ablawmt.com)

#### **STEVEN J. SHAPIRO:**

Mediator for individuals and organizations in conflict. Trial court and appellate court mediations. Attorney with 28 years experience in general practice of law. Public and private sector experience. Will travel. Steven J. Shapiro PC, 9 Friendship Lane, Suite 100, Montana City MT 59634. Phone (406) 449-1200. E-mail [StevenShapiro@montanacitylaw.com](mailto:StevenShapiro@montanacitylaw.com).

#### **ALLEN CHRONISTER:**

Attorney with over 25 years of experience in civil litigation and in mediating a wide variety of disputes, available for mediations. Reasonable rates, will travel. Allen Chronister, PO Box 1152, Helena MT 59624; (406) 449-3691; [almont@mt.net](mailto:almont@mt.net)

#### **MICHAEL H. KEEDY:**

As a former district court judge, I bring 12 years valuable experience to bear in settling your case. In addition, I have over 30 years' experience in a variety of other legal pursuits. Conference rooms are available at our Kalispell offices. Please call me at (406) 752-7122 or 888-865-8144.

### **INVESTIGATORS**

#### **INVESTIGATIONS & IMMIGRATION**

**CONSULTING:** 34 years investigative experience with the U.S. Immigration Service, INTERPOL, and as a private investigator. President of the Montana P.I. Association. Criminal, fraud, background, loss prevention, domestic, workers' compensation, discrimination and sexual harassment, asset location, real estate, surveillance, record searches, and immigration consulting. Donald M. Whitney, Orion International Corp., PO Box 9658, Helena MT 59604. (406) 458-8796 / 7.

#### **FBI NATIONAL ACADEMY GRADUATE:**

Discreet, professional, reasonably priced private detective agency led by 26-year Great Falls Police lieutenant Bryan Lockerby. Surveillance, investigations, interviews, dram shop, civil, locates, fraud, worker's compensation, etc. (No criminal defense cases.) Lighthouse Investigations LLC, PO Box 3443, Great Falls MT 59403; (406) 899-8782; [www.lighthouseinvestigations.net](http://www.lighthouseinvestigations.net).

### **EVICTIONS**

#### **EVICTIONS LAWYER:**

We do hundreds of evictions statewide. Send your landlord clients to us. We'll respect your "ownership" of their other business. Most evictions cost about \$216 including all fees and costs. Call for a price list. Hess-Homeier Law Firm, (406) 549-9611, [thesshomeier@msn.com](mailto:thesshomeier@msn.com)

### **WEB**

#### **MONTANA LAW WEEK**

*The Weekly Digest of Montana Law*  
[www.MontanaLawWeek.net](http://www.MontanaLawWeek.net)

#### **flatheadlaw.com**

*"The single resource for legal information in Northwest Montana."*

You can find every federal department and agency

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