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THE STATE BAR OF MONTANA

Bar groups sharpen your legal focus

on the

WEB



The new digital efforts by State Bar sections and committees, and local bars

Why the Chief will not run for re-election

See her statement on Page 6



Mercer

Residency flap is heating up for Montana's U.S. Attorney

Bar election & Jameson Award forms inside



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PRESIDENT'S MESSAGE

Changes and challenges

Issues facing a small western bar association

Peggy Probasco

I thought I would begin this month's message with a look at what I set out to accomplish at the beginning of my term:

■ At last year's Annual Meeting, I presented changes and challenges to the State Bar of Montana and its members. I spoke about the requested fee-assessment increase from the Office of Discipline Counsel (ODC). That increase has been granted and ODC has moved to its new quarters on Helena's Last Chance Gulch (see contact information on Page 21). I wish them success in their new place and offer the continued support of the important work that office does.

Receiving a letter from ODC is a gut-wrenching experience, particularly if the noted complaint is from a client for whom you tried your best. Yet, the ability to resolve unwarranted claims is much more streamlined and efficient, leaving the ODC time to investigate the more complex issues and address the problems that are real and need action.

■ I addressed the very real need of our law school to provide adequate space for its students. The response from individual attorneys has been remarkable and very, very appreciated by the Law School dean and faculty. That aside, given the current state of the state and the Legislature, adequate funding for the Law School building project is still a worry. Contact your legislators to continue their support of this important project when the Legislature re-convenes.

■ I discussed Constitutional Initiative 98 which was an attack on our courts without cause. The groups behind this and similar actions around our country, through proposed legislation and constitutional initiatives, continue to threaten the judiciary and the rule of law. In my message last month, I provided information about the anticipated focus of incoming ABA President Bill Nekoum regarding the rule of law and its relevance in every profession and everyday life.

■ I spoke of the legislative session with hope and trepi-

ation. As it happened, my involvement in the Legislature this year was minimal, due in part to the whole tenor of the session. Attorneys have an opportunity to urge their legislators to approach the special session with less acrimony and more openness to opposing views. Legislators must learn the art of compromise.

■ Our fledgling Lawyer's Assistance Program is staffed and funded for this year. Mike Larson, our attorney-counselor-fundraiser-presenter is working hard and reaching out. This vitally important service is available to each of us, for ourselves or for those we believe would benefit from contact with Mike. Consider the worth of any life saved by this invaluable position. Offer suggestions for continued funding (or make a donation) and help the Bar consider methods to integrate this service with the Office of Discipline Counsel to intervene in situations that will save a case, a client and counsel – call 888-385-9119.

■ Montana Legal Services continues to provide help for the most helpless in our society. I hope each of you has taken a pro bono case this year. If not, find out how you can help.

THAT IS A RECAP of my goals when I assumed the presidency. Since then, other issues have arisen which demand attention.

Last month, I mentioned one of those issues – the responsibility we have to discuss the rule of law with family, friends, neighbors and colleagues in other professions. This issue is connected to our continuing responsibility to promote the nobler aspects of practicing law through our Lawyers Assistance Program, our Lawyers' Fund for Client Protection, and the Office of Discipline Counsel. We need to support them. I will consider, with the State Bar Executive Committee and the Board of Trustees, how we might promote communication between these groups without betraying confidentiality. The ability to intercept potential problems before they blow up cannot be undervalued.

At a recent meeting in Seattle between other Northwest bar associations, we discussed the federal treaties that will

Former Justice Weber dies

Former Montana Supreme Court Justice Fred J. Weber died on May 11 in his apartment at the Waterford in Helena.

Justice Weber, a Deer Lodge native, graduated from the University of Montana. After serving in the Army's 10th Mountain Division, he practiced law in Havre for 31 years.

Justice Weber was elected to the Montana Supreme Court in 1980 where he served the state for 15 years.

Justice Weber and his wife Phyllis "shared a love for both Havre and Helena involving themselves in many community activities.," his obituary said. Through Young Life, a nondenominational youth organization, they placed

themselves in the lives of hundreds of kids. They were highly involved in the St. Jude's Parish and the charismatic movement in Havre.

The Webers, married in June 1951, had four children: Anna Marie of New York; Don Weber of Spokane; Mark Weber of Helena; and Paul Weber (deceased).

In Helena, Phyllis Weber, who worked at St Peter's Hospital in Helena as a volunteer for 24 years, drew Justice Weber into her ministry upon his retirement from the Supreme Court. They cross-country skied, hiked and bicycled-together, and took many trips in their RV throughout the Northwest.

Mercer update

Montana Senators Max Baucus and Jon Tester are co-sponsoring legislature to repeal the measure that allows federal prosecutors like Montana's William Mercer to live outside the district where they work, the *Billing Gazette* reported on May 12.

The two Democrats said it would force Mr. Mercer, who also serves as the No. 3 Justice official, to choose between his two jobs. Sen. Dianne Feinstein, D-Calif., planned to introduce the bill on May 14.

The bill would strike a provision . Mr. Mercer had slipped into the Patriot Act. **(See story on Page 9.)**

New state standards for recorded documents

The Legislature has passed and the governor has signed SB 269, a bill that implements changes to the current document standards law (MCA 7-4-2636).

These changes became effective on April 28 and were made as a result of conversations between the title industry and the clerks and recorders of the state. The changes should clear up any confusion about the standards, move closer to a uniform statewide standard and make it easier to record documents.

Some things stay the same. While most documents may still be submitted for recording, the document must meet certain standards in order to avoid paying a higher recording fee and qualify for the standard fee (\$7, MCA 7-4-2632)

The paper must be white, 20-weight and either 8 ½ by 11 or 8 ½ by 14 inches in size. It must be typed in 10- point type-face with black ink.

The first important change is that the document may be signed in either black or blue ink. The blue ink option will help people distinguish between the original signed with blue ink and copies made in black.

The second helpful change is a narrowing of the margins. The first page of any document must still leave a 3-inch top margin and subsequent pages must leave a 1-inch top margin. The drafter now will have additional space in the body for text and signatures because the side margins have been narrowed to ½

inch on either side. This additional inch of space should help avoid spillover into the margin.

The third change is that notary stamps, whether used by a Montana notary or an out-of-state notary, are now allowed. It is still recommended that they be located within the margins, but no longer are they subject to the type-face and ink color requirements.

The fourth change is that certifications from both Montana courts and clerks' offices, as well as from out-of-state courts and clerks, are exempt from document standards rules. This should help alleviate questions and aid in recording official documents from other offices.

allow attorneys from other countries to practice law in our courts without reference to state rules regarding multi-jurisdictional practice (MJP) or reciprocity. Few states remain that have not even addressed in some limited fashion (beyond pro hac vice) the issue of reciprocity or MJP. I want to review these issues. While I doubt they will be reconsidered by the Bar during my term, they will become issues in the future, with with or without our support. We need to seriously review the possible solutions to devise a plan we approve before one is foisted upon us.

I am sure these two issues have raised at least an eyebrow or two from the readers. If you have a position or idea on

these issues, let us know. Your input is appreciated.

I HAVE CONCLUDED RECENTLY that with what there is to attend to, a year-long presidency is a long time, but never long enough. Still, it is a position that presents an inside look at the inner workings of bar associations across the country. It is an invaluable advantage that small western state bar officers know a lot of their bar members personally.

I highly recommend that if you are intrigued with the Bar, irritated with the Bar, or simply wondering about the Bar to see how you can become involved. ○

Chief Justice Gray will not seek re-election

Montana Supreme Court Chief Justice Karla Gray has announced her decision not to seek re-election to the chief justice position in the fall of 2008.

Justice Gray, who has been on the Court since 1991 and has been elected to two eight-year terms as chief justice, had been expected to run again for re-election. In announcing that she would not enter the 2008 race, Justice Gray submitted the following statement:



“With very mixed emotions, I report to the people of Montana that I will not seek re-election to the position of Chief Justice of the Montana Supreme Court in 2008. I’m sure I needn’t say that this has been a very difficult decision, because I have never loved a job as much as I love this one.

“My decision to leave the Court at the end of my term as Chief Justice is based on one reason only: I have not been able to persuade myself that I can serve

another full eight-year term with the same energy and dedication I have poured into being Chief Justice from the moment I took office. Because I cannot persuade myself, I simply cannot and will not ask the people of Montana to re-elect me to this wonderful, but very challenging position.

“I have no doubt I could serve for four, perhaps six, more years as I have served so far and will continue to serve through the end of my term. There is always the possibility I could serve for eight; but I’m just not sure. I realize someone else might be able to meet all the obligations of being Chief Justice with fewer hours and less energy, but I can only do it my way. Consequently, because the people of Montana should be able to count on their Chief Justice serving the full term to which she has been elected, it would be wrong for me to ask for their support.

“I have no idea what may be in store for me after I leave the Court, although it’s fair to say I don’t see myself in a rocking chair at age 61. But whatever my post-Court future may bring, I don’t intend to spend the people’s time on such matters while I remain their Chief Justice.

“There are still many improvements in our system of justice I hope to accomplish before I leave office. While we have made many changes to make the courts more efficient and responsive to the citizens of Montana, we still have much work to do. I remain totally committed to finishing this work with the same gusto I had when my term as Chief Justice began in 2001.

“My hope for the people of Montana is that candidates for Chief Justice will be lawyers or judges who have the judicial temperament, integrity, objectivity, and legal analytical and writing skills so necessary for being a Justice of Montana’s

Who’s running for chief? McGrath, yes; Rice, no

Attorney General Mike McGrath said on April 26 that he will run next year for the Montana Supreme Court chief justice’s job, the *Billings Gazette* reported.

Mr. McGrath, 59, is the first to announce his candidacy for the nonpartisan post. He said he wasn’t prepared to make a formal announcement but wanted to let people know his plans in light of Chief Justice Gray’s decision to vacate the position, the *Gazette* said.

McGrath said he believes he has “the skills and experience” to improve the court in two areas.

“It seems like it takes long periods of time to get opinions issued, and I’d like to work on that,” the *Gazette* quoted him as saying.

“There have been a lot of changes in how the courts are structured. I think I’ve got the administrative experience, especially since serving as attorney general, to help improve this.”

Mr. McGrath said he is particularly interested in the Legislature’s plans to appropriate money for drug courts. “I’ll be very interested in working with local communities to make sure those courts work well,” he said.

Mr. McGrath, who has campaigned as a Democrat for 25 years, said he saw no problems now running in a chief justice race that is required to be nonpartisan, the *Gazette* said. He has been attorney general, the state’s chief legal and law enforcement official since 2001, after 18 years as Lewis and Clark county attorney. A Butte native, McGrath received a business administration degree from the University of Montana in 1970 and a law degree from Gonzaga University in Spokane in 1975.

JUSTICE JIM RICE, who has been rumored to be a possible candidate for chief justice, told *The Montana Lawyer*, “I will not be a candidate for chief justice in 2008. Although strongly committed to the court and its future progress, the current challenges of my work, as well as my personal and family involvements, leave me with a full plate already. I look forward to working with Chief Justice Gray as she completes her term, and then with the new chief justice, on the issues facing the Court.”

highest court; who are strong leaders and have uncommonly good hands-on management and administrative skills and the ability to work well – and in a consensus mode – with people of all kinds; and, most importantly perhaps, who sincerely want to ‘do Chief Justice’ – with all that entails – and not merely ‘be Chief Justice.’” ○

Bar groups building useful web pages for their members

By Charles Wood
The Montana Lawyer

Sections and committees of the State Bar of Montana are building web pages that focus information on each of the groups' law-practice specialties.

All 14 sections and 14 committees now have web pages on the State Bar web site under the "Groups" icon at www.montanabar.org. Aided by Bar Membership Coordinator Jill Diveley, section and committee leaders set up their pages to address the specific information needs of each group. Each page is for both the group's members and for attorneys or legal assistants who may wish to join the group.

For example, each page lists the group's purpose and bylaws, its current and past projects, membership benefits and instructions on how to join the group, the officers of the group and how to contact them, upcoming group-specific CLEs and a calendar of the groups' meetings, upcoming CLE seminars, and links to other web sites that have information specific to a groups law-practice category.

But some State Bar sections and committees have gone further with their pages' content. Starting last year, the Bankruptcy Section and the Child & Family Law Section leaders began a serious effort to design pages that have a substantial benefit for their members.

THE BANKRUPTCY SECTION page, designed by Bob Drummond of Great Falls, the former section chair, includes:

- A members-only subscription to Montana's Chapter 13 e-group, which discusses the latest bankruptcy news.
- Montana bankruptcy CLE materials for download.
- Links to bankruptcy CLE seminars.
- The Bankruptcy Section newsletters
- The Bankruptcy Code.
- An updated Bankruptcy Basics page via the U.S. bankruptcy courts.

● A wide range of links to, among others, the American Bankruptcy Institute, Montana Bankruptcy Court (including opinions), Chapter 13 Trustees and U.S. Trustees of Montana, Montana Bankruptcy Reports, National Conference of Bankruptcy Judges, and Federal Rules of Procedure.

"Bob is the person that took the initiative as the section chair last year to really get [the site] up and running," said Missoula attorney Richard Samson of Missoula, who is the current Bankruptcy Section chair.

"It can be an effective tool for staying abreast of current developments [in bankruptcy law]," Mr. Drummond said. He

Practice-specific information provides section, committee benefits

hopes to post new orders and opinions, new and updates rules and memoranda. "I think we could also post court calendars and 341 meeting calendars."

He said the web pages were instrumental during the debate and enactment of the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 for keeping Section members informed of develop-

ments in Washington, D.C.

Although much of the information presented above is available to anyone who clicks into the Bankruptcy Section page, the page also has a password-protected, members-only "room" that has even more detailed bankruptcy information. Although the members-only page has been running for several months, it is currently down while the State Bar makes its transition to a new web site provider.

THE CHILD & FAMILY LAW SECTION web page has been driven by Section Chair P. Mars Scott of Missoula. He first came up with the "members-only" idea as part of the overall page. It provides current Section members access to a database of all Montana family-law case updates and a list of current Section members.

Section members also get a 10 percent discount on the 2005 Montana Family Law Form Book through the Section page, family-law seminars, the "Montana Summary Dissolution of Marriage" booklet, and articles such as "Getting Military Health & Education Records" by the ABA.

Although much is provided to everyone at the Child & Family Law page, the "members-only" room also is down until the State Bar switches to the new provider.

"The members-only segment of the Child & Family Law Section web site provides a summary of the recent Montana family-law cases decided by the Supreme Court," Mr. Scott said. "Our goal would be to build a go-to web site that provides lawyers, who are dedicated to the practice of family law, with current information from many sources concerning dissolutions, parenting, child support, military law, alternative families, elder law and children's law."

Mr. Scott said he would like to add listserv groups, schedules of CLE conferences, schedules of teleseminars put on by the Section, e-newsletters, and lists of family law publications to the members-only site.

"I think that at some point, we should open the members-only section to everyone interested in family law, such as mediators, psychologists, CPAs, social workers, consultants and paralegals," Mr. Scott said.

He said he thinks the Section site is being used "off and on"

by practitioners, “because they tell me they like the quick access to the cases – but I’m sure it could be promoted more.”

UNIQUE TO OTHER sections’ pages, along with a wealth of other information, are:

BETTR Section

- A 10 percent discount on the State Bar Probate Forms Manual.
- Estate-planning articles.
- Certificate of completion for the "Transfer Risks for the Next Generation of Montana Farm/Ranch Operators" program.

Construction Law Section

- Construction Law Section E-Newsletter.
- ABA Forum on the Construction Industry.

Paralegal Section

- Section history.
- *The Montana Paralegal* magazine.
- Professional Responsibility.
- CLE Rules.
- Standing Committees.

Public Law Section

- The PowerPoint presentation titled "Why Kelo Can't Happen," presented by Section member Jim Lewis.

New Lawyers' Section

- Articles such as “Go Mobile, Young Lawyer” and “Shrink Student Loans With Public Service.”
- A list of current Section members via e-mail.
- A photo gallery of new lawyers’ trips to national meetings in such places as New Orleans and Chicago.

Women's Law Section

- 2006 National Survey on Retention and Promotion of Women in Law Firms, by the National Association of Women Lawyers.

Board of Trustees & Executive Committee

- Officers & trustees.
- State Bar Area map.
- The State Bar Strategic Plan.
- Board & Executive meeting schedules and agenda.
- Board & Executive meeting minutes.
- “Voices of Experience” from the past presidents of the State Bar.
- Report on the 2007 Midyear Meeting of the ABA.
- Members-only section.

Dispute Resolution Committee

- Appellate Mediation Forms.
- Rule 54 M.R.App.P.
- Articles such as “Negotiating Workplace Conflicts” and “Mediation 101: Understanding the Magic.”
- The Authorized Practice of Mediation Proposal.

- Model Standards of Conduct for Mediators
- A Conflict Resolution Bookstore.
- Committee meeting minutes.
- Links to the ABA Dispute Resolution Committee, American Arbitration Association, Association for Conflict Resolution, Montana Consensus Council, Montana Mediation Association, and Mediation Works.

WEB PAGES ALSO ARE provided under the State Bar’s “Groups” icon for the:

- Continuing Legal Education Institute
- Criminal Law Section
- Elderly Assistance Committee
- Energy & Environmental Law Section
- Federal Practice Section
- Health Care Law Section
- Indian Law Section
- School Law Section
- Law Education & Information Committee
- Lawyers Helping Lawyers Committee
- Professionalism Committee
- Technology Committee

FIVE OF MONTANA’S LOCAL BAR associations also have web pages under the “Groups” icon. They are the Cascade County Bar Association, 1st Judicial District Bar Association, Gallatin County Bar Association, Western Montana Bar Association, and the Yellowstone Area Bar Association.

The associations publish their monthly newsletters, list projects, award winners, officers, contacts and committees, and provide meeting schedules, speakers and RSVP information.

In addition, the Gallatin Bar provides on its site an inventory of the Gallatin County Law Library; and the Yellowstone Bar has the current Law & Motion Judge Calendar.

The Northwest Montana Bar Association showed how creative a local bar web site can be. A past NMBA president, Steve Berg, filled the page with legal parody that was quite hilarious. The NMBA page has not been updated since Mr. Berg retired, but can still be viewed under the “Groups” icon.

Also found on the “Groups” page are links to the web pages of the Montana Supreme Court’s boards & commissions.

SINCE COMMITTEES and sections have not surveyed members to see how much the pages are being used, one group – the State Bar Technology Committee which is listed on the Bar’s web site statistics software – may indicate an average level of group-site use. In April, the Technology Committee page drew 1,205 visits.

For those Bar committees who do not have web pages, committee members can contact Jill Diveley at (406) 442-7660, ext. 1201 or jdiveley@montanabar.org. She’ll be happy to set the page up and get you started.

○

Assistant U.S. attorney has a hard-nosed reputation

By **BECKY SHAY**
of the Billings Gazette

Assistant U.S. Attorney Jim Seykora has a weighty job: He represents the United States government when big-time criminals are prosecuted.

With that responsibility comes a work ethic that can be demanding, say people who work with Seykora. His hard-nosed style can force extra work, but the pay-off seems to be worth it.

Billings Police Chief Rich St. John said when Seykora works a case, "the i's are dotted and the t's are crossed three times."

"But what we get for that is a rock-solid case, top prosecution and more often than not a conviction," St. John said. "There is not a guy more prepared. If it goes to trial, you better have your ducks in a row, because he will."

Mike Moreni, a Billings police detective and former task force member, said preparing for a trial with Seykora is arduous. The attorney is adamant about getting "every minute detail," Moreni said, and that sometimes means officers do a lot of extra investigating and chasing down loose ends.

"The guy wears you out," he said.



Billings Gazette photo

Jim Seykora: no slam dunks

But that's OK, Moreni said, because Seykora is ready for anything.

"I wouldn't want to be in his cross-hairs," Moreni said.

The Drug Enforcement Administration named Seykora its 2004 Prosecutor of the Year. Moreni was serving with the National Guard in Iraq at the time, but he made it a point to send Seykora a congratulatory e-mail.

Seykora may focus on what others view as minutiae, but he said it helps him develop a summary of the crimes he

prosecutes. "You have to know the reasons for it," he said.

Further, if a defense attorney brings up something, Seykora has the information at hand for use in his cross-examination.

"It takes a lot of time, a lot of effort," he said, adding that includes the work of agents and officers.

"A lot of task force guys aren't used to working like that," said Seykora, who has been with the U.S. Attorney's Office since 1984. "They haven't had the opportunity in their previous careers to work large cases. That's what I've been doing forever."

Seykora appreciates a well-done job, be it by officers, attorneys, judges or juries.

"There's no such thing as a slam dunk," he said. "We affect a lot of people's lives, one way or another."

Seykora said he only takes cases with mandatory minimum sentences. That's one way, he said, to wade through the volume of cases in the U.S. Attorney's Office. It also means that when people who have done bad things are convicted, they go to prison for years or life.

"I don't revel in putting someone in jail for a long time," he said. "They do that to themselves."

He may not stand up and cheer when a conviction or a long prison sentence is announced, but Seykora does have a sense of satisfaction.

"You know you are doing something good for the community," he said.

THIS ARTICLE APPEARED in the *Billings Gazette* on April 22.

Mercer's residency clause adds fuel to the dispute over U.S. attorneys

By **Dan Eggen**
of the Washington Post

On Nov. 10, 2005, Attorney General Alberto R. Gonzales sent a letter to a federal judge in Montana, assuring him that the U.S. attorney there, William W. Mercer, was not violating federal law by spending most of his time in Washington

as a senior Justice Department official.

That same day, Mercer had a GOP Senate staffer insert into a bill a provision that would change the rules so that federal prosecutors could live outside their districts to serve in other jobs, according to documents and interviews.

Congress passed the provision several months later as part of the USA Patriot

Act reauthorization bill, retroactively benefiting Mercer and a handful of other senior Justice officials who pull double duty as U.S. attorneys and headquarters officials. Justice officials say the measure was a necessary clarification to ensure that prosecutors could fill temporary postings in Washington, Iraq and elsewhere, and that it also applies to assistant U.S. attorneys.

But the episode, which received little notice at the time, provides another

More MERCER, Page 31

Bar election: an opportunity for service

President-elect, secretary-treasurer and 8 trustee positions up for vote

The State Bar of Montana will take nominations through July 3 for eight trustee positions and the offices of president-elect and secretary-treasurer for the Bar elections to be held on Sept. 7.

Bar President Peggy Probasco urged Bar members to enter the races for this year's position vacancies, saying it is an opening for Bar members to serve the profession of law.

On the nomination form at right, a candidate for trustee must submit signatures of 10 active State Bar members who live in the candidate's area (an area map can be found on Page 183 of the Bar's 2007 Lawyers' Deskbook & Directory or on the Board/Executive Committee Page under "Groups" at www.montanabar.org).

Candidates for president-elect and for secretary-treasurer must have 25 signatures.

Trustee positions up for election this year are: two in Area

E (Eastern Montana); three in Area F (Lewis & Clark and Broadwater counties); and three in Area H (Yellowstone, Stillwater, Carbon and Big Horn counties).

"I believe the bar benefits from as much member participation as possible, and members benefit from as much bar participation as possible," said Cynthia Smith, chair of the State Bar Board of Trustees.

"The practice of law has been much more enjoyable to me

Use the form at right to qualify for nomination

than it would have been without my state bar involvement," Ms. Smith added. "Participation as a board member, officer or committee member is a solid way to benefit oneself and the profession."

Again, the filing deadline for the nominating petitions is July 3. Ballots will then be mailed to Bar members by Aug. 8, and must be returned to the Bar by Aug. 28. The ballots will be counted on Sept. 7

New trustee appointed by Bar board

Roosevelt Count Attorney Ryan C. Rusche was appointed in April to fill a trustee vacancy on the State Bar of Montana Board of Trustees.

Mr. Rusche was one of two applicants for the opening that occurred when Trustee Robert Spoja of Lewistown moved out of Area E, which he represented. Mr. Rusche will now represent Area E, which covers most of Eastern Montana. Glasgow attorney Peter Helland also represents Area E.

Mr. Rusche will be required to run for election in the Area E race that will con-

clude in September (see story above) if he wishes to retain the trustee position.

Mr. Rusche, who practiced law in Poplar for more than six years, is the chair of the state Human Rights Commission.

Mr. Rusche graduated in 1998 from Carroll College in Helena with a BA degree in History with minors in Spanish and Music Performance, and he was president of the American Indian Science & Engineering Society, on the College Review Board and in the student senate.

He received his juris doctorate from the University of Montana School of Law in 2001. While at UM, he was on the National Moot Court Competition third-place team. He also won the Margery Hunter Brown Research Assistanceship in Indian Law. He was president of the Student Bar Association, and vice president of the Native American Law Student Association.

While in Poplar, Mr. Rusche was attorney for the Assiniboine & Sioux Tribes, managing associate for the Knierim, Fewer & Chrisoffersen Law Firm, and had a private practice. He was elected county attorney last fall and has been in Wolf Point since January.

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State Bar officer & trustee election

2007 nomination petition

I, _____, residing at _____, Montana, am a candidate for the office of
() President-Elect; () Secretary-Treasurer; () Area E Trustee; () Area F Trustee; () Area H Trustee; at the
election to be held on Sept. 7, 2007. I am a resident of Montana and an active member of the State Bar of
Montana. I request my name be placed on the ballot.

Signature _____

The following are signatures of active members of the State Bar of Montana supporting my candidacy. Trustee candidates include the area of residence. No fewer than 10 signatures must be provided for a Trustee; and no fewer than 25 signatures for a President-Elect candidate or ABA Delegate candidate.

NAME

ADDRESS

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
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18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____

Return to the State Bar of Montana, PO Box 577, Helena MT 59624. Must be postmarked no later than July 3, 2007.

State Bar Award Nomination Form

2007 William J. Jameson Award

This is the highest honor bestowed by the State Bar of Montana. The Past President's Committee will be guided in its selection by the extent to which, in its judgment, the candidate:

1. Shows ethical and personal conduct, commitment and activities that exemplify the essence of professionalism.
2. Works in the profession without losing sight of the essential element of public service and the devotion to the public good.
3. Possesses an unwavering regard for the Rules of Professional Conduct, the Creed of Professionalism, the State Bar's Guidelines for Relations Between and Among Lawyers, and the State Bar's Guidelines for Relations Between Lawyers and Clients.
4. Assists other attorneys and judges in facing practical

and ethical issues.

5. Participates in programs designed to promote and ensure competence of lawyers and judges.
6. Supports programs designed to improve the discipline process for judges and attorneys.
7. Participates in programs that aid the courts in ensuring that the legal system works properly, and continually strives for improvements in the administration of justice.
8. Is actively involved with public and governmental entities to promote and support activities in the public interest.
9. Actively participates in pro bono activities and other programs to simplify and make less expensive the rendering of legal services.
10. Actively participates in programs designed to educate the public about the legal system.

Nominee: _____

Address: _____

Please describe activities you believe qualify your nominee for the Jameson Award. Please attach additional pages as needed, and other supporting documents. Note: Awards will not be made posthumously and may be given to more than one person.

Your signature: _____ Print your name: _____

Your address: _____ Phone: _____

Nominations must be postmarked no later than **June 15**. Send them to:

Jameson Award
State Bar Past Presidents Committee
P.O. Box 577
Helena MT 59624
or e-mail mailbox@montanabar.org

Minutes from the April Board of Trustees meeting

The following is a summary of the actions taken by the State Bar of Montana Board of Trustees at its April 13 meeting at the University of Montana School of Law:

PAST PRESIDENT'S REPORT

Past President Bernie McCarthy encouraged donations to the scholarship fund that is sponsored by the Board and then presented through the University of Montana Foundation. The scholarship is awarded annually to a UM law student.

Mr. McCarthy also encouraged the State Bar and the Board to utilize the wealth of knowledge and information that can be provided through the Past President's Committee members.

COMMITTEE REPORTS REQUIRING BOARD ACTION

The Board made policy changes regarding submission of resolutions by Bar members:

- The Board approved an amendment to the Board Policy 1-108-4 by adding the language "The person presenting the resolution must provide at their cost the required copies." The policy requires that 100 copies of a resolution proposal be submitted. See Board Policies on Page 196 of the 2007 Lawyers' Deskbook & Directory.

- The Board amended Board Policy 1-109 by adding the language "... (45 days in advance of annual meeting) shall be posted on the State Bar's web site and"

- The Board rejected an amendment to Board Policy 1-108-5(b) that would have added the language "...make sure that any proposed resolution is consistent with the purposes contained in the Constitution of the State Bar (Article III), the By-laws of the State Bar of Montana, Policies of the Board of Trustees and any Strategic Plan of the Board of Trustees and then..." Most Board members felt that although some resolutions have little to do with the State Bar's goals, the proposed amendment was too restrictive on Bar members' rights of speech. As it stands, the Board Policy only curbs resolutions with scurrilous or defamatory content.

The Board made changes to the State Bar of Montana By-Laws:

- The Board approved the removal of any reference to the requiring, recording or keeping of social security numbers. The measure addresses privacy and identity-theft concerns.

- The Board rejected a proposal to amended Article I, Section 3(a) to add language "...or those whose only practice of law is with the Reserve Component of the United States Armed Forces, which includes the National Guard and Reserves."

NEW MEMBER BENEFIT

The Board approved a new benefit that would give Bar members a monetary discount on Corel software. The Corel Bar Association Program will now be a featured membership benefit of the State Bar, with details soon to be found on the Member Benefits link of the State Bar web page at www.montanabar.org.

LAWYERS ASSISTANCE PROGRAM (LAP)

Program Coordinator Mike Larson reported that it had been a busy three months since his start date as the new LAP coordinator.

He advised the Board of several accomplishments, including the progress of CLE programs dealing with a balance of work and life issues, the addition of new volunteers to the Lawyers Helping Lawyers Network, his involvement in working with various Bar associations and professional assistance programs, and the development of a record-keeping system.

There is still a need to fine-tune the program and how it's handled administratively, he said

BAR COUNSEL'S REPORT

State Bar Counsel Betsy Brandborg reported that the Annual Meeting planning was coming along well and that technology-related issues and how they affect the practice of law would be this year's focus.

She further advised that the format for the annual Road Show will be different this year. The Show will present on three different segments for each day that would include education, a legislation wrap-up, and a Lawyers Assistance Program overview. The reason for the change is to coordinate the Road Show with local bar meetings.

NEW BUSINESS

Roosevelt County Attorney Ryan Rusche was selected by the Board as the new Area E Trustee to fill the remainder of Bob Spoja's term, which will be up for re-election in September, 2007. See details of Mr. Rusche's background on Page 10. ○

STATE BAR CALENDAR

May 22

Unauthorized Practice of Law Commission meeting, 10 a.m., State Bar offices, Helena

May 25

Deadline for advertising and content for the June/July edition of The Montana Lawyer magazine

May 28

Memorial Day, State Bar offices closed

June 1-2

Jackrabbit Bar Association meeting, North Tahoe, Nev.

June 4

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

June 7

State Bar Executive Committee meeting, Red Lodge

June 8-9

State Bar Board of Trustees retreat, Rock Creek Resort, Red Lodge

June 15

Access to Justice meeting, State Bar offices, Helena

July 4

Independence Day, State Bar offices closed

July 23-27

Bar Exam, Missoula

July 25

Deadline for advertising and content for the August edition of The Montana Lawyer magazine

September 13-14

State Bar Annual Meeting, Hilton Gardens Inn, Missoula

49 pass February 2007 Bar Exam

The following applicants to the State Bar of Montana passed the Montana Bar Exam in Helena in February:

Beach, Kenneth

Bergeson, Roberta "Jean"

Birdsong, Gregory

Boone, Sarah

Brahana, Matthew

Breck, Justin

Breck, Stephanie

Burleigh, David

Chiaviello, Philip

Coffman, Danielle

Coffman, Edward "Ted"

Cole-Hodgkinson, Jessica

Coleman, Brent

Coppede, Brenda

Davis, Michael

Freeman, Erin

Friedman, Scott

Gallagher, Nicole

Grimm, Raymond

Hamm, Kimberly

Helmer, Christopher

Kautz, Bryan

Kronk, Elizabeth

Kunzelman, Erin

Lawellin, Courtney

Lindemann, Cole

Martinez, Tina

McDonald, Jessica

Miller, Daniel

Miller, Nicholas

Miller, Scott

Montes, LeAnn

Morison, Melinda

Moser, Kurt

Norlin, Olivia

Patterson, Richard

Piper, Ronald

Riggers, Shawwna

Roset, Kristin

Schriefer, Bonnie

Shea, Thomas "Todd"

Stidham, Jonathan

Stuckey, Elizabeth

Sudbury, Ryan

Vidulich, Valori

Wiletsky, Danielle

Williams, William

Yaxley, Janine

Zasada, Erin

Upcoming CLE seminars for Montana lawyers

May 22 Teleconference

Estate Planning for Business Owners: A Guide for Basics & Advanced 1.50 CLE credits. Presented by Cannon, (800) 775-7654

May 24 Missoula – Grant Creek Inn

Insurance Law Update 6.0 CLE credits, including 1.0 Ethics credit. Presented by National Business Institute, (800) 930-6182

June 5 Helena – Park Plaza Hotel

Workers Comp Hearings 6.0 CLE credits, including 1.0 Ethics credit. Presented by National Business Institute, (800) 930-6182

June 6 Big Sky

Land Use Law 4.0 CLE credits. Presented by New West Publishing, (406) 829-1725

June 8 Billings

Documenting Disciplinary Action 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

June 12 Teleconference

Retirement Benefit Planning 1.50 CLE credits. Presented by Cannon, (800) 775-7654.

Other web & phone CLEs for Montana credit are:

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

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

June 13 Helena – Metcalf Building in Capitol complex

Preventing Harassment 3.0 CLE credits. Presented by the state Personnel Division, (406) 444-3985

June 14 Helena – Metcalf Building in Capitol complex

Privacy & the Right to Know 6.50 CLE credits. Presented by the state Personnel Division, (406) 444-3985

June 19 Helena, MT – Colonia Hotel

Managing Out-of-Control Juveniles 10.75 CLE credits. Presented by the Montana Supreme Court, (406) 841-2967

July 17 Teleconference

Compliance Issues for Trustees 1.50 CLE credits. Presented by Cannon, (800) 775-7654

Try out Monte's 'Friday Puzzler'

Missoula attorney Monte Jewell recently e-mailed this "Friday Puzzler" to members of the Montana Association of Criminal Defense Lawyers:

The web site *wired.com* reported that Brussels law enforcement began a criminal investigation into a "virtual rape" allegedly committed by a player on the game at the popular Second Life web site (www.wired.com/culture/lifestyle/commentary/sex_drive/2007/05/sexdrive_0504). Montana Chief Federal Judge Donald Molloy analyzed a similar issue when he considered whether virtual images of children could constitute child pornography.

No one seems to have questioned whether the virtual-rape defendant would be the alter ego in the game or the actual person.

Second Life permits users to interact on-line in a simulated world with cartoonish "avatars." Some Second Life players earn actual income from activity within the game. Stanford Law professor Lawrence Lessig, Judge Posner and others have appeared within Second Life. Judge Posner's avatar apparently gave a lecture "inside" the game. See a description at <http://secondlife.com/whatis/>.

Is Judge Posner going to hear the case within the game? Perhaps its time to hang out a shingle in Second Life and accept judicial appointments.

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Justice Foundation awards \$540,000 in grants

The Montana Justice Foundation (MJF) awarded \$540,000 in grants to fund programs serving the civil legal needs of low-income Montanans.

Most notable is a grant of \$420,000 awarded to the Montana Legal Services Association, the state's largest provider of civil legal aid.

Other grantees in the 2007-2008 grant cycle include:

- Cascade County Law Clinic, \$15,000.
- Eastern Montana CASA (Court Appointed Special Advocates) / GAL (Guardians ad Litem), \$10,000.
- CASA of Missoula, Inc., \$5,000.
- Community Mediation Center in Bozeman, \$10,000.
- Community Dispute Resolution Center of Missoula County, \$5,000.
- State Bar Law-Related Education Center, \$5,000.
- DOVES (Domestic Violence Education & Services) of Polson, \$4,000.
- UM Law School, Law Student Bar Association and Montana Public Interest Coalition (joint proposal), \$5,000.

Another \$61,000 was set aside by MJF to pay for a state pro bono coordinator. The grant awaits a decision by a stakeholder summit regarding where the coordinator will be placed.

"We are thrilled by the continuing partnership between Montana banks and lawyers in serving Montana and those less fortunate," said Amy Sings In The Timber, director of IOLTA Operations for MJF.

"Access to justice is a commitment we have made to the people of Montana," she said, "and having the capability to fund worthy organizations at these levels will truly advance our cause."

The Montana Justice Foundation is a non-profit corporation founded by Bar members in 1979 to establish a true charitable arm of the Montana legal community. The Foundation's mission is to make justice accessible to all Montanans. It does so through the support of organizations that provide legal services to vulnerable and underserved populations and to those organizations that increase public understanding of the law and the legal system through education.

Since 1986, MJF has distributed more than \$2.35 million to non-profit organizations committed to the access-to-justice cause. Over 90 percent of these funds have gone directly to the Montana Legal Services Association (MLSA).

The Interest on Lawyers' Trust Accounts (IOLTA) program, is making a difference for legal aid programs in Montana. The IOLTA program, established by the Montana Supreme Court in

The Board of Directors of the
Montana Justice Foundation

Wishes to Thank:

J. Martin Burke
For his Contribution
In Memory of
Bruce Toole

Chief Justice Karla Gray
For her Contribution
In Memory of
Pat Regan

&

Katrina Wilson Martin
For her Contribution
In Honor of
Colin Stephens

Montana Justice Foundation

... Making Justice Accessible to All Montanans

Tax deductible contributions to the Montana Justice Foundation can be sent to:
Amy Sings In The Timber, MJF, P.O. Box 9169, Missoula, MT 59807-9169

1986, is a program by which Montana lawyers deposit client funds – that are either too small or held for too short of a period of time to yield any profit for individual clients – into pooled, interest-bearing accounts. The interest generated by these IOLTA accounts is collected by the Montana Justice Foundation and distributed in a competitive grant process among qualified non-profit organizations.

In previous years, low interest rates on IOLTA accounts have yielded poor returns for the Foundation, limiting its ability to adequately fund statewide access-to-justice efforts. Recently, MJF, Montana attorneys and Montana's leadership banks have been working together to make a difference for access-to-justice programs and the communities they serve (see story below).

Leadership banks provide IOLTA accounts with interest

rates that are comparable to fair market rates for similar accounts and are tied to a federally recognized market indicator. Thus, as market rates rise, IOLTA interest rates rise as well. This means Leadership banks have agreed to support the IOLTA program through thick and thin.

This year, the Montana Justice Foundation was able to nearly double its total grant amount over the previous year, Ms. Sing's In The Timber said. "The increased funding means that Montana Legal Services Association will be able to expand its capacity."

MLSA intends to add an advice attorney to its existing Helpline, as well as add an employment law attorney to its staff. MLSA currently employs 15 full-time equivalent attorneys charged with serving nearly 190,000 eligible clients.

Glacier Bank increases IOLTA interest at attorney's request

By **Amy Sing's In The Timber**
Director of IOLTA Operations
Montana Justice Foundation

Whitefish attorney Doug Scotti contacted me at the Montana Justice Foundation (MJF) to offer his help in boosting funds for the IOLTA program.

Mr. Scotti is an associate with Morrison & Frampton whose IOLTA accounts are held at Glacier Bank of Whitefish. Mr. Scotti attended a meeting with me and Jim Ness, senior vice-president of Glacier Bank of Kalispell, to discuss legal needs in Montana and the IOLTA program.

Mr. Ness was pleased to accommo-

date MJF and Mr. Scotti's request to increase IOLTA rates.

Effective immediately, Glacier banks of Kalispell and Whitefish have agreed to tie their IOLTA rates to the 30-day Federal Home Loan rate minus a 2 percent shave. As of this month, the variable rate is set at 3.47 percent. This rate is a 1.47 percent increase from Glacier's previous rate and will be paid across all accounts regardless of amount on deposit.

"We are happy to support the IOLTA program," said Mr. Ness, "the interest is going to a worthy cause." And Glacier banks would be happy if the increased rate draws attorney business as well.

Glacier banks of Kalispell and Whitefish now join Valley Bank of Helena, Western Security Bank, and Big Sky Western as MJF Gold Level Leadership banks within the Glacier Bancorp Inc. holding company. Gold Level banks tie their interest rates to a federally recognized market indicator and offer an annual net yield of 2.75 percent or higher.

Glacier's decision to increase its IOLTA rates demonstrates a real commitment to community-based banking, and the support of attorneys like Mr. Scotti is critical to making banks aware of the importance of the IOLTA program to addressing legal needs of low-income Montanans.

TO FIND OUT how you can help make a difference contact Amy Sing's In The Timber at (406) 523-3920 or asings@mtjustice.org.

ACLU's Missoula staff moves to new building

The Missoula legal office of the American Civil Liberties Union of Montana (ACLU) has moved six blocks east to a brand-new building, the *Missoulian* reported.

The new offices, at 241 E. Alder St., are part of a "strategic investment" that the national ACLU is making in Montana.

"This is a dream come true for me," said Betsy Griffing, ACLU of Montana general counsel.

Over the next five years, the ACLU plans to invest \$10 million into offices in Montana, Florida, Mississippi, Texas and New Mexico to boost civil liberties work in those states. Montana's office is one of the smallest "affiliates" in the country, but is also considered by the group as one of the most

effective at identifying constitutional infringements, forming public policy and heightening awareness of civil liberties issues.

"For the last decade we've had a staffing pattern of three-and-a-half people," said ACLU of Montana Executive Director Scott Crichton. When done hiring later this spring, the Montana staff will increase by five.

At the May 1 open house in Missoula, the staff attorneys of the State Public Defenders were the first to arrive to congratulate the ACLU staff, the *Missoulian* said. It was the Montana ACLU's work that led to the passage of public defender legislation in 2005 that created the statewide public defender office.

Justices vacate Rules of Evidence order

The Montana Supreme Court issued the following order on May 3:

No. AF 07-0031

IN THE MATTER OF THE PETITION
FOR AMENDMENT OF THE MONTANA
RULES OF EVIDENCE

At a public meeting held on March 20, 2007, at 1:30 p.m., this Court considered a number of items on the posted agenda. One of those items was “Revisions to Rules of Evidence,” proposals for which had been sent to the Court by its Commission on Rules of Evidence (Commission). The Minutes of that meeting establish that we discussed each of the Commission’s proposals, and heard from Chad Wright, representing the Montana Association of Criminal Defense Lawyers, who opposed one of the proposed revisions. No one else appeared in support of or opposition to the proposed rule amendments, but the Court took note of the letters and comments submitted by the Commission in support of and opposition to the proposed changes. Ultimately, the Court voted unanimously to adopt three of the proposed amendments, and voted 5 to 1, with one member abstaining, to decline at present to adopt the proposed amendment to Rule 804(b)(6). On April 17, 2007, at another public meeting on which the topic appeared on the agenda, the Court signed – and thereafter the Clerk of this

Court filed—an Order to that effect.

Toward the end of April, it came to the Court’s attention that we had inadvertently failed to timely post notice of the public meeting held on March 20, 2007. As we were preparing to take appropriate steps, Margaret A. Tonon (Tonon), the Chair of the Commission, petitioned on May 1, 2007, for an order re-noticing the matter on a timely posted agenda for a public meeting. That petition must, of course, be granted.

The Court has looked carefully at the other matters on the late-posted agenda for the March 20, 2007 public meeting, and at the current status of those matters. We conclude that none of the other items must be re-noticed for a public hearing.

THEREFORE, IT IS ORDERED that our Order filed April 17, 2007, in this cause number is hereby VACATED; and IT IS FURTHER ORDERED that the Court will timely post notice of a future public meeting including the Proposed Revisions to Rules of Evidence. While we cannot establish the date of that public meeting at this time, it is anticipated that it will be before the end of June, 2007.

ORAL ARGUMENTS

June 2007

■ **Cause DA 06-0538** – STATE OF MONTANA, Plaintiff and Respondent, v. CHARLES DUNN, Defendant and Appellant.

Oral argument is set for Wednesday, June 13 at 9:30 a.m. in the Courtroom of the Montana Supreme Court, Justice Building, Helena.

■ **Cause DA 06-0477** – STATE OF MONTANA, Department of Revenue, Plaintiff and Respondent, v. PPL MONTANA, Respondent and Appellant.

Oral Argument is set for Wednesday, June 13 at 1:30 p.m. in the Courtroom of the Montana Supreme Court, Justice Building, Helena. District Judge Brad Newman will sit in place of Chief Justice Gray who has recused herself.

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Great Falls attorney receives reprimand

The Montana Supreme Court publicly reprimanded a Great Falls attorney on May 2 for withholding information from other attorneys in a trust settlement case, the *Billings Gazette* reported.

But justices did not suspend Steven T. Potts from practicing law for 30 days, as was recommended by the Commission on Practice, the *Gazette* said.

Four of the seven justices believed “you will not again violate the rules governing a lawyer’s conduct,” in part because Mr. Potts has no prior record of disciplinary actions, Justice John Warner told Potts and his attorney, Bob James of Great Falls.

Mr. Potts was ordered to pay the costs of the censure hearing.

According to the *Gazette*, the Court did unanimously agree that Mr. Potts had violated two provisions of the Montana Rules of Professional Conduct,

the guidelines written by the Supreme Court to govern the actions of lawyers, in a 2001 trust case.

Mr. Potts was accused of withholding information that one of his clients had already received some assets from a trust account that was still in dispute. According to a complaint in the case, Mr. Potts knew his client had taken about \$270,000 in investments that

belonged to a deceased relative. Family members disputed how the money should be split up.

Other attorneys working on a settlement did not know that some of the assets in the trust had already been spent, the *Gazette* said, and Mr. Potts did not mention that when an agreement was reached. Chief Justice Karla Gray and Justices Patricia Cotter, Jim Nelson and William Leaphart recused themselves from the proceedings and were replaced by four District Court judges.

Kalispell lawyer disbarred after 8 client complaints

A Kalispell attorney was disbarred on Feb. 28 by the Montana Supreme Court in a case that went unreported in *The Montana Lawyer*.

Kenneth Wesson lost his license to practice law in Montana after eight separate client complaints were filed against him. The complaints were lumped into one formal complaint by the Commission on Practice, which recommend the disbarment.

Mr. Wesson failed to take delivery of the Commission’s findings that were sent to his mailing address, “but that does not relieve him of the obligations of this proceeding nor the sanctions imposed herein,” the Court order said.

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

LEGAL MANUALS

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2006, 288 pages
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1999 w/2003 Update, 400 pages
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2005, 60 pages incl. 5 forms
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2007, 104 pages annotated
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Divorce in Montana
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1998, 95 pages w/2001 Update
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Pocket-sized booklet
\$4 each

CLE outlines for all January through June 2006 CLEs

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2005 State Bar Annual Meeting

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Steven Keeva, 2004 UM Blakenbaker Lecture on Professional Responsibility

CD, free, please return

Format change for AG opinions

Attorney General Mike McGrath has adopted format changes for attorney general opinions, effective Jan. 1, 2007. The changes are designed to make the opinions more user-friendly for attorneys and other readers.

The new format resembles changes adopted several years ago by the Montana Supreme Court. The Court wanted to allow uniform citation of opinions regardless of the medium from which the opinion is copied or downloaded.

The attorney general opinions will now contain numbered paragraph references.

"We had received comments from attorneys indicating some frustration with the proper citation of our opinions," said Chris Tweeten, McGrath's chief civil counsel. "They are available for download in so many places that the page citations are pretty meaningless. This change should correct that problem."

ODC office is moved, has new contact info

The Office of Disciplinary Counsel moved to its new offices on Helena's Last Chance Gulch on May 1 from its former space in the old federal building.

ODC's new contact information is:

Street address:

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The ODC web site, available about June 1, will be www.montanaodc.org.

Preparing law students for meaningful, healthy lives as lawyers

By **Bari Burke**, professor
University of Montana
School of Law

I write to ask for your suggestions for enabling law students to prepare for meaningful, healthy, and dedicated lives as lawyers.

That is the purpose of my seminar at the law school called “Lawyers’ Values, Lives, and

Work.” This seminar results from a collaboration, in 2000, between former Dean Jack Mudd and me, at the invitation of the Carnegie Foundation for the Advancement of Teaching which was, and still is, engaged in a multi-year study of legal education as part of its “Program on Preparation for the Professions.”

As we thought about the course, we agreed that law schools generally, and ours in particular, press students to acquire both the specialized knowledge and the lawyering skills necessary to think and perform as competent lawyers. On the other hand, we believed that law schools need to do more to prepare students to become lawyers fully and honorably engaged by law practice and equipped to choose and adopt the habits necessary to live meaningful and healthy lives in that practice.

Our specific thesis was that “professionalism” (I will ask for help in defining this term in a later column), physical and emotional health, and life satisfaction are closely linked and that legal education does not sufficiently prepare graduates to recognize or respond in healthy ways to the conflicting values and consequent pressures of professional life. Thus, the seminar investigates the subject of values (explicit and implicit) in the legal profession, the values implicit in the current culture of legal practice, and the personal values lawyers bring to their practice.

We explored with our students four particular questions:

- (1) What are the sources of lawyers’ meaning and satisfaction, as well as stress (I will ask for help in defining this term in a later column on dissatisfaction in professional life)?
- (2) In what ways do law schools and the profession transmit professional values and attitudes and create among law students a commitment to those values?
- (3) What values and attitudes do law students need to cultivate personally to find meaning and satisfaction in their professional lives, and what practices and habits must they develop to be able to protect their chosen values and attitudes in the face of potentially conflicting values?

- (4) What potential does legal education have to prepare students to flourish as professionals?

WE CAUTIONED students at the beginning of the course that they would need to consider deeply personal questions during the course:

- What are your personal values?
- How would you describe yourself as a law student?
- How would others describe you?
- What sustains you and brings you satisfaction as a law student?
 - Who or what gets in your way in finding law school satisfying?
 - Since beginning law school have you asked yourself whether law school feels right for you?
 - Do you have any hesitations about becoming a lawyer?
 - What qualities and habits do you want as a professional?
 - How do you, and will you, live up to your personal and professional values and goals?

Ungraded writing assignments include: (1) a paper asking students to explore and identify their essential values as they relate to their lives as lawyers, “Who am I – this person who is about to become a lawyer?”; (2) a paper asking students to explain their present vision of their professional and personal lives in ten years; and (3) a letter of recommendation for themselves that honestly presents their sense of their values, attitudes, and behavior that will suit them to practice law.

Then, to help students discover first-hand what Montana lawyers think about their lives as lawyers and the sources of meaning and satisfaction, as well as stress in their practices, each student interviews a practicing attorney and writes a paper reflecting on that interview. How has that interview helped students to put themselves in the position of a lawyer and begin to form a professional identity?

THE STUDENTS READ a variety of books (e.g., Steven Keeva, “Transforming Practices” (1999); Walter Bennett, “The Lawyer’s Myth: Reviving Ideals in the Legal Profession” (2001); and David Hilfiker, “Healing Our Wounds: A Physician Looks at His Work” (1998/2003)). They also read and articles primarily from bar journals and law reviews on such broad topics as the fundamental traditional and current values and environments of the legal profession, as well as particular topics such as billable hours, balance or equilibrium between professional and personal time, making and learning from mistakes, and procrastination and perfectionism.

Although I lost Jack Mudd as a full partner in 2002 because

he began extensive out-of-state travel, I have continued to teach the course annually. Each time I teach the course, I have invited several lawyers to join various class sessions. At the end of each course, I invite the participating lawyers and students to suggest additional topics or readings or other ideas for improving the course. They do so freely.

Now I'd like to solicit you, lawyers throughout the state, to become my partners in this course by continuing a conversation already started among members of the bar about this large area called "professionalism." In a later column, I'll present a list of the various possible components of that elusive term and ask for your thoughts.

THE EDITORS of *The Montana Lawyer* have generously agreed to allow me to write a series of columns that raise specific topics and ask for your advice and help which I can then take into the classroom and share with our students. I also want to be able to promise students that I will bring their concerns back to you through this series of columns. Some columns will look at the medical profession (including medical education) and their responses to calls for increased professionalism and ask if you find any of those responses appropriate for legal education. I more often plan to ask for your responses to questions more directly connected to the practice of law.

For this initial effort, would you please respond to the following "hypothetical":

You are the guest speaker during a class session. A student poses the following question: What, in particular, about the practice of law is satisfying or meaningful to you?

Please send your responses by e-mail or street mail to:

E-mail address: bari.burke@umontana.edu

Street address: School of Law,
University of Montana, 32 Campus
Drive, Missoula MT 59812

Office phone: (406) 243-4252

LETTERS

Grateful for attorney's pro bono help

I am writing to convey my deep appreciation for the pro bono work of a Missoula attorney, Jane E. Cowley of Worden Thane PC, and what she did for a long-time staff member of the Poverello Center, Inc.

I have honestly never been more impressed with another professional. She represents the legal profession with integrity and with the spirit of service to others.

As Western Montana's largest homeless shelter and soup kitchen and a 501(c)3 non profit, we are constantly fundraising and grant writing to meet our expenses. Our dedicated, loving staff is unwavering as they serve the underprivileged in Missoula, but they are certainly not compensated financially as much as they deserve. Ms. Cowley's generosity in assisting one of our long-term employees was beyond the call of duty

Our employee is a hard-working single mother of two young children. She attends the University of Montana and works at the Poverello Center full time. Because she could not afford to retain counsel, she had taken great individual initiative in working with legal aid and representing herself in her divorce.

However, she understandably felt let down by the legal system and confused by the process when despite her efforts and orders from the court, she was getting no response or correspondence from the attorney representing her ex-husband. The attorney missed multiple court appearances and months went by with no child support.

From the moment we asked for assistance, Ms. Cowley immediately stepped in, comforted her, explained procedure, and assisted her with filings. Her actions single-handedly changed her and her children's lives.

The Poverello Center Inc, as ever, belongs to this community. Ms. Cowley's support and the support of Worden Thane have demonstrated that at the highest level.

Ms. Cowley should be commended for serving her profession with compassion and integrity. It is an honor to have met her.

- *Ellie Hill, executive director,
Poverello Center Inc.
Missoula*



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Negotiation Theory & Practice

Alain Burrese



Splitting the difference

I finished my opening statement in a mediation and the plaintiff began telling her side of the situation that brought on the lawsuit which centered on some work the defendant performed for the plaintiff and the quality and cost of the services provided. When she finished, I turned to the defendant. He did not give much of an explanation and cut quickly to the chase. He told her that he did not like having dissatisfied customers, and wished she would have given him the chance to remedy the situation rather than her paying someone else to redo the work. The amount she was suing him over was the cost of having the job redone. He told her, "I don't want any bad feelings over this, can't we just split it down the middle?"

I looked back at her and she replied, "Sure. That would be fine."

He wrote a check and the matter was settled.

It was one of the quickest and easiest mediations I have been involved with, and proves that sometimes we just need to communicate with each other. We can avoid or minimize disputes over matters that are more easily resolved without lawsuits.

The main point I want to make with this story is that sometimes meeting in the middle is a viable solution and an easy way to resolve problems.

HOWEVER, CONTRAST THIS with another matter I was involved with while working as a claims attorney with ALPS.

The insured was being sued for malpractice over a missed statute of limitations on a medical malpractice claim. Liability was clear regarding the legal malpractice; the complaint was not filed in time. The underlying medical malpractice claim and alleged damages were not so clear. The demand was \$1.2 million. I had valued the claim between \$100,000 and \$200,000, taking into consideration the expense of litigating such a claim. This was still early, but we had some very positive discovery to support this valuation including an excellent IME (Independent Medical Examination).

I flew out of state to attend an early settlement conference with the insured and the defense counsel representing him. I wanted to personally see the plaintiff and plaintiff's counsel during the negotiations. Plaintiff opened with the \$1.2 million demand. We countered with a \$100,000 offer. The settlement

master wanted to move us into the \$500,000 to \$600,000 range, and kept telling us that is where it should settle. I was very firm in saying that we were not going to move much unless the plaintiff moved considerably. They moved a little, and I came back with an offer of \$150,000. I told them we were not going any higher unless they came down into the legitimate ballpark. They moved to \$950,000. The settlement master kept pressuring us to move up in increments to reach the five to six hundred thousand dollar range, again working us toward the middle.

The next move surprised everyone. I told them that was it. Our offer remained at \$150,000, and I was heading back to Montana. The plaintiff and plaintiff's counsel were furious and the settlement master was angry, but it was not something I believed should be met in the middle. They provided nothing to change my initial valuation of the case.

A few months later, when the plaintiff came into the range that I thought the case was worth, we did settle for a little over \$200,000.

I SHARE THESE TWO CASES to illustrate that meeting in the middle, or splitting the difference, can be an effective closing tactic in certain situations, but not always. Many times the negotiation dance leads both parties toward a particular settlement range, and once in that range, many negotiators will attempt to close by giving a summary of the negotiations and saying something like, "because things are so close, why don't we just split the difference?"

This can be very effective, and many negotiations end this way. It is probably one of the most popular closing tactics.

However, there is a presumption that both parties started with fair opening offers. If one party of the negotiation uses an exaggerated opening offer or demand, such as in my second example, and then suggests working toward the middle or splitting the difference, it can sometimes be considered more of a hardball tactic attempting to pressure the other side into doing something they would not otherwise do.

Meeting in the middle, or splitting the difference, is not necessarily going to work until you have negotiated into an acceptable settlement range of both parties. Therefore, you should not immediately look toward moving to the middle once two opening positions have been declared.

IN THE EXAMPLE above there was no way I was going to move toward the middle ground of five to six hundred thousand dollars. Use this tactic only when you have negotiated into the acceptable settlement range and it appears that it will be a beneficial closing strategy to seal the deal.

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

NEWS ABOUT MEMBERS

Following 12 years as the CEO and general counsel for Montana Independent Telecommunications Systems, a trade association of rural telephone companies, **Michael Strand** has started his own law practice in Helena, Strand & Associates. Mr. Strand has represented clients before nearly all of the state agencies (and especially the Montana Public Service Commission) for nearly 15 years and intends to continue representing clients in those venues as well as in the courts. He has also served as a full-time lobbyist in every state legislative session since 1995 as well as testifying on numerous occasions before the U.S. Congress and the Federal Communications Commission and hopes to continue providing lobbying and public relations services. He welcomes referrals and may be reached at (406) 465-5792.

John P. Paul has formed the Law Office of John P. Paul in Great Falls. Mr. Paul holds a Ph.D. from Marquette University and earned his MA and JD degrees at the University of Washington in Seattle. He practiced in Seattle and, after moving to Great Falls, engaged in the private practice of law, most recently with the firm of Alexander, Baucus, Paul & Young. His practice is located at 410 Central Ave., Suite 519 in Great Falls. His practice continues to focus on business and commercial law, as well as real estate, estate planning and probate. Mr. Paul also is a member of the Washington State Bar. **Lani J. Witt** joins him as his legal assistant. Mr. Paul may be contacted at PO Box 533, Great Falls MT 59403; telephone (406) 761-4422; fax (406) 761-2009; email johnpaul@qwestoffice.net.

Dorsey & Whitney announced **Barbara Chillcott Hall** has joined the law firm's Missoula office as an associate in the public finance group. Dorsey has offices in Missoula and Great Falls. Ms. Hall will focus on public finance and economic development, particularly in the areas of state and municipal government financing, water and sewer district financing, and school district bonding. Prior to joining Dorsey, Ms. Hall worked in the non-profit sector as a water rights attorney. Ms. Hall received her law degree from the University of Montana School of Law, and her BA from University of North Carolina, Chapel Hill.

Kirsten H. LaCroix, chief criminal deputy Missoula County attorney, has recently been appointed by the Montana Supreme Court as a new member to the Supreme Court's Commission on Rules of Evidence. She replaces Bradley G. Newman, who was elected as a district judge. Ms. LaCroix is a 1995 graduate of the University of Montana School of Law. In addition to litigation in the criminal arena, Ms. LaCroix teaches trial advocacy at the local, state and national levels. Prior to working in Missoula County, Ms. LaCroix was a deputy county attorney in Cascade County practicing civil and criminal law.

Kalispell attorney **James H. Cossitt** recently spoke in Chicago at the American Bar Association meeting on attorney discipline. He addressed the ABA's Ad Hoc Committee on Bankruptcy Court Structure & Insolvency Process. Mr. Cossitt serves as a member of the task force, which addressed a number of topics that arose as a result of the enactment of the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005.

DEATHS

Robert Poore, Butte attorney

Long-time Butte attorney Robert Arch Poore, 87, died May 3 of natural causes at the home of his daughter in Hamilton.

Mr. Poore was born and raised in Butte. He attended the University of California, Berkeley, where he received his bachelor of arts degree in Classics, graduating maxima cum laude, Phi Beta Kappa, in 1941.

He served in the Navy in World War II in the Pacific Theater, where he was a gunnery officer on destroyer escorts. After his Navy service he attended Harvard Law School, receiving his law degree in 1949 with Phi Beta Kappa honors.

Returning to Butte, he joined his brother, James A. Poore Jr., in their father's law firm, where he practiced for a half century. Among his professional awards are: The first William J. Jameson Professional Responsibility Award from the State Bar; the University of Montana Lawyer of the Year Award; the State Bar's Distinguished Service Award; and Silver Bow County Bar Association's Liberty Bell Award.

For 39 years, he was a member of the Montana Bar and federal court system, serving as chairman of many Supreme Court committees and boards. "He cared deeply for maintaining the highest of standards for Montana lawyers," his obituary said.

Mr. Poore's commitment to civil justice showed in his willingness to give pro bono defense in 1956 for John Cyril Helman, who had been accused of being a communist under the membership clause of the Smith Act. The trial came before the 9th Circuit Court of Appeals, resulting in declaration of the membership clause as null and void.

His highest professional moment came in the 1970s, when he represented the state of Montana at the U.S. Supreme Court level to uphold the constitutionality of the Montana Gross Receipts Tax.

For 35 years, Mr. Poore served as president of the Butte Community Concert Association. He spearheaded the restoration of the Mother Lode Theatre. He also directed an historical project of honoring Butte's mining heritage with three gateway arches – the Montana Tech Gateway Arch, Ulrich-Schotte

Gateway and Nature Trail, and the World Museum of Mining Gateway. In 2000, Mr. Poore received the Governor's Civic Engagement Award, for the above-mentioned projects and for his generous support of the Butte YMCA, Montana Tech, and his many years as a board member of St. James Healthcare.

According to his obituary, Mr. Poore loved to quote the following verse from Rudyard Kipling's poem "If":

*If you can fill the unforgiving minute
With sixty seconds' worth of distance run
Yours is the Earth
And everything that's in it."*

Mr. Poore is survived by his wife, Pauline, and four daughters.

Joseph Fennessy Jr., Libby attorney

Joseph Francis Fennessy Jr., 90, died at his home in Libby on April 18.

Mr. Fennessy was born and raised in Libby. After completing high school at the early age of 16, he went to Gonzaga University, graduating with a bachelor of arts degree in 1938 and acquired a bachelor of law degree in 1940 (which was acknowledged as a juris doctorate degree in 1967). He returned to Libby to set up a law practice for a brief period before enlisting in the Navy during World War II. He served on several ships, primarily in the Asiatic Pacific Area.

Mr. Fennessy's law practice in Libby spanned almost six decades. He served as city attorney for Eureka, Libby and Troy at different times in his law career, and served as the Lincoln County attorney. His semi-retirement years still found him at the office daily, staying in touch with his clients, friends and family, his obituary said.

Mr. Fennessy was on the board of directors of First National Bank, co-founded by his father, in the mid-1960s until his retirement from the board in 1988.

He was a charter member of the Libby Council of Knights of Columbus, a founding member of Cabinet View Country Club, a charter member and first exalted ruler of the Libby Elks Lodge. He was also a member of the Libby Chamber of Commerce, the American Legion and held a 60-year pin from

the VFW. Mr. Fennessy also served on the Lincoln County School Board and was an active member of the Montana and Washington State and American Bar associations.

He is survived by three sons.

Pete Dunbar, FBI agent, U.S. district attorney

Byron "Pete" Dunbar, 79, died April 21 at his home in Billings.

He was born in Three Forks. He joined the Merchant Marines in 1944 and was honorably discharged in 1947.

Mr. Dunbar received a law degree from the University of Montana in 1952. His career in the FBI took him to Washington, D.C.; Dallas; St. Louis; Clinton, Okla.; and New York City. He and his wife, Margie, returned to Montana in 1966 and Mr. Dunbar worked in Glasgow until 1970 and then moved to Bozeman. He retired from the FBI in 1979.

Mr. Dunbar served as assistant Gallatin County attorney. In 1980, he was appointed by President Reagan as U.S. attorney, District of Montana, and moved to Billings where he held that position until 1990.

Mr. Dunbar was admitted to the State Bar of Montana, 9th Circuit Court of Appeals and the U.S. Supreme Court. He also was the Booster president of the MSU Bobcats. He was a member of the Elks Club, Montana Law Enforcement Academy, Society of Former FBI Agents, American Society for Industrial Security and Association of Certified Fraud Examiners.

Mr. Dunbar is survived by his wife, two daughters and two sons.

Other deaths

● **Linda Lee Montgomery-Seitz**, 44, a clerk in Missoula justice court since 2000, died April 6 in a Missoula hospital after a short illness.

● **Eda Blair**, widow of the late District Judge Frank E. Blair, died April 7 in Sheridan, Mont., at the age of 100.

● **Barbara Jean (Cheney) Ober**, 74, a legal secretary for 20 years in Great Falls, died April 16 in Spokane Valley, Wash.

● **Mary Rita Corbett Molloy**, mother of Donald Molloy, chief federal judge for Montana, and Helena attorney Jim Molloy, died May 5 in Great Falls at age 86.



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The pang of Virginia Tech cuts deep now. Yet we know, from other incidents of blinding horror, that the pain we feel today will dull. The living, except for families and survivors, will gradually adapt and move on.

It's important, therefore, that we as a nation pause now—and fix in our minds the questions of what we can learn, and what we must change, to prevent the next senseless bloodbath in a school or workplace.

It's time to consider Virginia Tech's tragedy through the prism and value that have characterized our nation from its earliest days: common sense.

As president of the American Bar Association, my perspective is rooted in the law. Do our laws concerning guns, mental health and privacy work effectively? Or do they create a protected zone that helps the discontented and damaged to become killing machines?

There are no perfect answers in an open society where guns are plentiful. But, we owe it the victims to ask these common-sense questions:

- Why does a society of ordinary consumers need rapid-fire weapons that were designed for war?
- Why can we not have more effective background checks for those buying guns? Is there really anyone in our country who wants the mentally ill to bear arms?
- Do privacy and disability laws unduly paralyze law enforcement officials and educators, until talk of violence becomes a tragic, irreversible reality?

Ironically, Virginia is one of just 17 states that includes mental health history in its background checks. But was even that law sufficient? [The governor of Virginia did order the tightening of the mental-health guncheck loophole a week after the Virginia Tech massacre.] The ominous fact is that a court ordered the Virginia Tech killer to undergo psychiatric evaluation for possible suicidal tendencies did not register on

his background check. In Virginia, only actual confinement in a mental hospital is recorded.

One valuable start would be for Congress to pass the National Instant Check System Improvement Act. This bipartisan legislation, supported by the NRA and the Brady Campaign, would strengthen the background check system, including how mental illness is reported.

Almost every element of the Bill of Rights – including freedom of speech, the right to bail, and rules governing police searches – has undergone some reshaping or compromise as our nation has evolved.

The Second Amendment is no exception. In cases involving sawed-off shotguns and machine guns, to name two, courts have found since 1939 that gun ownership may be limited for purposes of public safety.

For 10 years, federal law prohibited ammo clips that load more than 10 bullets. This restriction imposes no hardship on the law-abiding but slows down determined killers, and makes it less likely that they can take multiple lives. It is a common-sense measure that Congress should reinstate.

Given our nation's embattled history over gun regulation, and of the rights of the mentally ill, there are no easy solutions. But in our hearts, wherever we stand on gun control, no one wants a disturbed, suicidal young person prowling a college or high school campus with enough casually purchased firepower to end dozens of lives.

When we talk of rights, surely the rights of young people to be safe from random violence must count for more, whether they live on a college campus or in an inner city. We cannot accept carnage as a regrettable norm.

The ABA has looked at firearms policy many times over the years. In the wake of Virginia Tech's tragedy, we will examine our laws again. And we will work with other Americans to find common-sense ways to stop the unforgivable killing of our children. ○

Time for common sense

Legal lessons from Virginia Tech

By **Karen J. Mathis**
President, American Bar Association

CLASSIFIEDS

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

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

separate issue for July. Call (406) 442-2200 for more information.

ATTORNEY POSITIONS

ATTORNEY: The Montana Legal Services Association has an opening in its Indian Law Unit for a staff attorney serving the Blackfeet Indian

Reservation. Requires travel within Montana, as this position will provide services to low income clients on the Blackfeet Indian Reservation and its surrounding counties. Experience working with Indian and/or low-income clients preferred. MLSA is funded in part by the Montana Justice Foundation. Salary depends on experience. Send a letter of interest, resume and three references to: Montana Legal Services

Association, 616 Helena Ave., Suite 100, Helena MT 59601.

LAW CLERK: Judge John Larson is recruiting for a law clerk in the 4th Judicial District, Missoula. This is an excellent opportunity to gain experience in all aspects of the law. Applicants must have a JD and have legal research experience. The position comes with a full state benefit package including a generous leave package. Salary \$36,774 per year, anticipated start date is 8/07. For more information see: <http://discoveringmontana.com/statejobs/application.asp> or a local Job Service. Deadline for application: May 31, 2007.

DEPUTY COUNTY ATTORNEY:

Immediate vacancy. Full-time permanent Deputy County Attorney position with the Custer County Attorney's Office, Miles City, Montana. Juris doctor degree from accredited law school, licensed to practice in Montana. Salary up to \$58,069.44 based on 40-hour work week, dependent on experience. Experience preferred. Excellent benefits. For job description and application form please contact Noel Gruba at Job Service in Miles City at (406) 232-8340. Applications accepted until position filled. Request accommodation from Custer County Attorney Office, 1010 Main Street, (406) 874-3310 or fax (406) 874-3450.

ASSOCIATE: Flathead Valley law firm seeks associate attorney to help with busy real estate, land use and litigation practice. Experience is preferred but we are willing to train the right person who possesses a strong work ethic, desire to learn and improve, and writing and analytical skills. Compensation and benefits are very competitive. Submit your cover letter, resume, transcript and writing samples to Ken Kalvig, Scott & Kalvig PC, PO Box 1678, Kalispell MT 59903-1678.

ATTORNEY: The Flathead County Attorney's Office is seeking an attorney to fill a full-time, permanent position. Salary starting at \$48,000 plus, depending on experience. Experience in criminal law and trial experience is preferred, and an interest in possibly moving to the civil area is a plus. The position

requires knowledge of criminal law and procedures, rules of evidence and civil procedure and familiarity with legal research and word processing. Full job description and online application can be viewed at co.flathead.mt.us or by contacting the Flathead Job Service, (406) 758-6200. Direct any questions to Vickie at (406) 758-5630.

CIVIL LITIGATION ATTORNEY:

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

ASSOCIATE ATTORNEY:

Busy Great Falls firm seeks an attorney with experience in civil litigation. Strong research and writing skills required. Competitive salary and benefits. All inquiries will be kept confidential. Send letter of application, resume, references and a writing sample to *The Montana Lawyer* #3-22, PO Box 577, Helena MT 59624.

ASSOCIATE: Sullivan Tabaracci & Rhoades PC seeks an associate attorney with at least 3 to 7 years experience to complement its growing transactional and litigation practice specializing in commercial, real estate and business law. Our 11-member firm enjoys over seven decades of combined experience, and provides associates with excellent opportunities to expand their legal practice. In our continuing effort to exceed our client's expectations, we hire only exceptional attorneys and staff. Situated in centrally-located Missoula, the firm's upscale office suite offers a spacious, technologically advanced and pleasant work environment. Successful applicants must be licensed to practice law in Montana and demonstrate an exceptional academic background as well as superior research, analytical, verbal and writing capabilities. All applications will be held in confidence. Please submit your cover letter and resume to: Sullivan, Tabaracci & Rhoades PC,

Attn: Office Administrator, 1821 South Avenue West, Third Floor, Missoula MT 59801; www.montanalawyer.com; info@montanalawyer.com.

ATTORNEY sought for expanding family law practice in Kalispell. Applicants must be personable, work independently, have excellent organization/communication/writing skills and ability to manage multiple priorities. Experience preferred. Salary depends on experience; health and retirement benefits available. Send cover letter, resume, references and writing sample to Lonnevik Law Firm PC, PO Box 1784, Kalispell MT 59903.

**LEGAL ASSISTANTS
& OTHER PROFESSIONALS**

LEGAL ASSISTANT needed for 10-attorney Helena law firm. Candidates should have three years of legal experience with business litigation, insurance coverage, and environmental law knowledge. Certification preferred. Proficiency in Word, Excel, legal terminology, and court filings required, with strong proofreading, multi-tasking, and organizational skills. Very competitive salary and benefits with challenging and rewarding work. Submit resume to Doney Crowley Bloomquist Payne Uda PC, PO Box 1185, Helena MT 59624-1185.

RECEPTIONIST / LEGAL SECRETARY: \$12.50-plus per hour, depending on experience, with benefits package in busy law firm. Perform receptionist duties, scheduling, maintain client contacts, etc. Experience with multi-line telephone, court and administrative filings, and proficient in WordPerfect, transcription, legal terminology, and file management. Qualified individuals please send cover letter and resume to Beth Baker at Hughes, Kellner, Sullivan & Alke PLLP, PO Box 1166, Helena MT 59624 or by e-mail to bbaker@hksalaw.com.

PARALEGAL OR LEGAL ASSISTANT: Busy Kalispell law firms seeks paralegal or legal assistant with transactional and litigation experience in real

estate, land use, partnerships and corporations, employment, and general business law. Candidates must be analytical, organized, detail-oriented, and able to perform with limited supervision. Bookkeeping and accounting skills a plus. Contact with clients and others required. Salary depends on experience. Send resume and cover letter to: Scott & Kalvig PC, PO Box 1678, Kalispell MT 59903.

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example in which Gonzales's statements appear to conflict with simultaneous actions by his aides in connection with U.S. attorney policies.

At issue in the dispute over Mercer were residency requirements for U.S. attorneys. Mercer has been largely absent from Montana while working as a senior aide to Gonzales for the past two years, a situation that has drawn the ire of U.S. District Chief Judge Donald W. Molloy of Billings.

Molloy wrote to Gonzales on Oct. 20, 2005, that Mercer was violating federal law because he "no longer resides in Montana" and was living with his family in the Washington area.

Three weeks later, on Nov. 10, Gonzales responded to Molloy that Mercer "is in compliance with the residency requirement" under federal law because he "is domiciled there, returns there on a regular basis, and will live there full-time as soon as his temporary assignment is completed."

On the same day back in Washington, the new legislation was added to the Patriot bill at the request of Mercer, who had been assigned the task of shepherding the provision through Congress,

ground, 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.

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Sen. Tester calls on Mercer to resign

On May 2, the day this *Washington Post* article was published, Montana Sen. Jon Tester issued the following statement:

"For months, I gave Bill Mercer the benefit of the doubt that he was shooting straight with me and with the people of Montana. Mr. Mercer has been given every opportunity to do right by the people he represents; he has passed on that chance too many times. Mr. Mercer was operating outside federal law, so he had the law changed. That might work in Alberto Gonzales' Justice Department, but it's no how we do business in Montana. He should resign his post as Montana's U.S. Attorney immediately."

according to congressional aides and new statements from one of Mercer's colleagues.

William E. Moschella, the principal associate deputy attorney general, also told House and Senate investigators that the residency provision was of particular interest to Mercer because of his dispute with Molloy, according to a congressional aide. Moschella said he believed other Justice officials were aware of the effort to get the provision passed, but did not identify them, the aide said.

Mercer made his request to Brett Tolman, who was counsel to Sen. Arlen Specter (R-Pa.), then chairman of the Senate Judiciary Committee. A spokeswoman for Tolman, now the U.S. attorney in Utah, declined to comment.

Specter's office suggested the measure was unremarkable. "The provision was included in the conference report at the request of the Justice Department," said Scott Hoeflich, a Specter spokesman. "It was shared with staffers on both sides of the aisle. It was included as a stand-alone provision in a draft of the conference report circulated on Nov. 10, 2005, and appeared in every subsequent draft."

Justice spokesman Brian Roehrka declined to comment on Mercer's role in securing the legislation or on whether Gonzales was aware of it at the time he wrote to Molloy.

Roehrka said the legislation "recognized a longstanding DOJ practice" of allowing prosecutors to serve in temporary postings. Thirty-five federal prosecutors have taken dual appointments under the provision in the last 10 months, he said.

Under the provision, Gonzales or his designee can exempt federal prosecutors

from residency requirements so they can take on "dual or additional responsibilities." Without such a waiver, federal law requires that a U.S. attorney "shall reside in the district for which he is appointed."

The new provision was retroactive to February 2005, before Mercer began working at Justice headquarters.

Mercer currently serves as the acting associate attorney general and has been nominated for appointment to the job permanently. He spends only about three days a month in Montana as U.S. attorney, according to congressional testimony, and is among about a half-dozen U.S. attorneys who currently work in senior jobs in Washington.

The practice has come under scrutiny in Congress because of claims by the Justice Department that it fired New Mexico prosecutor David C. Iglesias in part because he was absent from the job too much. Iglesias, who is a Naval Reserve officer, has filed a complaint with the Office of Special Counsel alleging that the firing was, among other things, a violation of federal laws prohibiting discrimination against military personnel.

"It's a curious contrast that leaders in the Department of Justice would slip a change into law to allow one U.S. Attorney to spend only a few days a month in his district and keep his job, while at the same time claiming to fire another for spending a few days a month away from his district to serve his country," Sen. Patrick J. Leahy (D-Vt.) said in a statement.

THIS ARTICLE APPEARED in the *Washington Post* on May 2.



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