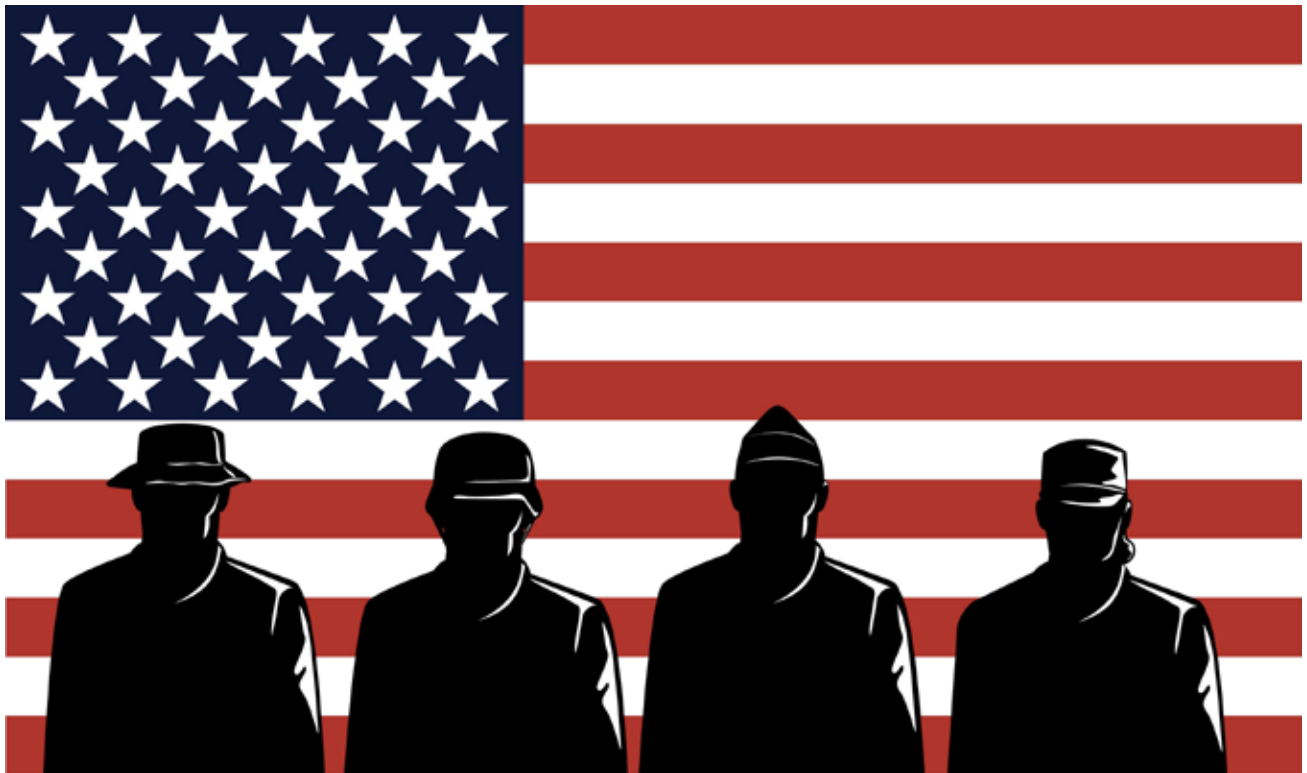


# MONTANA

# LAWYER

State Bar  
— of —  
Montana

April 2015 | Vol. 40, No. 6



## Vets' representation needs

Study finds assistance seeking benefits is needed but difficult to find — Page 18

New State Bar of Montana section proposed to address needs of veterans — Page 10

### Also in this edition:

- > State Bar submits comment to Supreme Court on proposed reciprocity rules
- > Evidence Corner: Montana Rules of Evidence essential in any trial in Montana

- > Nomination forms for Karla M. Gray Equal Justice Award, Neil Haight Pro Bono Award inside
- > Accepting cases that involve domestic violence can be a very rewarding experience

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### From the cover

Veterans are among the groups identified as a population in particular need of consideration in "The Justice Gap in Montana: As Vast as Big Sky Country," a study authorized by the Access to Justice Commission (See page 18). Also, State Bar members have proposed a new section to address the needs of veterans (see page 10).

# 100-year-old journal shows main issues for lawyers unchanged, despite tech 'advances'

Technology. The deadline for these "President's Messages" are sneaky things. Until now, I have managed to meet them. This one, ugh. It is timely, but a bit rough.

It started out OK, then Mr. Rockwood Brown, an 84-year dean of the Montana Bar and fellow Macallan aficionado, stopped by for lunch, handed me an innocent looking book and we made our way to a pleasant lunch. I came back to finish up my Message, took a peek at the book, and had to hastily make some changes. The deadline is now charging like a bear. My bear spray is in the tent.

President-Elect Matthew Thiel, as custodian of the annual State Bar Retreat, has asked us to focus on technology. His focus is appropriately narrowly defined as making the State Bar a helpful enterprise at insuring the technological advances (if you want to call them advances) more accessible, more understandable and less dangerous to our members. It's a worthy effort, and consistent with what we are hearing from every corner of the world. Given technology, we have research and writing outsourced to India on a grand scale; instant legal research access available to all; and a multi-billion-dollar industry in computer-access legal forms, and, in my view, advice. When I use your dues to attend seminars in big American cities, the experts foretell of ominous changes to come — but are not quite clear as to what they are. It is clear, if something can be done by a robot, it will be.

No doubt, a lawyer must be cognizant of the modern technological trends even outside the day-to-day practice of law. For example, all litigators have a Facebook story where their case was won or lost because of some improvident social media post.

Thus, I was going to make some attempt to harmonize Mr. Thiel's effort with comments on technology and its affect on law, lawyering, and lawyers. Largely I was going to leave technology's effect on the law alone. That's what the Intellectual Property crowd is for. Similarly, technology's effect on lawyering is already known by you, or you have intentionally decided to turn your back on it. You know about the days before word processing; cellphones; e-mail and the Kardashians. If you don't, it's because you are too young and have been assiduous about avoiding me and those of my vintage droning on about the "good ol' days."

But what has technology done to "lawyers"? This is where Rockwood's book comes in. His father, Rockwood Brown Sr., was a lawyer at the turn of the century and Rocky handed me, just before lunch, a thin volume entitled "*Reports of the Montana Bar Association from January 13, 1903 to February 3, 1914.*" This is interesting. I thought, I have some material on how lawyers have changed. A chance to compare and contrast the issues, then and now. The complete lack of perceptible change is stunning.

The Montana Bar Association record of proceedings chronicles the issues facing the Bar then, and they are identical to the issues we face now. In 1905, they debated putting a federal courthouse in Billings to meet expanding caseload in the Billings area; the decline over 50 years in the prestige of lawyers; the relative shortage of lawyers, and what the credentials for lawyers should be. They talked civilly amongst themselves about the issues of the day. They advocated for more uniform laws. Some complained about the Montana Supreme Court as having too many technical rules and the federal courts being in the back pocket of the moneyed class. The Bar supported appointed judges, not elected judges, but realized the folly of pursuing the matter from a political perspective. Some complained about the sensationalism in the press brought to criminal cases. In the 100 years that followed, the substance of the issues the assembled Executive Committee of the State Bar faced then differs so little from what we face now, the differences are not worth mentioning. What is worth mentioning is that, in the interim, we have jet travel; instantaneous communications; two World Wars (at least) and the nuclear age.

My intent to make some headway on the issue of how technology has affected lawyers, in their capacity as lawyers, could not withstand the bright glare of contradictory evidence. There is so much in this book relevant to today's practice that I am seeing if it can be posted online.

Because the book is an unpolished chronicle of our predecessors in Montana law, we can see so much that relates to our current era, which we shamelessly call "modern." The members do herald the invention of the typewriter as providing a convenient way for copies to be made. The papers presented to the State Bar Annual Meeting were erudite to a point that this small volume could substitute for any, perhaps all, entries on a modern jurisprudence class syllabus.

Some observations were quite frank. On annual meetings:

*"Our annual meetings are pleasant occasions but unless something beneficial is suggested or accomplished they are of little value."*

On the Supreme Court/State Bar relations:

*"There is no prouder history in our profession than the instances when the bar has stood on its side of the dividing line and said things which the court disapproved and forbade, but said them with unbending sternness."*

At one point in reading the book, I did wonder if the State Bar of a century ago might have set a standard which we have

### Retirement party for Hon. Ed McLean April 30

Colleagues, friends and family of the Honorable Edward P. McLean will be hosting a party to celebrate Judge McLean's career and retirement from the bench on April 30.

McLean, 69, is stepping down from the bench after 26 years presiding as District Court judge in Missoula. He is currently the longest-serving judge in Missoula County.

The retirement party will be held on April 30, 2015, starting at 5 p.m. at the Holiday Inn in downtown Missoula. Please mark your calendar and join in celebrating Judge McLean's amazing career.

### Worden Thane welcomes Johnson

Worden Thane P.C. in Missoula has announced the addition of Chris Johnson to the law firm.

Johnson has been in practice for over 20 years, first in Washington state and for the last 13 years in Missoula.



Johnson

Worden Thane plans to utilize Johnson's significant experience in the areas of real property and business law, and his particular emphasis in development, business and real estate transactions, entity formation, boundary and access issues, and related business planning.

Johnson can be reached by contacting Worden Thane P.C. at 406-721-3400, or through the firm's website, [www.wordenthane.com](http://www.wordenthane.com).

### New associate at Murphy Law Firm

Thomas M. Murphy recently joined Murphy Law Firm in Great Falls as an Associate Attorney. Murphy grew up in Great Falls and graduated from C.M. Russell High School. He received his undergraduate degree in political science from the University of Montana in 2010, and he received his law degree from the University of Montana School of Law in May of 2014.



Murphy

Murphy will represent injured workers, victims of car accidents, and disabled people applying for Social Security disability benefits. Murphy is admitted to practice in all Montana courts and the U.S. District Court. He is a member of the Cascade County Bar, State Bar of Montana, American Bar Association, Montana Trial Lawyers Association and the Workers' Injury Law & Advocacy Group.

### Lucas joins Rubin & Ries Law Offices

Emily A. Lucas has joined Rubin & Ries Law Offices, PLLC as an associate attorney where she will practice family law, with an emphasis on civil cases involving domestic violence.

Born and raised in Missoula, Montana, Lucas earned a Bachelor of Arts degree in political science and minor in

women and gender studies from the University of Montana in 2010, and graduated from the University of Montana School of Law in 2014.

While in law school Lucas concentrated her clinical studies in family law, focusing on serving survivors of domestic violence. In recognition of her clinical and volunteer efforts, she was awarded Missoula Family Violence Counsel 2013 Citizen of the Year, Montana Bar Association 2014 Pro Bono Student of the Year, and was the 2014 recipient of the Florence S. Wold Award for dedication to providing legal services to low income people.

Lucas represented UMSL in the American Bar Association Client Counseling Competition in 2012 and the National Moot Court Competition in 2014, through which she was admitted to the Order of Barristers in honor of her excellence in written advocacy.

She can be contacted at [elucas@rubinrieslaw.com](mailto:elucas@rubinrieslaw.com) or 406-541-4141.

### Elshoff appointed Teen Court judge in Texas

Jim Elshoff, a State Bar of Montana member who moved to Texas in 2007, has recently been appointed as Teen Court Judge, an arm of the Municipal Court for the city of San Marcos.



Elshoff

Youth ages 10-17 will have pled guilty or nolo contendere to Class C misdemeanors, and the Teen Court presides over the sentencing phase, which includes mandatory service by other teens as part of their sentence for prior offenses. The Teen Court provides a second chance for juvenile offenders, and completion of their sentence results in dismissal of the charge.

Elshoff has practiced law since 1985; in addition to membership in the Montana Bar, he is also licensed in the federal courts in Texas and the U.S. Supreme Court. He is a law professor at Texas State University and Wayland Baptist University, a certified mediator, and the pastor of two small churches in central Texas.

### Indian Law Week events scheduled April 13-17

The Native American Law Students Association (NALSA) at the University of Montana School of Law will be hosting its annual Indian Law Week, April 13-17. This year's theme is Law, Culture and the Environment. NALSA will host lunch and bring in speakers to discuss a variety of topics impacting tribal communities, such as natural resource extraction, the Columbia River Treaty, and environmental regulations. These sessions are April 13-15 from noon to 1 p.m. in UM Law School room 101. They are free and open to the public.

On April 16, Continuing Legal Education will be offered from 8 a.m. to 5 p.m. at the Holiday Inn Downtown, co-sponsored by the Montana State Bar's Indian Law Section. Featured speakers are Kimberly Varilek from the EPA's Region 8 Office

## Member and Montana News

of General Counsel, David House from Vasquez Estrada & Conway LLP, Carrie Le Seur from Baumstark Braaten Law Partners, Kenneth Pitt who is a CSKT Associate Justice Court of Appeals & UM Adjunct Professor, and Matt McKinney the Director of the Center for Natural Resources & Environmental Policy. Cost for the CLE is \$100 for attorneys, \$70 for Indian Law Section members and \$50 for non-attorneys.

A reception, silent auction and presentation of the Mi-Ha-Ka-Ta-Kis (Ray Cross) Award will follow the CLE on April 16 from 6:30 to 9:30 p.m. Tickets for the reception are \$10 for the general public or \$5 for students. For more information or to register for the CLE, please visit their Facebook page at MT NALSA or the UM Events Calendar at <http://www.umt.edu/law/newsevents>.

### Innocence Project to have movie screening, CLE

The Montana Innocence Project will present a film screening of *After Innocence* with a panel discussion to follow April 8 at Missoula's Roxy Theater.

The panel discussion will feature Montana Innocence Project Legal Director Larry Mansch, Attorney Colin Stephens, and private investigator Jeff Patterson.

The event will be April 8; 6 p.m. at the Roxy Theater in Missoula.

There will be 2.0 CLE ethics credits offered; a \$40 donation is suggested.

### Montana has record number of ABA delegates

Some recent developments have given Montana its biggest delegation ever in the American Bar Association House of Delegates.

There are now five Montana lawyers serving as delegates and after the Annual Meeting in August there will be six. Each state, along with the District of Columbia and Puerto Rico, is guaranteed a minimum of two delegates. Until recently, there had never been more than three delegates from Montana, according to Butte attorney Robert Carlson. Carlson recently

completed a term as chair of the House of Delegates, which gives him a lifetime appointment as a delegate.

The other five Montana delegates are:

- Damon Gannett, Billings – Montana ABA Delegate and Chair of the Delegation
- Shane Vannatta, Missoula – ABA Delegate from the State Bar of Montana
- Jock Schulte, Missoula – Thirteenth District Governor to the ABA Board of Governors (3 year term)
- Erica Grinde, Missoula – Young Lawyers Division nominee to the ABA Board of Governors (term starts in August, 2015 for three years)
- Tony Patterson – ABA Health Law Section Delegate

Carlson said that the record ABA representation for Montana is mostly a matter of timing and circumstances. Patterson was already a Health Law Section delegate when he moved here from Texas a few years ago, becoming the third delegate.

Every 12 years, Montana is entitled to a seat on the ABA Board of Governors. Schulte became the fourth member of the Montana delegation when he was elected for a three-year term in 2013.

Vannatta became the fifth when Carlson was elected to be Chair of the House. Carlson was serving as the Montana State Delegate when he was elected to be the Chair.

Erica Grinde from the Missoula County Attorney's Office was nominated to take a seat as a Young Lawyers Division representative to the Board. She will round out the delegation when she goes on the Board this August and joins the Montana Delegation in the House of Delegates.

The increase in the size of the delegation has been noticed in the ABA, and has indirectly lead to committee and commission appointments within the organization. According to Carlson, this is mostly because the state's attorneys have proven their effectiveness.

"People listen and stand up and pay attention because they know we have attorneys who roll up their sleeves and do the work."

## State Bar News

### Nominations for Bar awards open now

Nomination forms for the William J. Jameson Award, George L. Bousliman Professionalism Award, Karla M. Gray Equal Justice Award, and the Neil Haight Pro Bono Award are available at [www.montanabar.org](http://www.montanabar.org). Gray and Haight forms are available on pages 7 and 9 in this edition. Deadline for Gray nominations is **May 15** and Haight nominations is **July 1**.

Jameson and Bousliman forms were printed in the March edition. Information and criteria are listed on the individual award forms. Deadline for Jameson and Bousliman nominations is **May 15**.

### Bar dues deadline was April 1

The State Bar of Montana mailed annual dues statements to attorneys on March 1. Payments for all fees were due **April 1**. If you haven't paid your dues yet, be sure to do so immediately. Dues can be made by check or online with a credit card. CLE transcripts will be mailed separately in April with a filing deadline of **May 15**.



# Pro bono report shows participation increase

The Montana Supreme Court and the State Bar of Montana are pleased to announce the results of the State's 2014 attorney pro bono report, which shows a significant increase in the number of attorneys providing free legal services.

According to the report, 2,387 Montana attorneys (84 percent) volunteered free and substantially reduced fee legal services to low-income Montanans across the state in 2013. That is a 14 percent increase over 2012, when 2,025 (70 percent) reported pro bono hours. The value of pro bono legal services approaches \$19 million. However, that is down 5 percent from the nearly \$20 million value of services reported in 2013.



McGrath

Supreme Court Chief Justice Mike McGrath said the biggest challenge the judiciary faces is the increased number of litigants that are self-represented. He said the Court is able to address some of that with the Court Help Program and through the forms and directions provided on the court website.

"Without the assistance of a substantial amount of members of the Bar taking pro bono cases, we would never get through the process," McGrath said. "I feel good that the State Bar has so many people who have taken so many cases without fee."

Current State Bar President Mark Parker said the report illustrates how much Montana's lawyers do every year to enrich the state. He added that using the billable hours metric to measure attorneys' pro bono efforts is a bit unfortunate, but probably unavoidable.

## Read the report online

The full 2014 pro bono report is available online at [www.montanabar.org](http://www.montanabar.org) and at [www.courts.mt.gov](http://www.courts.mt.gov).

"Many charitable, civic and religious efforts would fail without free guidance from our Bar members, and much of the good and hard work gets forgotten before it can be reported," Parker said. "I am proud to be a part of these folks."

Pro bono services are most often provided to low-income clients in family law matters, including adoptions, guardianships, divorces, parenting plans and child support issues and includes victims of domestic violence. However, attorneys provide pro bono services to many other qualifying clients, including the elderly, military veterans and organizations serving low-income individuals.

Rule 6.1 of the Montana Rules of Professional Conduct state that "[a] lawyer should render at least 50 hours of pro bono publico legal services per year."

Attorneys who volunteer their legal services report a great deal of personal satisfaction. Sixty-six percent of attorneys providing pro bono service in 2014 rated their experience, with 94 percent indicating the pro bono work was a positive experience.

The full pro bono report is available at [www.montanabar.org](http://www.montanabar.org) or [www.courts.mt.gov](http://www.courts.mt.gov).

## State Bar of Montana elections begin

Election season is under way for State Bar positions. Letters have been sent to those whose terms are expiring. The nominating petition was published in the March issue of the Montana Lawyer, and is available at [www.montanabar.org](http://www.montanabar.org). The following positions are up for election: Areas E, F and H; Secretary/Treasurer; President-Elect.

### 2015 election calendar

- March — Letters to Areas E, F and H trustees, and Secretary/Treasurer whose terms are expiring, enclosing nominating petition and deadline for returning to bar
- April 6 — Filing deadline for original nominating petitions (Postmarked or hand-delivered 60 days before election)
- April 13 — Ballots to printer (only contested races)
- May 6 — Ballots mailed no later than 30 days before election (contested races only)
- May 26 — Ballots postmarked or hand-delivered no less than 10 days before the date of the election
- June 5 — Ballots counted, affidavit signed by canvassors; elected officers and trustees will be notified by executive director

# Karla M. Gray Equal Justice Award

This award honors a judge from any court who has demonstrated dedication to improving access to Montana courts. Consideration for this award will be given to nominees who demonstrate this dedication and commitment with a combination of some or all of the efforts described below:

- Personally done noteworthy and/or considerable work improving access of all individuals, regardless of income, to the Montana court system.
- Instrumental in local Access to Justice efforts, including program development, cooperative efforts between programs, and support for community outreach efforts to improve understanding of and access to the courts.
- Active support of citizen involvement in the judicial system.
- Active support and commitment to increasing involvement of volunteer attorneys in representing the indigent and those of limited means.
- Other significant efforts that exhibit a long-term commitment to improving access to the judicial system.

The Access to Justice Commission selects one award winner. Nomination materials will be retained and considered by the Access to Justice Commission for three years.

Nominee: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**On a separate sheet of paper**, please describe how the nominee has demonstrated dedication to improving access to Montana courts. Please attach additional pages as needed, and other supporting documents.

Your signature: \_\_\_\_\_

Print your name: \_\_\_\_\_

Your address: \_\_\_\_\_  
\_\_\_\_\_

Your phone number: \_\_\_\_\_

**Please mail the nomination by May 15 to:**

Karla Gray Award  
c/o Erin Farris-Olsen  
State Bar of Montana  
P.O. Box 577  
Helena, MT 59624

# Indian Law Summer Program offers 15 CLE credits

Montana is home to seven Indian reservations, 12 federally recognized tribes and one state recognized tribe. This physical presence means the intersection between Indians and non-Indians, as well as tribal, federal and state governments and agencies occurs with increasing frequency. What retired Professor Ray Cross said 20 years ago remains true, “[i]f you’re an attorney in a small town in Montana you can’t avoid the practice of Indian law.” A working knowledge of Indian law concepts remains significant for many attorneys and entities working with Indian people or on Indian issues.

Indicative of the prominent stature of Indian law in Montana, 44 important U.S. Supreme Court cases have arisen in Montana. Recognizing the particular importance in Montana of having a working knowledge about Indian law, the University of Montana School of Law strives to maintain a leadership role by providing a strong educational program designed to meet these needs. Building on Margery Hunter Brown’s vision, which led to the first in-house Indian Law Clinic in the United States, the Law School began enhancing its academic year Indian law course offerings with a Summer Indian Law program in 2008.

The American Indian Law Summer Program provides

an opportunity for law students from around the U.S., UM graduate students, attorneys and other people working with Indian people or on Indian issues to achieve a deeper understanding on a variety of Indian law topics. Taught in a 9 a.m. to noon, one-week, one-credit format, the course offerings this year cover Indian Law Research, June 1-5; Voting Rights in Indian Country, June 8-12; Indian Child Welfare Act, June 15-19; Criminal Jurisdiction in Indian Country, June 23-27; Indigenous Culture Preservation, June 29-July 3; American Indian Natural Resource Law, July 6-10; Indian Property law, July 13-17; and Constitutional and Code Drafting Issues Relating to Indian Law, July 20-24. Pending approval, each course will be worth 15 CLE credits.

As these courses will demonstrate, American Indian law concepts reflect not only the impacts of U.S. history and policies, but the richness and resilience of tribal people and their governance structures. This is a chance to bring clarity to complex areas of law while enjoying the pleasures of Missoula in the summer.

For additional information about the program, please visit the Summer Indian Law program website at: [umt.edu/indianlaw](http://umt.edu/indianlaw).

*Register today! A limited number of spots are available for this program.*



*27<sup>th</sup> Annual*

**ADVANCED  
TRIAL  
ADVOCACY  
PROGRAM**

*May 25-29, 2015*

Register today for this intensive hands-on course in trial advocacy offering tips and techniques from jury selection to closing arguments. An outstanding group of Montana trial lawyers and judges will demonstrate skills and critique your performance.

**Topics Include:**

- Effective Jury Selection
- Compelling Opening Statements
- Creating Dynamic Trial Visuals
- Courtroom Communication Techniques
- Depositions
- Formulating a Direct Examination Strategy
- Art of Cross Examination
- Presenting and Attacking Expert Testimony
- Persuasive Closing Arguments
- Ethical Pitfalls for Trial Lawyers

**Tuition:** \$1200 (Approx. 30 CLE credits, including 1 ethics credit - pending approval)  
Enrollment for this program is limited. Register early to avoid being placed on a wait list. A limited number of partial tuition scholarships are available for public service attorneys.

**Faculty Include:** Ron Clark, Esq.; Michael Cok, Esq.; John Connor, Esq.; Randy Cox, Esq.; Triel Culver, Esq.; Katie DeSoto, Esq.; Professor Cynthia Ford; Sean Goicoechea, Esq.; Steve Harman, Esq.; Tom Henderson, Esq.; Natasha Prinzing Jones, Esq.; Michael Lessmeier, Esq.; Hon. Ted Lympus; Keith Strong, Esq.; Hon. Karen Townsend; Hon. Loren Tucker; and Gary Zadick, Esq. Communication faculty include Sam Boerboom, Ph.D.; Nikki Schaubel, M.S.; and Melinda Tilton, M.A.

**To register:** visit the calendar of events at [umt.edu/law](http://umt.edu/law).

For registration questions, contact the School of Law at (406) 243-4311.

For program questions, contact: Karen Stephan, Boone Karlberg P.C., (406) 543-6646.



# Neil Haight Pro Bono Award

This memorial award is named in honor of Neil Haight, the Executive Director of Montana Legal Services Association for more than 30 years.

Through Neil's leadership, MLSA survived numerous attacks during his many years at its helm. His effort left a solid foundation which eventually led to the current MLSA structure as a statewide law firm. His optimism carried MLSA staff through the darkest years when many thought all hope of civil legal assistance to the poor was lost. Despite numerous and endless attacks, Neil never lost faith in the vision and goal of MLSA.

After his retirement in 2002, Neil remained the icon of MLSA until his death in 2008. His passion for justice and his compassion for Montanans living in poverty was a model many lawyers, both within and outside MLSA, in those early years of "legal aid" in Montana.

The Neil Haight Pro Bono Award recognizes a person who exemplifies Neil's legacy of providing outstanding legal services to Montanans living in poverty. The nominee is a lawyer, other individual or organization which has provided pro bono services to those in need in Montana. While the nominee may be a lawyer who has provided direct pro bono legal representation, he or she may also be a court employee, paralegal, psychologist, or social worker who has provided pro bono services in aid of direct pro bono legal representation in Montana.

Nominations are also accepted for law firms, teams of lawyers, and associations of Montana lawyers and pro bono programs receiving no form of compensation or academic credit for doing pro bono work and whose work was not a non-legal public service.

Attorney nominees must be admitted to practice in Montana. Nominees cannot be employees of organizations which provide free or low-cost services to the poor.

The Neil Haight Pro Bono Award is conferred periodically after review of all nominations, by the State Bar Justice Initiatives Committee. Individual or organizations which submit the nomination may submit more than one nominee.

**In honoring Neil, the recipient of this award should demonstrate some of the following:**

- a. *be a dedicated, committed leader instrumental in the delivery of civil legal services to Montanans living in poverty; or*
- b. *be a key person in the development of a pro bono program for a bar association or community organization; or*
- c. *contribute significant work toward creating new and innovative approaches to delivery of volunteer civil legal assistance through a new or existing pro bono program sponsored by a bar association; or*
- d. *perform significant and meaningful civil pro bono activity which resulted in satisfying previously unmet needs or extending services to underserved segments of the population; and/or*
- e. *Successfully litigated pro bono civil cases which favorably resulted in the provision of other services to Montanans living in poverty.*

**Nominee Information:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Organization (if applicable) \_\_\_\_\_

**Nominator Information:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Organization \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**On separate pages, please describe the following:**

- 1) Please describe the ways in which the nominee has provided outstanding pro bono services. This may include a compelling case that the nominee assisted with or litigated on a pro bono basis. Alternatively, this may include a history of dedication to the pro bono cause including expansion of pro bono effort in an under-served area, a willingness to continually accept pro bono work or difficult cases on a pro bono basis, or some other qualitative improvement to legal services for Montanans in need. If possible, please quantify the nominee's pro bono contribution by detailing the approximate number of hours donated or the number of cases in which he or she is or was involved. Please be

individual's or organization's work which mirrors Neil Height's dedication to pro bono.

- 2) Please briefly describe the nominee's professional career including a history of dedication to serving the under-served in Montana.

Nominations and supporting documents will not be returned. Send them no later than July 1 to:

Neil Haight Pro Bono Award  
Justice Initiatives Committee  
PO Box 577  
Helena, MT 59624

# New section proposed to address vets' needs

A 2012 study commissioned by the State Bar revealed a serious shortage of legal assistance to Montana's veterans. Montana has the second largest population of veterans per capita in the U.S., so the study tried to determine the legal needs of our veterans and active-duty servicemembers. The most common civil legal issues of the survey respondents included creditor, debt, or collection issues, veteran-specific issues (i.e., dealing with the Veterans Administration, review of discharges, etc.), family law issues, and employment difficulties.

The survey showed that a quarter of veterans were having difficulties paying bills, a third had veteran-specific problems, a quarter were experiencing a family law problem, and just under a quarter had recently had an employer/employment problem. In most cases, veterans had not tried to have a lawyer handle their problem, either because they could not afford one or because they tried to handle it themselves without legal advice. One may infer from the numbers that few persons in those situations knew of the availability of a lawyer-referral service, modest means representation, limited scope, or of *pro bono* potential. At the time of the study, many of the veteran's problems identified had not been resolved and still existed.

Accordingly, State Bar of Montana members have proposed the creation of a new Bar Section, which will focus on military legal issues and veterans legal needs in particular. Section attorneys could assist in the *pro bono* Legal Document Clinics held around the state (reducing travel), or similarly coordinate with the MLSA or persons who help run the Bar's Self-Help Centers in order to address veteran-specific issues. They could also appear at Veteran Stand-Downs in their community, again to address veteran issues. It would create a pool of veteran-issue-savvy lawyers upon whom an agency could call when a veteran with legal issues appears. Since many issues are finance-related, the Section could arrange with volunteers from local credit counseling offices to participate when needed. The Legal Document Clinics have an established process of first meeting with

## See related article

This month's article in a series looking at the Montana Access to Justice Commission's Gaps and Barriers study focuses on veterans as a population in need of particular attention. See page 18.

veterans wanting assistance, determining what their needs are, then later having them visit with a volunteer attorney. This would reduce wasted time for the lawyer and would allow the attorney to see what the need is, and arrive at the meeting with the needed resources (when possible).

Section attorneys would have access to CLE trainings and materials on veteran and military legal issues at a reduced price. Section membership would also foster networking opportunities for lawyers practicing in the field to share experiences and information. The Section can focus on connecting lawyers trained in military and veteran law with the veterans needing legal services. The 2012 study demonstrated that veterans would benefit from the resolution of their legal issues through modest means, limited scope, *pro bono*, or full scale representation and the new section can aid in making those attorney referrals.

The Veteran's Law Section would create that pool, and would better enable the Bar to advertise our availability for those who are not aware of the option. In creating this section, Montana would join 20 other state bar associations that maintain a section of similar focus. But that requires volunteers, and your Bar needs help to come up with Section members to share the load.

If you want information, want to make suggestions, or wish to add your name for the Section, please contact Steve Garrison at [turbo159@earthlink.net](mailto:turbo159@earthlink.net).



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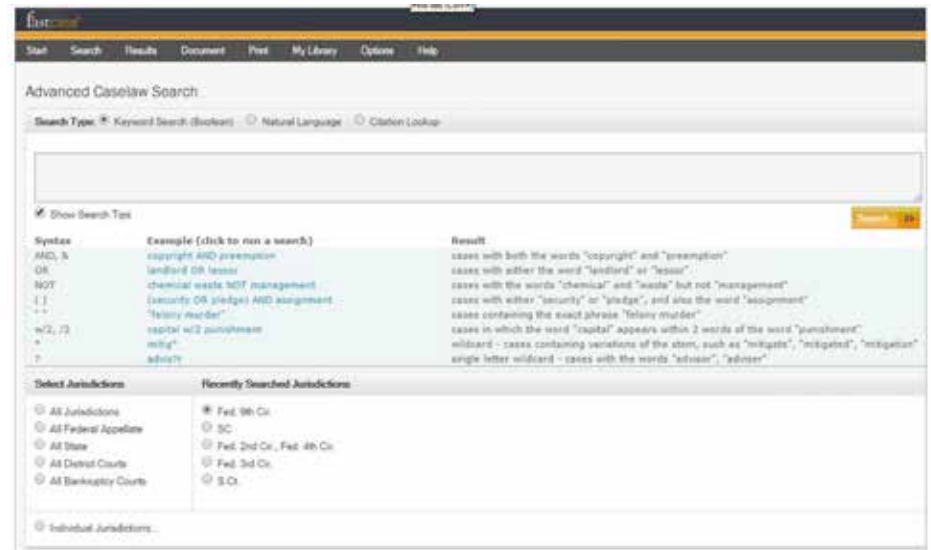
# Fastcase's advanced caselaw search: How to frame a search

*This is the latest installment in a series of articles about making Fastcase work for you through your Bar membership.*

Users may launch Fastcase's proper search function by clicking on Advanced Caselaw Search at the top of the left column of options on the welcome Quick Caselaw Search screen. On this screen the user must simply tell the database two things: what to look for and where to look. In this article, we'll look at how we tell the database what we want it to search for. In the following article we'll run an actual search and discuss ways of arranging the results to make them as responsive and accurate as possible.

Let us start with a quick thought about methodology: These notes are intended for a wide audience of attorneys using Fastcase as a member benefit of many bar associations, some of them jurisdictional and some of them subject matter. These various bar packages offer sometimes different content packages. In order to make this article as useful as possible, I'll pick a general federal case search. What I do in the next article with this general federal appellate search, you can do within your particular jurisdictions, whether searching for "allowable rate of interest" in Missouri or "sentencing and mitigation" in Maryland or "patent and obvious and registration" in the U.S. Court of Appeals for the Federal Circuit. In short, we'll use the mutatis mutandis approach: The search we run now will demonstrate principles and methods that you will be able to import into your own research projects.

So how do we tell the database what to look for? We use search terms that cover the subject matter and that are the terms likely to have been used by the court. It matters how we express these terms, and the search system that Fastcase (and virtually all other databases you will search, legal and non-legal) uses is called Boolean, after George Boole, a 19th century British



The image above shows what the advanced caselaw search page looks like. In particular, note the content box and the jurisdictional buttons.

mathematician and logician. There is no reason to be intimidated by a fancy term like "Boolean searching". Immediately below the box for search terms you will find a collection of rules and hints for Boolean searching, with some further advice offered in this entry from the Fastcase blog: [www.fastcase.com/tip-learn-to-use-boolean-operators/](http://www.fastcase.com/tip-learn-to-use-boolean-operators/). Let me note quickly just a few of the most common and useful Boolean choices you will have to make:

Do you want an and or an or? The default connector on Fastcase is and. Thus a search for adoption parent consent will yield cases containing all three of those words. If you want cases containing any one of those words, you must specify: adoption or parent or consent.

Do you want a word or a phrase? If you want cases that contain the words summary and judgment, you need only search for summary judgment. If, however, you want the term summary judgment as a phrase, you can specify that choice by using quotation mark to search for "summary judgment" instead. Using the quotation marks will give you only

that exact phrase in your results.

Are you not sure how the courts may have said something? You can tell the database to search for options. To give an example, you have a client who underwent a spontaneous search of his car trunk during a traffic stop. How do the courts treat these matters? Have they set down conditions for consent or exigent circumstances or intrusiveness or probable cause that would shed light on the propriety of the search? It's an easy enough search: warrantless search trunk car. Wait, you say: what if the judge says not car but automobile? Do I run the risk of missing cases or having to run duplicative searches? There is a way, using parentheses, that you can tell the database to search for alternatives even within an and search. If you type into the terms box warrantless search trunk (car or automobile), your results list will give you cases containing the words warrantless, search, trunk and either car or automobile. This is the sort of flexibility that makes your research time much more productive and efficient.

# Bar is monitoring bills in 2015 Legislature

The following are bills that the State Bar of Montana is monitoring in the 2015 Montana Legislative Session. Each entry on the Bill Watch page is linked to the bill's page on the Montana Legislature's Detailed Bill Information website and will indicate whether the Bar supports, opposes or is taking no position on the bill.

To follow the progress of the bills the Bar is watching, click on the Legislative Bill Watch updated daily at [www.montanabar.org](http://www.montanabar.org).

- HB2: Sponsor – Nancy Ballance (R) HD87 – General Appropriations Act; Bar's position: Support judicial
- HB 12: Sponsor – Ellie Boldman Hill (D) HD90 – Provide for a decree of dissolution without a hearing when uncontested; Bar's position: Monitoring
- HB 26: Sponsor – Margaret MacDonald (D) HD51 – Adjust debt limit allowed for summary dissolution; Bar's position: Monitoring
- HB 74: Sponsor – Ryan Lynch (D) HD76 – Require notice to the attorney general regarding data breaches; Bar's position: Support
- HB 133: Sponsor – Margaret MacDonald (D) HD51 – Authorize the public defender to award fixed-fee contracts; Bar's position: Monitoring
- HB 139: Sponsor – Nate McConnell (D) HD89 – Clarify public defender involvement in eligibility determination; Bar's position: Monitoring
- HB 143: Sponsor – Nate McConnell (D) HD89 – Suspend payment of public defender fee during incarceration; Bar's position: Monitoring
- HB 255: Sponsor – Matthew Monforton (R) HD69 – Referendum regarding disqualification of judges receiving certain contributions; Bar's position: Oppose
- HB 261: Sponsor – Ryan Lynch (D) HD76 – Revise laws regarding clerk of court fees for transmitting records; Bar's position: Monitoring
- HB 272: Sponsor – Ellie Boldman Hill (D) HD90 – Adoption of the uniform collaborative law act; Bar's position: Oppose
- HB 343: Sponsor – Bryce Bennett (D) HD91 – Prohibit request of online passwords as a condition of hiring or employment; Bar's position: Monitoring
- HB 366: Sponsor – Geraldine Custer (R) HD39 – Revise county district court clerk and justice of peace compensation laws; Bar's position: Monitoring
- HB 430: Sponsor – Steve Fitzpatrick (R) HD69 – Provide for an interim judicial redistricting commission;



Bar's position: Support

- HB 447: Sponsor – Kirk Wagoner (R) HD75 – Revise right to participate laws related to attorney fees; Bar's position: Monitoring
- HB 448: Sponsor – Kirk Wagoner (R) HD75 – Revise right to know laws related to attorney fees; Bar's position: Monitoring
- HB 461: Sponsor – Steve Lavin (R) HD8 – Revise salary for certain justice position; Bar's position: Monitoring
- HB 513: Sponsor – Andrew Person (D) HD96 – Clarify rules of evidence for mental health professional-client privilege; Bar's position: Monitoring
- HB 515: Sponsor – Willis Curdy (D) HD98 – Revise Montana's probate code; Bar's position: Monitoring
- HB 615: Sponsor – Carl Glimm (R) HD6 – Revise laws related to the fundamental rights under the MT Constitution; Bar's position: Monitoring
- HJ 21: Sponsor – Bryce Bennett (D) HD91 – Interim study on ownership of personal information; Bar's position: Monitoring
- SB 15: Sponsor – Nels Swandal (R) SD30 – Clarify laws relating to the call of a retired judge or justice; Bar's position: Support
- SB 59: Sponsor – Robyn Driscoll (D) SD 25 – Clarify the court's consideration of the eligibility process; Bar's position: Monitoring
- SB 72: Sponsor – Taylor Brown (R) SD28 – Allowing political party endorsements and expenditures in judicial races; Bar's position: Monitoring
- SB 89: Sponsor – John Brenden (R) SD17 – Require supreme court justices/district court judges to file financial reports; Bar's position: Support
- SB 139: Sponsor – Diane Sands (D) SD49 – Revise jury selection laws; Bar's position: Monitoring
- SB234: Sponsor – Fred Thomas (R) SD44 – Revise tax and fees for professional liability insurance; Bar's position – Informational
- SB 235: Sponsor – Kris Hansen (R) SD14 – Generally revise laws related to the courts; Bar's position: Support
- SB 253: Sponsor – Mary McNally (SD24) – Provide for uniform act for powers of appointment for estate planning; Bar's position: Monitor
- SB 266: Sponsor – Mary McNally (SD24) – Provide for uniform act regarding fiduciary access to digital assets; Bar's position: Monitor
- SB 306: Sponsor – Elsie Arntzen (R) SD26 – Generally revise laws on notarial acts; Bar's position: Monitoring
- SR 15: Sponsor – Scott Sales (R) SD35 – Confirm governor's appointees to the judiciary; Bar's position: Monitoring

Follow the progress of the bills the State Bar of Montana is watching by clicking the Legislative Bill Watch logo at [www.montanabar.org](http://www.montanabar.org).



# Bar submits comment on reciprocity proposal

The State Bar of Montana has submitted comment to the Montana Supreme Court on proposed changes to the admission rules that would adopt reciprocity rules and re-implement admission on motion in Montana.

Given the diversity of opinion on the issues, the Bar's comment takes no position on the proposed rule changes. The State Bar's Board of Trustees chose instead to provide basic information about the Bar's current admission structure and the structures of the states that have admission on motion.

In addition, the board's comment requests that if the court does adopt the proposed rules, the Court assess a fee sufficient to ensure admission on motion applicants bear the full financial cost for the measures taken to absorb their membership so that current State Bar members and attorney applicants taking the Montana bar exam bear none of the costs.

To accommodate the costs of absorbing the Court's proposed changes, the State Bar requests that total admission fees be assessed at the amount charged in New Mexico, \$2,500. New Mexico is the model for the Court's proposed rules. The State Bar also requests re-examination of the fee structure annually.

New Mexico's admission coordinator reports that that state's fee of \$2,500 "is about right," and she notes that this fee is a substantial savings for applicants who would ordinarily confront costs of at least \$10,000 to travel, study, take a bar review course and time away from their practice.

Averaging the numbers supplied by other states that have recently adopted admission on motion, Montana can anticipate approximately 100 admission on motion applicants initially, with that number leveling off in successive years.

## Montana Petroleum Association's proposed rule amendments

The Bar's comment on the proposed reciprocity rules also makes note of another rule change proposal before the Court. The Montana Petroleum Association has asked the Court to revise the Montana Rules of Professional Conduct by adding a new section (b) to Rule 5.5 to state:

A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services

## Read the comment online

The Bar's initial comment and comment exhibits are posted online at [www.montanabar.org](http://www.montanabar.org).

in this jurisdiction to the lawyer's employer or its organization affiliates and are not services for which the forum requires pro hac vice admission.

The proposed language would be unique to Montana, whose current Rule 5.5 is unique because it is outdated from ABA model rules.

The Supreme Court's order on Nov. 5 to re-examine the issue of reciprocity noted that much has changed since the Court denied a motion in 2003 to adopt reciprocity rules and re-implement admission on motion.

One significant change is the adoption of the Uniform Bar Examination. Now, attorneys who have taken the UBE in other states within the last three years may be admitted to the State Bar of Montana without taking the Montana bar exam, provided they are certified by the Commission on Character and Fitness and complete the Montana Law Seminar. The other significant change is that the Montana bar exam no longer tests on Montana law. One of the chief arguments against admission on motion in 2003 was that attorneys admitted by motion would not be required to pass the portion of the Montana bar exam that tested knowledge of Montana law.

The Court also noted that Montana is the only UBE state that does not allow admissions on motion, and it is one of only 12 states in the country overall that does not allow admissions on motion.

Including the Bar's comment, which was submitted March 30, there had been 16 comments submitted to the Court on the proposed reciprocity rule. Of the other 15 comments, twelve supported the proposed changes, two opposed and one — from the Commission on Character & Fitness — was neutral but urged the Court to authorize the Commission to continue using the current NCBE process and its present character and fitness review as part of the character and fitness admission process.

The State Bar Board of Trustees will be meeting April 10 in Missoula and may file additional comments following that meeting. Bar members have until April 28 to file their own comments.

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## Judicial Nomination Commission seeks comment on 8th District judge applicants

The Judicial Nomination Commission has received eight applications for the position of district court judge for the 8th Judicial District (Cascade County) and is now seeking public comment. The eight are vying to fill the seat to be vacated by Judge Kenneth Neill in June.

The Commission received applications from the following attorneys: Theresa L. Diekhans, Kathleen Diamond Jensen, John Andrew Kutzman, Allen Page Lanning, Kory Vaughn Larsen, Michael Leon Rausch, Matthew Stuart Robertson, Joseph M. Sullivan

The applications may be viewed through a link at [www.courts.mt.gov](http://www.courts.mt.gov). Comments will be accepted until **5 p.m. on Monday, April 27**.

The Commission welcomes public comment, either in writing (e-mail or paper) or via telephone. Public comment may be submitted to:

Judicial Nomination Commission, c/o Lois Menzies, Office of Court Administrator, P.O. Box 203005, Helena, MT 59620-3005; [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov); The Commission will forward the names of three to five nominees to the governor for appointment after reviewing the applications and public comment and interviewing the applicants. The person appointed by the governor is subject to election at the primary and general elections in 2016. The candidate elected in 2016 will serve for the remainder of Judge Neill's term, which expires January 2019.

# Sometimes the cases that nobody wants can have the greatest impact

By Brandi Ries and Hilly McGahan

If there's one thing you might get a roomful of attorneys to agree on, it's that they'd rather avoid family law cases. Especially ones involving domestic violence. But done right, taking on a family law case that involves domestic violence can have far-reaching positive impacts. It can mean empowering a victim for the first time, and even saving her<sup>1</sup> life. It can mean ending a child's exposure to violence and changing the very course of that child's life. It may constitute the first form of accountability an abuser has ever faced. And it can mean confronting and eschewing destructive societal norms and taking positive steps toward making our communities safer and healthier.

It should come as no surprise to family law attorneys that a significant number of contested family law cases involve domestic violence. In studies conducted by the National Center for State Courts that looked at court records only, there was documented evidence of domestic violence in 20-55 percent of contested parenting cases.<sup>2</sup> As part of that study, a mediation program used a screening process that revealed a much higher incidence of domestic violence than the review of court records showed.<sup>3</sup>

But before we can properly appreciate the particular issues raised by a family law case that involves domestic violence, we must first understand and identify the dynamics of domestic violence.<sup>4</sup> Properly screening for domestic violence is crucial to keeping clients and children safe and to ensure that the attorney is ethically representing the client and avoiding malpractice. This means screening to determine whether we may be representing the victim or perpetrator of domestic violence.

## Screening for domestic violence

Screening for domestic violence involves a conversation with the client, preferably alone, and a series of questions. An intake questionnaire alone is not sufficient to properly screen for domestic violence. Examples of screening questions might include: "Has your intimate partner ever hurt or threatened you?" "Do you feel safe in your home?" "Has your partner ever taken your children away without your permission or threatened to never

1 This article will use the pronoun "she" when referring to victims and the pronoun "he" to refer to abusers or perpetrators. While there are certainly exceptions, domestic violence is primarily perpetrated by men against women and children.

2 Susan Keilitz et al, *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers*, prepared for the National Center for State Courts, State Justice Institute, NCSC Publication Number R-202, p. 5 (1997), available at <https://www.ncjrs.gov/pdffiles1/Digitization/169016NCJRS.pdf>.

3 *Id.* at 7.

4 See the March 2015 issue of the *Montana Lawyer Magazine* for a primer on domestic violence.

let you see them again?" "Does your partner ever force you to do things that you do not want to do?" "Does your partner control your access to money?" "Does your partner call you names?" "Does your partner ever prevent you from sleeping or eating?"<sup>5</sup>

The attorney should explain to the client that determining whether domestic violence is present is necessary for determining how best to represent the client. There are excellent, free resources available to attorneys for improving the recognition and understanding of domestic violence, and learning how to properly screen for it.<sup>6</sup>

Just as attorneys should screen to determine whether they are representing a victim of domestic violence in a family law case, so too should they learn to recognize when they are representing a batterer. A failure to recognize battering behaviors can have serious negative impacts on the client, the victim and the parties' children. Safety and ethical considerations also arise for attorneys who are representing an abuser.<sup>7</sup>

One tool an attorney might use to determine whether the client is a batterer is asking the screening questions above in the inverse. However, a batterer will commonly deny engaging in abusive behavior or will blame the victim for the batterer's actions. If a client does report engaging in abusive behavior (i.e., power and control tactics, physical or sexual violence), but justifies that behavior by placing blame on the victim for causing that behavior, the attorney should be aware that the client is likely a batterer. Other indications that an attorney is representing a batterer include the client insisting that the attorney file frivolous motions and requesting primary parenting of the children when the client has not historically been an involved parent.

Attorneys should not facilitate or empower the batterer's continued abuse of the victim through the civil legal system. Attorneys should refer to resources with specific guidance on how to ethically provide civil legal representation to perpetrators of domestic violence.<sup>8</sup>

## Safety planning

Leaving an abusive relationship is the most dangerous step a victim of domestic violence can take. And serving an abuser with legal documents, appearing at court hearings, or doing anything

5 American Bar Association Commission on Domestic Violence, *Tools for Attorneys to Screen for Domestic Violence* (2005), available at <http://www.americanbar.org/content/dam/aba/migrated/domviol/screeningtoolcdv.authcheckdam.pdf>.

6 Domestic Violence Intervention Project, *A Guide for Conducting Domestic Violence Assessments* (2010), available at <http://ndvsac.org/a-guide-for-conducting-domestic-violence-assessments/>; American Bar Association, Commission on Domestic Violence, *Tool for Attorneys to Screen for Domestic Violence* (2005), available at <http://www.abanet.org/domviol/>.

7 For further discussion, see Margaret Drew, *Lawyer Malpractice and Domestic Violence: Are we Revictimizing our Clients?* *Family Law Quarterly*, Vol. 39, p. 7 (2005).

8 See Mo Therese Hannah, Ph.D. & Barry Goldstein, J.D., *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues*, 2-25 (2010).



that might be contrary to the abuser's demands, puts the victim at a particularly heightened risk. Therefore, if an attorney determines that the family-law client is a victim of domestic violence, it is essential that the attorney help the client make a safety plan. The attorney and the client should discuss how the client will stay safe, and if children are involved, how they will be protected. The attorney should take the time to listen to the client's ideas on what will keep her safe and should be nonjudgmental. The client is the expert on her life; she knows what is likely to keep her safe and what will put her in danger.

The attorney should give examples and discuss specific situations with the client: "If you need to leave your home with your children, where can you go?" "Do you have a safety word that you can text to a safe person if you need immediate help?" "Do you have a safe place to take your pets if you need to leave your home?" "Do you have your important documents in a safe, accessible place?" "Do you need to change the passwords on any of your online accounts?" "Do you have a safe address where I can mail you documents and a safe phone number for me to call you?"

Safety planning should be done repeatedly throughout the client's case, and in response to procedural steps in the case that might not immediately occur to the attorney as a safety risk. For example, sending out discovery requests commonly angers abusers, so the attorney should discuss the content of those requests with the client and safety plan with the client when the requests are mailed.

If the attorney does not feel capable of safety planning with the client, the attorney should refer the client to a local domestic violence agency for safety planning and support.<sup>9</sup>

### **Domestic violence is an issue: So now what?**

Domestic violence can affect all aspects of a family-law case, including safety considerations of a victim and the children, a parenting plan, the determination of child support, maintenance, family support, marital estate division, and even tax-filing statuses.

**Is there a Concern for the Client's Safety?** The first consideration for a family-law attorney to address when representing a victim of domestic violence is whether the client is in danger of immediate harm. In addition to the safety planning discussed above, an attorney must determine the legal issues that need to be addressed in order to keep the client safe in the imminent future. The attorney should consider whether the client needs an Order of Protection against her abuser, and if so, whether an Order of Protection will actually protect the client, or if it will only put the client in further danger of harm by the abuser.

The Order of Protection statutes can be found in the Montana Code Annotated Title 40, Chapter 15. The May issue of Montana Lawyer will cover this legal remedy in more detail (in both its legal application and in practice). Orders of Protection are an area of law that deserve significant attention due to the

<sup>9</sup> In most cases, attorneys should refer clients to the local domestic violence agency so that the client can access support services offered by the agency and other community organizations. The attorney should keep in mind that whether or not the client participates in the programs offered by the domestic violence agency is the client's decision; however, many victims are not aware of the support services available in the community and the local agency can help connect the victim to needed services.

importance of keeping our clients and their children safe from further harm.

**Domestic Violence and Parenting.** Children are undeniably affected by domestic violence. The statistics are startling — between 3 million and 10 million children in the United States will witness a parent commit violence against the other parent in a single year. There is a strong correlation between violence toward a partner and child abuse — 30-60 percent of families who report abuse by one parent against the other parent also report child abuse.<sup>10</sup> The U.S. Advisory Board on Child Abuse has stated that in the United States, domestic violence is the single strongest precursor to abuse and neglect fatalities.<sup>11</sup>

And contrary to popular belief, childhood *exposure* to domestic violence should be taken just as seriously as child abuse. Male children exposed to domestic violence are twice as likely to abuse their partner(s) as adults, and female children exposed to domestic violence are more likely to be victimized as adults.<sup>12</sup> Not only are children raised in abusive homes learning values and beliefs that will shape their behavior as adults, but their exposure to domestic violence can affect their brain development and health across the lifespan. "Children who are exposed to domestic violence are more likely to exhibit behavioral and physical health problems including depression, anxiety, and violence towards peers."<sup>13</sup> They are also more likely to be suicidal, abuse substances, run away from home, and commit crimes of sexual assault.<sup>14</sup>

Recent neuroscience findings show that chronic childhood exposure to domestic violence results in "physical changes to the brain, impairment of brain function, and consequences for physical and mental health over the lifespan."<sup>15</sup> The brain damage caused by childhood exposure to domestic violence has been compared to brain damage caused by concussions sustained in contact sports like football.<sup>16</sup>

Even when children are not exposed to physical violence by one parent against the other parent, batterers commonly use children as a tool for exercising power and control over the victim parent. Ways in which the abuser may use the child to control the other parent might include: asking the child to relay messages between the parents (that are often inappropriate for children or demeaning to the other parent); using parenting

**Violence, page 25**

<sup>10</sup> In Harm's Way: Domestic Violence and Child Maltreatment, National Clearinghouse on Child Abuse and Neglect (2003).

<sup>11</sup> Family Violence Prevention Fund, The Facts on Children and Domestic Violence, available at <http://police.ucsf.edu/system/files/domesticviolencechildren.pdf>, citing U.S. Advisory Board on Child Abuse and Neglect, U.S. Department of Health and Human Services, A Nation's Shame: Fatal Child Abuse and Neglect in the United States: Fifth Report (1995).

<sup>12</sup> *Id.*, citing Murray A. Strauss, Richard J. Gelles & Christine Smith, Physical Violence in American Families; Risk Factors and Adaptations to Violence in 8,145 Families, New Brunswick: Transaction Publishers (1990).

<sup>13</sup> P. Jaffe & M. Sudermann, Child Witness of Women Abuse: Research and Community Responses, in Understanding Partner Violence: Prevalence, Causes, Consequences, and Solutions, Vol. II. (1995).

<sup>14</sup> D.A. Wolfe, et al., Strategies to Address Violence in the Lives of High Risk Youth, in Ending the Cycle of Violence: Community Responses to Children of Battered Women, New York: Sage Publications (1995).

<sup>15</sup> Lynn Hecht Schafran, Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience, The Judges' Journal, Vol. 53, No. 3 at 35 (Summer 2014).

<sup>16</sup> *Id.*

# Montana Rules of Evidence: Essential accessory in any court

By Cynthia Ford

Who knew you would find fashion advice here in Evidence Corner? I do have very clear (and staid) specific opinions about appropriate courtroom dress for both men and women, which I am happy to share anytime. However, I recognize that not everyone agrees with me<sup>1</sup> on details such as number of piercings, length of skirt, type of shoes, or propriety of yoga pants. For women<sup>2</sup>, though, you can always get away with a strand of pearls and/or pearl earrings. These accessories signal recognition of the formality of the courtroom. Further, pearls go with every color and style of outfit. The only other accouterment that is so universal is your book of rules. No matter what color your jacket, shoes or briefcase, the Rules of Evidence are a mandatory component of your courtroom appearance. No decent lawyer, male or female, should enter a courtroom without a copy of the applicable rules, including the Rules of Evidence. Rookie lawyers may think that bringing the rules makes them look like novices; veteran lawyers know it is the mark of experience. Sometimes a ruling depends on the exact language of a particular phrase, sometimes even the placement of a comma. No one can reliably remember; everyone should be actually looking at the text of the rule at issue.

The only variable in the prior sentence is in the phrase “applicable rules.” The key here, of course, is to be sure that you are using the set of Rules of Evidence that applies in the court in which you are appearing. In previous columns, I have covered the difference between the Montana Rules of Evidence that apply in Montana state district courts (our courts of general civil and criminal jurisdiction), and the Federal Rules of Evidence, which apply in the federal district courts. In my last two columns, I wrote about the rules of evidence for each of Montana’s seven tribal court systems. To complete this topic, I realized that I should address the other very active court system in Montana: the state courts of limited subject matter jurisdiction (usually identified as city courts, municipal courts, and justice of the peace courts).

1 And, for the record, I do agree, on this subject at least, entirely with my former student and current Speaker of the Montana House of Representatives, Austin Knudsen, for whom I have great personal regard. When he was on the UMLS Trial Team, for three years, he complied beautifully with the team sartorial requirements. Sadly, unless you are the coach of a team which you have selected, my experience is you can suggest but not mandate attire.

2 Even in this age, I would not encourage non-women to sport pearls, either on the neck or in the earlobe (or nose), in court. I apologize for this gender discrimination, but observe that men could wear all the pearls they want under their buttoned shirts and ties, and that their consolation is that really it is so much easier to get dressed: a couple of shirts, a couple of ties, a dark suit, decent shoes, and you are good to go.

There are 61 justice courts, 84 city courts and six municipal courts in Montana.<sup>3</sup> The justice courts are mandated in the Montana Constitution (there was a big fight at the Convention, with Duke Crowley leading the unsuccessful charge to eliminate them); the city and municipal courts are the creation of the Montana Legislature. In terms of subject matter, these courts handle to conclusion misdemeanor criminal cases, protection orders, civil claims up to \$12,000, and small claims court claims to \$7,000.00.<sup>4</sup> As the Supreme Court’s website observes: “The total caseload of these courts is nearly 10 times greater than that of the District Courts in Montana. Courts of limited jurisdiction are the courts in which most Montanans seeking justice will encounter the justice system.” The Supreme Court Administrator’s statistics support this assertion. In 2013<sup>5</sup>, a total of 30,955 non-criminal cases were filed in Montana’s city, justice and municipal courts, combined. Of these, 26,436 were characterized as “civil”; 3,495 involved orders of protection; and 1,024 were characterized as “small claims” cases.<sup>6</sup> By contrast, there were 18,899 “civil” cases filed in Montana’s district courts.<sup>7</sup> On the criminal side, statewide the city/justice/municipal courts saw 154,059 traffic cases and 52,133 criminal violations<sup>8</sup>; the district courts had 3,525 investigative subpoena/search warrant cases and 9147 adult criminal cases.<sup>9</sup> The overall case count for all types of filings for the year 2013 was: district courts 52,105 v. city/municipal/justice courts 237,147. These are filings, not cases decided to conclusion, but wow!

Many cases in both district and the limited jurisdiction courts across Montana are conducted with at least *pro se* party. My own personal observation is that this problem is common in the courts of limited jurisdiction, where the lesser amount at stake may not justify legal fees. A further complication is that many justices of the peace and city court judges are not formally law-trained.<sup>10</sup> The Commission on Courts of Limited Jurisdiction zealously enforces mandatory attendance at the

3 <http://courts.mt.gov/lcourt/default.mcpix>

4 See MCA Title 3 for the specific statutes setting forth the jurisdictional limits for each type of court: 3-6-103 for municipal courts; 3-10-301 through 3-10-304 for justices’ courts; 3-11-102 through 3-11-104 for city courts; 3-7-501 and 3-7-502 for water courts;

5 The most recent online statistics for the Courts of Limited Jurisdiction are for 2014, but for the District Courts they cover 2013. I have used the 2013 statistics for both sets of court for the following comparisons so that we have kumquats v. kumquats.

6 <http://courts.mt.gov/content/lcourt/stats/2013/2013CivilFilings>

7 Of course, the District Courts handle lots of “other” non-criminal matters which are not within the subject matter jurisdiction of the city, justice and municipal courts: probate, family law, juvenile cases, commitments etc. I certainly do not intend to infer that the District Courts are underworked, by any means.

8 <http://courts.mt.gov/content/lcourt/stats/2014/2014CrimViolations.pdf>

9 <http://courts.mt.gov/content/dcourt/stats/2013stat.pdf>

10 Municipal court judges are required to be admitted to the bar.

twice-a-year trainings<sup>11</sup>, which includes instruction in evidence, but there are so many subjects to cover in so little time that it is like drinking from a fire hose. Thus, it is extra important for lawyers who do appear in the courts of limited jurisdiction to know exactly what rules apply and be prepared to elucidate both the language of the rule and its policy and applicable precedent to the judge and the opponent.

## THE BAD NEWS: DIFFERENT RULES OF CIVIL PROCEDURE APPLY IN THE LIMITED JURISDICTION COURTS

The Montana Rules of Civil Procedure apply to civil actions in District Court<sup>12</sup>, but not in most of the courts of limited jurisdiction. Instead, the justice and city courts follow the Montana Justice and City Court Rules of Civil Procedure<sup>13</sup> and the Montana Uniform Rules for the Justice and City Courts.<sup>14</sup> You will note that the titles of these sets of rules do not include “municipal courts.” Another chapter of Title 25 of the MCA, “Civil Procedure,” covers these: “Chapter 30: Procedure in Municipal Courts.” Section 25-30-101 shows the hybrid nature of these courts, and thus the relative complexity of ascertaining the rules that govern their civil proceedings:

**25-30-101. Applicability of district court and justice’s court rules.** (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, and 3-10-704 through 3-10-706; 25-31-102(2), 25-31-115, 25-31-402, 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-1002), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words “municipal court” being substituted for justice’s court and “judge” for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court’s rules on disqualification of judges, the proceedings and practice in municipal court must be the same as in district court.

(Part 2100 of Chapter 30 deals separately with the procedure for appealing from municipal to district court). Luckily, we don’t have to spend any more space in this column on civil procedure, and the applicability of the Montana Rules of Evidence is much more straightforward.

## THE GREAT NEWS: THE MRE APPLY TO ALL TRIALS IN ALL COURTS IN MONTANA

You can see from the foregoing that it is imperative to identify and apply the specific rules of procedure for the exact type of court in which you are appearing. As we say in the law, “DUH.” Sadly, you would be shocked by the number of limited jurisdiction judges who report to me that lawyers before them routinely cite the M.R.Civ.P. The good news I bring you here is

<sup>11</sup> M.C.A. 3-10-203.

<sup>12</sup> M.R.Civ.P. 1 states: “**Rule 1. Scope of Rules.** These rules govern the procedure in all civil actions and proceedings in the district courts of the state of Montana, including probate proceedings, unless specifically provided to the contrary in the Uniform Probate Code...”

<sup>13</sup> M.C.A. Title 25, Chapter 23.

<sup>14</sup> M.C.A. Title 25, Chapter 24.

that you don’t have to switch to different Rules of Evidence, because the Montana Rules of Evidence apply in all of the Courts of Limited Jurisdiction, including the Workers’ Compensation Court and the Water Court.

## The Montana Rules of Evidence Expressly Say They Apply Everywhere

We often overlook the introductory rules, skipping directly to the subject area at immediate issue. However, rereading them occasionally yields great insight. For this subject, M.R.E. 101, “Scope” is a nugget of gold:

(a) Proceedings generally. These rules govern **all proceedings in all courts in the state of Montana with the exceptions stated in this rule.** (Emphasis added)

Subsection c lists the situations where the MRE do not apply: Rule 104(a) determinations by the court of preliminary questions of fact; grand jury proceedings; miscellaneous non-trial criminal proceedings, including sentencing; summary proceedings but explicitly not summary judgment motions; and matters which, when authorized by law, are uncontested or non-adversary. For trials, however, the general rule of 101(a) applies, requiring use of the Montana Rules of Evidence “in all courts in the state of Montana.”

## Justice, City and Municipal Courts

Nothing in the statutes governing these courts countermands the direction of M.R.E. 101, that the M.R.E. govern “in all proceedings in all courts in ... Montana,” and nothing in the exceptions listed in M.R.E. 101 applies to trials in the justice/city/municipal courts. Therefore, the same rules of evidence govern trials in these courts as in the district courts.

## Water Court

The same is true of Water Court. The statutes located in Title 3, Chapter 7, “Water Courts,” lay out various requirements for proceedings in these courts, including jurisdiction, but nothing indicates any intention for anything other than the Montana Rules of Evidence to apply in adversary proceedings in Water Court. I conclude that the Water Judge is bound by the Montana Rules of Evidence.

## Workers’ Compensation Court

We all know there is such a court, not least because Montana Supreme Court Justice James Shea used to be its judge. Interestingly, the provisions about this Court do not appear in M.C.A. 3-1-101, entitled “The several courts of this state.” In fact, nothing anywhere in Title 3, “Judiciary, Courts,” even mentions the Workers’ Compensation Court, although Water Court does have a separate chapter (7) of Title 3 (see above) and there are contingent provisions for an Asbestos Claims Court.<sup>15</sup> Regardless of its placement in the Code, the statute is clear: in Workers’ Compensation Court, the Montana Rules of Evidence apply.

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<sup>15</sup> See the next section. It is amazing what you can, and cannot, find simply by perusing the Code.

# For veterans, assistance seeking benefits is needed, but elusive

By Iris Marcus, J.D.  
Montana Justice Foundation

Montana has more than 100,000 veterans. Roughly, one in 10 Montanans has served in the military. The conflicts in which these veterans were engaged include World War II, the Korean conflict, the Vietnam War, the Gulf War, Operation Iraqi Freedom, Operation Enduring Freedom (OIF/OEF) and Operation New Dawn. <sup>1</sup> THE JUSTICE GAP IN MONTANA: As Vast as Big Sky Country<sup>2</sup> identifies veterans as a population in need of particular attention.

In addition to information gathered explicitly for the *Gaps and Barriers* study, the study author relied on information from a 2012 survey conducted by the State Bar of Montana's Law Related Education Committee, which documented pressing civil legal issues of Montana veterans.<sup>3</sup> According to the 2012 assessment the chief civil legal needs of the veterans surveyed included: creditor/debt collections issues; securing disability or health care benefits through the Veterans Administration; family law issues; and employment difficulties.

Of the legal issues identified by the study, the most difficult to address are those regarding veterans' benefits. This is often the result of several overlapping circumstances, beginning with the fact that the process of applying for benefits is in itself complex and difficult to navigate. In many cases, the process of applying for benefits, and the necessary follow-up, could be greatly aided by attorney assistance. However, there are few pro bono attorneys able to take on such cases and the veterans in need of services might be reluctant to ask for help. *Gaps and Barriers* focuses on this reluctance or inability to seek assistance as a barrier.

For veterans who served in OEF/OIF and Operation New Dawn the *Gaps and Barriers* study emphasizes the barriers that veterans face as a result of injuries they sustained during their deployments. In particular, *Gaps and Barriers* concentrates on the two injuries that have become the "signature" wounds of post 9/11 conflicts: traumatic brain injury (TBI) and post-traumatic stress syndrome (PTSD). Veterans suffering from these conditions have issues that can make the process of

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1 The Washington Post; "What Each State's Veteran Population Looks Like in 10 Maps," by Niraj Chokshi; November 11, 2014

2 THE JUSTICE GAP IN MONTANA: As Vast as Big Sky Country, A Report on the Gaps and Barriers to legal assistance for low and moderate income Montanans, Carmody and Associates, June 2014. Hereafter "Gaps and Barriers."

3 Veteran and Active Military Legal Needs Assessment in Montana, Christie Blaskovich, Michael Reed, Brook Redden, Janice Doggett JD, Law-Related Education Committee, State Bar of Montana, August 12, 2012.



## About the Gaps and Barriers series

This is the third installment in a series of articles giving an in-depth look at "The Justice Gap in Montana: As Vast as Big Sky Country," a study authorized by the Montana Access to Justice Commission. In March, the series looked at victims of domestic violence as a population in particular need of consideration. Future installments will examine other populations the study identified as needing particular consideration: the mentally ill or mentally disabled, Native Americans, people with limited English proficiency or who are hearing impaired, and older Montanans.

## Read the report

To read the study "The Justice Gap in Montana: As Vast as Big Sky Country," visit [www.mtjustice.org/gaps-and-barriers-study/](http://www.mtjustice.org/gaps-and-barriers-study/)

reintegration an enormously difficult and fraught experience. Multiple deployments, the constant vigilance required to assess threats and respond accordingly, and sources of sudden catastrophic violence<sup>4</sup> resulted in high numbers of military personnel suffering from PTSD. The use of improvised exploding devices (IEDs) caused high numbers of brain injuries from penetrating head wounds or exposure to repeated concussive blasts. Both injuries exist along a continuum and might not be immediately evident. Whether or not military personnel are diagnosed with PTSD, the challenges of returning to civilian life after enduring such circumstances can make seeking legal assistance even more difficult. Finally, the stigma that is often associated with acknowledging the need for help further compounds barriers for military personnel in need of legal assistance.

Moreover, PTSD and TBI are both linked to a higher incidence of substance abuse. Without treatment, the anxiety present in both conditions can lead to the use of illegal substances in an effort to find relief from the underlying conditions. The military has a zero tolerance policy regarding substance of abuse. Military personnel in all branches receive a less-than-honorable discharge if they are found to have used illegal substances. Veterans who receive a less-than-honorable discharge are ineligible to receive benefits. In this case, military personnel must seek a “discharge upgrade” to restore eligibility. The veteran must show that his or her use of illegal substances is a result of PTSD or TBI. These are complex cases, and for the veterans seeking help the stakes cannot be higher.<sup>5</sup>

In preparing this article, I interviewed Professor Hillary Wandler, of the University of Montana School of Law, regarding gaps in pro bono legal assistance for veterans. Beginning in 2009, Professor Wandler, in conjunction with the State Bar of Montana and the University of Montana School of Law, conducts Continuing Legal Education (CLE) seminars that focus on veterans’ rights and provide accreditation for attorneys to represent veterans in complex legal matters. In the same year, she and the State Bar of Montana started a group called “Montana Attorneys for Montana Veterans.” As her comments demonstrate, this is a positive and dynamic avenue upon which training for pro bono attorneys continues to develop.

4 For example, road side bombs such as improvised exploding devices (IED).

5 Suicide rates for veterans in Montana top the nation on a per capita basis. This fact alone points up the urgency with which issues related to helping veterans secure their benefits is paramount. “Suicide Among Montana’s Veterans,” Montana Strategic Suicide Prevention Plan - Updated November 2014

“Access to justice can be improved by increasing the number of attorneys in certain geographic areas. But we cannot achieve full access to justice only by increasing the volume of legal services. We must also raise awareness about gaps in subject matter expertise that make access to legal services difficult for specific populations. This is especially true in the area of veterans disability law. In my experience, Montana attorneys are highly interested in assisting Montana veterans,” states Professor Wandler.

The Veterans Disability Law CLE had a strong first showing, with 40 attorneys joining the Montana Attorneys for Montana Veterans (MAMV) group, and has grown every offering since.

A growing list of attorneys, (currently 67, up from less than a handful in 2009), accredited by the VA Office of General Counsel, and technically able to represent veterans before the VA and Board of Veterans Appeals, further demonstrates the willingness of Montana attorneys to assist in these matters.

Nevertheless, Professor Wandler shared that placing veterans’ cases with attorneys has been difficult and referrals are often delayed and sometimes completely denied. She explains the reasoning behind the seeming disparity of high attorney interest to relatively low case placement:

“I do not believe that this issue is due to a lack of interest. Instead, most attorneys who are interested in taking veterans’ cases express concern with the amount of time it will take to learn the underlying law and successfully navigate the VA claims system; this concern is compounded by our lack of any screening process for veterans’ cases, which means we cannot ensure referrals are viable enough to justify the likely more burdensome learning curve. The steep learning curve and lack of screening put veterans’ referrals in stark contrast to other types of cases referred through Montana Legal Services Association and other pro bono programs across the state.”

As Professor Wandler points out veterans’ cases can be very demanding. Although to be sure, greatly rewarding too, as providing legal assistance to veterans has the potential to make an enduring positive impact on their lives. Supporting the work of the MAMV is an opportunity to provide a foundational piece for veterans undergoing the hard work of transitioning back to civilian life.

***Iris Marcus is an Americorps VISTA with Montana Justice Foundation.***

“

*(W)e cannot achieve full access to justice only by increasing the volume of legal services. We must also raise awareness about gaps in subject matter expertise that make access to legal services difficult for specific populations. This is especially true in the area of veterans disability law. In my experience, Montana attorneys are highly interested in assisting Montana veterans.*

Professor Hillary Wandler, University of Montana School of Law

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# The Licensing of Alcoholic Beverages in Montana – Part 2: Breweries

By Antoinette Tease

This article is the second in a three-part series of articles regarding the licensing of alcoholic beverages in Montana. Our first article dealt with wineries; this article will focus on breweries.

Currently, there are seven microbreweries in downtown Billings and roughly three dozen throughout the state. Montana has long had a thriving microbrewery business; the first brewery located in Montana Territory was opened in 1863 and closed in 1974 (after a brief hiatus during Prohibition). In 1926, Montana was the first state to repeal Prohibition enforcement. Prohibition officially ended in 1933. Interestingly, the total number of breweries in the United States in 1873 was around 4,000, whereas the total number of breweries located in the United States today is just under 3,000, representing a consolidation in the industry.

According to the Brewers Association State Craft Beer Sales and Production Statistics for 2013, Montana ranks third nationally in terms of the number of breweries per capita. The total economic impact of Montana's brewery industry is estimated to be over \$200 million. By contrast, Montana's tourism industry is estimated to have generated nearly \$2 billion in sales in 2014, resulting in an additional \$276 million in state and local taxes. Although tourists visit our state because of its natural wonders and unparalleled outdoor activities, Montana's eclectic and award-winning breweries help ensure that tourists will enjoy their stay.

The laws governing the licensing of breweries in Montana are numerous but relatively straightforward. Mont Code Ann. § 16-3-106, passed in 1933 (the same year in which Prohibition ended), prohibits the opening of alcoholic beverages during transit. Mont Code Ann. § 16-3-201 allows the manufacture of beer for personal or family use. Under Mont Code Ann. § 16-3-212, a licensed brewer or importer may sell beer to any licensed wholesaler. Small breweries — defined as those with annual nationwide production of less than 10,000 barrels — are allowed to sell beer on-site from 10 a.m. to 8 p.m. Mont Code Ann. § 16-3-213. Under the sample room exception, breweries that manufacture

less than 60,000 barrels of beer per year may provide samples of their own beer on premises and without charge, upon payment of a license fee.

The Montana Code also sets forth certain mandatory contract provisions for agreements between a brewer or importer and the licensed wholesaler; these agreements must be filed with the state Department of Revenue. Mont Code Ann. § 16-3-222, -226. Under Mont Code Ann. § 16-3-230, all beer that is to be distributed in the state must be shipped to a licensed wholesaler. Mont Code Ann. § 16-3-244 places advertising restrictions on beer retailers.

Title 16, Chapter 3, Part 3 of the Montana Code sets forth various restrictions on the retail sale of beer. For example,

Mont Code Ann. § 16-3-302 and -303 govern the consumption of beer on premises and the sale of beer for consumption off premises. Mont Code Ann. § 16-3-306 addresses the proximity of retail beer establishments to churches and schools, and Mont Code Ann. § 16-3-316 governs the provision of alcoholic beverages at fundraising events.

Title 16, Chapter 4, Part 1 of the Montana Code provides the specific licensing requirements for brewers. Mont Code Ann. § 16-4-103 addresses licensing requirements for wholesalers, and Mont Code Ann. § 16-4-104 addresses licensing requirements for retailers. Licenses may be transferred only with the permission of the Department of Revenue. Mont Code Ann. § 16-4-106. Special provisions are made for golf courses and catering operations. Mont Code Ann. § 16-4-109, -111.

The brewery industry garnered the attention of the Montana Legislature this year. House Bill 326 would allow a person to own licenses for both a brewery

and a bar. House Bill 336 would have raised the production cap from 10k to 60k for breweries allowed to operate a taproom (the small brewery exception discussed above). As of the writing of this article, both bills have been tabled.

***Antoinette Tease is a registered patent attorney in based in Billings.***



# McLean disbarred for theft, misconduct

## Summarized from March 17 order (No. PR 14-0737)

The Montana Supreme Court ordered attorney David M. McLean of Anaconda disbarred on March 17 and ordered him to repay more than \$400,000 he stole from clients and other funds.

McLean has admitted to the thefts as well as to forging signatures, lying to clients and falsifying reports during the commission of the thefts. He has agreed to disbarment and “any and all other form, forms, or combinations ... of discipline set forth in Rule 9 of the Montana Rules of Disciplinary Enforcement the either the Montana Commission on Practice and/or the Montana Supreme Court believe ... is warranted against me.”

McLean was ordered to reimburse \$462,614 that he stole from a total of nine clients, as well as \$32,714 that he stole from the American Board of Trial Advocates in his role as secretary/treasurer.

The Office of Disciplinary Counsel filed a formal disciplinary complaint against McLean on Nov. 14, 2014. The complaint consists of 33 counts alleging misconduct and theft of client or other funds by McLean.

McLean subsequently provided the Commission on Practice a conditional admission and affidavit of consent on Jan. 9, 2015. However, the Commission rejected the initial admission

because McLean said the amount he misappropriated because it did not take into account fees earned from the trust account deposits.

“The Commission found his attempt to claim fees based upon his admitted theft of funds and his acts of deceit upon his clients, ABOTA and third persons hubris inconsistent with his claim of remorse.

McLean provided a second conditional admission on Jan. 16, which attempted to address concerns the Commission raised in its rejection of the initial admission.

On Feb. 3, the Commission submitted to the Court its Findings of Fact, Conclusions of Law, and Recommendation that McLean’s conditional admission be accepted.

In his admission, McLean responded to the substantive allegations of the complaint with a single paragraph:

“Consistent with the foregoing, I shamefully and with grave sorrow and sincere remorse, admit the material allegations of ODC’s complaint against me. Moreover, I admit I misappropriated between \$32,714.00 to \$34,950.00 from ABOTA. I further admit that I misappropriated at least \$321,866.33 of my former client funds. I also admit, as ODC has alleged against me, that my conduct violated Rules 1.2, 1.4, 1.15, 4.1, 8.4(b) and 8.4(c) of the Montana Rules of Professional Conduct.”

## DISCIPLINE

### Clark indefinitely suspended from practice

#### Summary of Feb. 25 order (No. PR 14-0792)

Attorney Michael Clark was indefinitely suspended from the practice of law in Montana for failing to appear before the Supreme Court at the show cause hearing in a fee arbitration case. He was also ordered to pay \$3,500 to his client in the fee arbitration case.

On Oct. 21, 2014, the Fee Arbitration Board appointed by the State Bar of Montana unanimously ruled that Clark “refund and return to Petitioner Julie Vinton the total amount charged by him (\$3,500) pursuant to their attorney-client relationship.”

Clark did not appear at the arbitration hearing or otherwise respond or participate, for which the board also recommended that Vinton file a complaint against Clark with the Office of Disciplinary Counsel.

On Oct. 28, 2014, the State Bar mailed by certified mail a copy of the board’s decision to Clark, but that letter was returned, marked “unclaimed.” The State Bar then mailed a copy of the decision by first class mail to Clark. The State Bar advised the Clerk of Court that Vinton had not received the refund as ordered by the Board, nor had Vinton been served with any summons or complaint initiating any litigation over the Board’s action.

According to Rule 10.1 of the Rules on Arbitration of Fee

Disputes:

If, within 60 days of the mailing of the Board’s decision, an attorney against whom an arbitration decision is rendered has not filed a lawsuit in accordance with Rule 8.5 and has failed to comply with the Board’s decision, the Supreme Court shall issue an order to show cause why the attorney should not be suspended from the practice of law. If good cause is not shown, the Supreme Court shall suspend the attorney from the practice of law.

On Nov. 25, 2014, the Court issued an order transferring Clark to disability/inactive status and deferring disciplinary proceedings against him until he requests a change in his status. A fee arbitration proceeding is not a disciplinary matter and may proceed regardless of the status of the attorney’s license.

The Court thus ordered Clark to appear on Feb. 10 and show cause why he should not be suspended. He failed to appear.

### Kohn suspended for 60 days

#### Summary of March 10 order (No. PR14-0468)

Attorney Brian Kohn was suspended from the practice of law in Montana for 60 days effective May 1.

The Commission on Practice concluded that clear and convincing evidence establishes Kohn’s violations of multiple

**Court**, next page

**Court**, from previous page

provisions of the Montana Rules of Professional Conduct. The Commission concluded that Kohn:

- engaged in conduct in connection with a post-conviction relief proceeding that was prejudicial to the administration of justice;
- Kohn failed to provide his client with competent representation;
- failed to act with reasonable diligence and promptness in representing his client;
- failed to respond to his client's inquiries;
- failed to advise his client that he had elected to terminate representation;

The Commission further concluded that Kohn failed, upon termination of representation, to take steps to the extent reasonably practicable to protect his client's interests or to advise his client that he was abandoning the matter and terminating the representation, failing to advise his client of the applicable deadlines, and failing to timely return unearned fees.

### Avery placed on interim suspension for DUI

#### Summary of March 17 order (No. PR 15-0142)

The Montana Supreme Court ordered attorney David C. Avery to be placed on interim suspension from the practice of law for Feb. 15 convictions for driving under the influence of alcohol—fourth or subsequent offense-- and failing to give notice of an accident by the quickest means.

The suspension is effective immediately and pending final disposition of a disciplinary proceeding predicated upon his Feb. 15 convictions.

The Office of Disciplinary Counsel had asked the Court to determine, pursuant to Rule 23B of the Montana Rules for Lawyer Disciplinary Enforcement, whether Avery should be immediately suspended based on the convictions.

Avery filed a response, stating that he had not been currently practicing law and had no current clients because he was participating in a six-month Warm Springs Addiction Treatment and Change program.

After reviewing the matter, the Court concluded that Avery's conviction of felony DUI affected his ability to practice law and ordered the interim suspension.

The Court directed the Office of Disciplinary Counsel to file a formal complaint with the Commission on Practice based upon those

### Admonition, practice management course ordered for attorney

#### Summary of March 17 order (No. PR 13-0706)

The Montana Supreme Court ordered that attorney Eduardo Encinas receive several disciplinary measures, including a public admonition from the Commission on Practice and completion of an office practice management course.

The discipline was imposed in connection with Encinas'

dealings with his client Eloy Barrios.

The Office of Disciplinary Counsel had charged Encinas with a violation of Rules 1.1 and 1.3 of the Montana Rules of Professional Conduct. The Commission on Practice found that ODC had failed to prove by clear and convincing evidence that Encinas violated these rules. However, the COP found that evidence established a violation of Rules 1.4, 1.5, 1.5(b), and 1.16(d) of the MRPC. Those violations deal with communication with the client, charging reasonable fees, and making reasonable steps to protect a client's interests after termination of representation.

In addition to the admonition and Encinas was also ordered to present to the ODC a written plan to implement management practice and policy changes in his office and to pay court costs and reimburse Barrios \$1,250 with interest from April 6, 2012.

### COMMENT

### Court asks for comment on proposed disciplinary rule changes

#### Summary of March 17 order (No. AF 06-0628)

The Office of Disciplinary Counsel has petitioned for amendments to Rules 7, 11, 12, 14, 16, 18, 19, 22, 25, 27, 28 and 29 of the Rules for Lawyer Disciplinary Enforcement.

The Montana Supreme Court will accept comments on ODC's proposed amendments to the rules for **90 days following the date of this order**. All comments must be filed with the Clerk of the Supreme Court.

### RULE CHANGES

### Court implements substitution of judges rules

#### Summary of March 25 order (No. AF 09-0289)

The Montana Supreme Court issued an order Tuesday to implement new rules on substitution of district judges to address what the Montana Judges Association has characterized as "obvious abuse of the rule."

The rule changes implemented require the filing fee to be paid in all criminal and civil cases. Previously, no filing fee was required in criminal cases or by parties who have qualified for representation at public expense.

The court's order also recommends the 2017 Montana Legislature to consider raising the filing fee for substitution of judges from \$100 to \$200, noting that the fee has been set at \$100 since 1987.

In criminal cases filed by the county attorney, the county attorney is to pay the motion fee within 30 days of receipt of a claim from the clerk of district court. In criminal cases filed by the attorney general, the attorney general is to pay the motion fee within 30 days of receipt of a claim from the clerk of district court. In criminal cases where the motion is filed by or on behalf of an indigent defendant, represented by a public defender, the office of public defender shall pay the substitution motion fee within 30 days of receipt of a claim from the

clerk of district court.

The rule changes are adopted effective **July 1, 2015**.

### Court revises Internal Operating Rules

#### Summary of March 18 order (No. AF 06-0632)

The Court has determined to implement certain revisions to its Internal Operating Rules. The purpose of the revisions is to update the rules to reflect current practices; to streamline the rules to eliminate the distinction between non-cite and memo opinions; and to provide more transparency to the Court's processes.

The Supreme Court Internal Operating Rules are posted on the court's website at [http://courts.mt.gov/court\\_rules.mcp](http://courts.mt.gov/court_rules.mcp).

### APPOINTMENTS

### Brant Light, Elizabeth Best reappointed to Commission on Rules of Evidence

#### Summary of March 17 order (No. AF 07-0018)

The terms of Brant Light and Elizabeth Best as members of the Montana Supreme Court Commission on Rules of

Evidence expired. The Court reappointed Light and Best to the Commission for four-year terms to expire on Feb. 1, 2019.

### Harball appointed to Commission on Courts of Limited Jurisdiction

#### Summary of March 24 order (No. AF 06-0263)

The Court ordered that Charlie Harball is appointed as a member of the Commission on Courts of Limited Jurisdiction starting March 24, 2015, and ending June 30, 2018.

Harball takes over Kelly Addy's seat on the Commission. Addy resigned his position.

### Halverson appointed to complete term on Judicial Nomination Commission

#### Summary of March 24 order (No. AF 06-0238)

Elizabeth A. Halverson of Billings, an attorney residing in the Thirteenth Judicial District, was appointed to the Judicial Nomination Commission.

Halverson will complete the term of Patrick Kelly. The term ends Jan. 1, 2017.

# Legal Technology for Legal Professionals

The State Bar of Montana  
Is Presenting 2 Legal Technology CLEs  
By Paul Unger of Affinity Consulting Group

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6.0 Montana CLE credits, including 1.0 Ethics

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#### • ABOUT THE PRESENTER

• Paul J. Unger is a national speaker, writer and leader in the legal technology industry. He is an attorney and founding principal of Affinity Consulting Group, a nationwide consulting company providing legal technology consulting, continuing legal education, and training.

• He served as Chair of the ABA Legal Technology Resource Center (2012-13, 2013-14), was former Chair of ABA TECHSHOW (2011), and is a member of the American Bar Association, Columbus Bar Association, Ohio State Bar Association, Ohio Association for Justice, and Central Ohio Association for Justice. He specializes in document and case management, paperless office strategies, trial presentation and litigation technology, and legal-specific software training for law firms and legal departments throughout the Midwest.



For more information about upcoming State Bar CLEs, please call Tawna Meldrum at 406-447-2206. You can also find more info and register at [www.montanabar.org](http://www.montanabar.org). Just click in the Calendar on the upper left of the home page to find links to registration for CLE events. We also mail out fliers for multi-credit CLE sessions, but not for one-hour CLE or webinars.

# New Lawyers Section's Toolkit CLE

**When:** April 10, 2015, 11:30 a.m. – 4:30 p.m. Immediately following Montana Supreme Court oral arguments in *Department of Revenue v. Priceline*.

**Where:** Missoula – University of Montana School of Law, Castles Arena; Billings live interactive broadcast – Crowley Fleck PLLP, 490 N 31st St #500

**Lunch provided?:** Yes, at both locations

**CLE Credits Pending:** 4.5, including 2.0 ethics

**Cost:** Online registration on State Bar Website, \$25 NLS members, \$30 nonmembers; On-site registration, \$30 NLS members, \$35 nonmembers; Law clerks and students FREE – please RSVP to NLS President at [jamie.iguchi@gmail.com](mailto:jamie.iguchi@gmail.com)

**Topics include:** ALPS Attorney Match mentorship program;

Beyond the Criminal Justice Response: Intimate Partner Violence in the Civil Legal Context; Preparing Clients for a Settlement Conference; Overview of the Montana Human Rights Act and the Administrative Process; Tribal Sovereign Immunity and Subpoenas; Ethics of Limited Scope, Pro Bono, and Modest Means.

## New Lawyer's Section Social

**When:** Immediately following the CLE, 5 to 7 p.m.

**Where:** Missoula – 520 S 5th St E (approximately 2 blocks from the law school) with honored guest, State Bar President Mark Parker

**Billings –** Petroleum Club, 27 N 27th St #2200

## Upcoming State Bar of Montana Live CLE Events

### April

**Friday, April 10:** Criminal Law and Mock Voir Dire CLE – 6.5 CLE credits – Great Falls. Attendees will hear analyses of the prosecution and defense of individuals charged with crimes, current criminal law updates, and a view from the bench presentation. There will also be a mock jury selection exercise, designed to pattern a real-life voir dire. Register online at [montanabar.org](http://montanabar.org).

**Friday, April 10:** Minimizing the Risk of a Medical Malpractice Claim FREE CLE – 2.0 CLE credits Providence St. Patrick Hospital in Missoula. The session will also be available by webinar for those attorneys who cannot attend in person. Please notify Sara Laney at the University of Montana via email no later than Thursday, April 9, at [sara.laney@mso.umt.edu](mailto:sara.laney@mso.umt.edu) if you prefer to attend via the webcast. Speaker Martha Raymond, Esq., Associate Vice President of Risk, Claims & Insurance for Providence Health & Services, will review case studies and share what motivates people to sue their physicians. Martha will focus on steps health care providers can take to reduce that motivation, and examine ways to record their interactions and thought processes to support a provider's defense if sued.

**Friday, April 24:** Family Law CLE — 6.5 CLE credits — Billings, April 24. Highlights include upcoming changes to family law from the 2015 legislative session and the latest Montana Supreme Court cases affecting this area of the law; a panel discussion on Limited Scope Representation; a presentation on Errors and Omission insurance to help you discover with coverage you need to protect yourself and your firm. Register online at [montanabar.org](http://montanabar.org).

### May

**Friday, May 1:** Judicial Relations Committee's Bench-Bar Conference, Bozeman — 7.5 CLE credits (2.5 ethics) — May 1, 2015

Members of the Federal, State and Courts of Limited Jurisdiction will share their insights about changes and challenges in the law that impact all practitioners. New rules, proposed rules, best practices — what to do and what to avoid — will be candidly discussed at this CLE. Register online at [montanabar.org](http://montanabar.org).

**Wednesday, May 8:** Mediation, Helena

**Wednesday, May 13:** Technology CLE presented by Paul Unger, Helena, (See ad on page 23)

**Friday, May 15:** Technology CLE presented by Paul Unger, Billings (See ad on page 23)

### June

**Saturday, June 6:** New Lawyers Workshop & Road Show, Bozeman

**Tuesday, June 16:** Internet for Lawyers, Billings

**Thursday, June 18:** Internet for Lawyers, Great Falls

### August

**Thursday-Friday, Aug. 20-21:** Annual Bankruptcy CLE, Great Falls

### September

**Wednesday-Saturday, Sept. 9-11:** Annual Meeting, Missoula

### October

**Thursday-Friday, Oct. 1-2:** Women's Law Section CLE, Chico Hot Springs

**Friday, Oct. 9:** Dispute Resolution Committee, Bozeman

**Friday, Oct. 9:** Dispute Resolution Committee, Bozeman

**Friday, Oct. 23:** Family Law Section, Missoula

**Friday, Oct. 30:** eDiscovery Through Trial – A Practical Approach, Missoula (Rescheduled)

time and exchanges as a way to threaten and harass the other parent; threatening to take the children away or use the court system to play out this threat; and making frivolous reports against the victim to Child Protective Services.<sup>17</sup>

When representing a party in a parenting plan case that involves domestic violence, the attorney must consider the presence of domestic violence in advocating for the client and for the child's best interests. In Montana, parenting plan determinations must be in accordance with the best interest of the child.<sup>18</sup> Montana Code Annotated § 40-4-212 includes specific factors that must be considered by the court in a parenting plan case. One of the factors that the court must consider is "physical abuse or threat of physical abuse by one parent against the other parent or the child." A court may determine that a parent's contact with a child is detrimental to the child's best interest and evidence of physical abuse or threat of physical abuse by one parent against the other parent or child must be considered when making that determination.<sup>19</sup>

A frequent statement heard in parenting cases is that "the parties just need to get along." But this statement completely overlooks the cycle of violence and power and control dynamics exerted by the abusive parent over the other parent. Domestic violence does not stop when the parties separate; in fact, the risk of harm to a victim only increases after the parties have separated. Parenting plans that do not account for the power and control dynamics at play in a relationship involving domestic violence—which will continue to exist post-separation and post-dissolution—do not serve the children's best interest.

An attorney representing a victim in a parenting case should include provisions in a parenting plan that will protect the victim and serve the child's best interests. The attorney should also consider what evidence, including expert witness testimony, is necessary to allow the court to include those necessary provisions in the parenting plan.

#### **Financial Support (Child Support and Family Support).**

Abusers commonly seek control over their partners through financial abuse. Examples of financial abuse include: refusing to allow the victim to work, causing the victim to be fired from employment, controlling the victim's access to assets and money, forcing the victim to use all of her earnings to support the family so she cannot accumulate savings, giving the victim an allowance and making her account for every penny she spends, taking out debt in the victim's name, ruining the victim's credit, etc.<sup>20</sup>

Financial independence is key for a victim to successfully and safely leave an abusive relationship. In fact, one of the main reasons victims of domestic violence return to the abuser is due to lack of financial resources. Therefore, an attorney representing a domestic violence victim should consider the client's temporary and long-term financial needs in terms of family support and

child support.

**Temporary Support.** In order for a victim to support herself and provide for children during separation from the abuser, it may be necessary to file a motion for temporary support (family support, child support, or both). Montana Code Annotated § 40-4-121 provides for a party to move for temporary maintenance, temporary child support, or a temporary family support order. In addition to the payment of maintenance and child support, victims commonly need assistance paying specific debts (such as insurance, marital debts, housing payments, etc.) during the pendency of the case. A victim can specifically request that the other party pay such debts in the temporary family support motion.

**Child Support.** As noted above, it may be necessary for a victim to request that the court or Montana Child Support Enforcement Division (CSED) determine temporary child support, which would be in place while the district court case is pending. However, it is possible that the victim's safety may be at risk if her address is disclosed to the abuser as part of the child support application process or if she requests that the abuser pay child support. This is a conversation that the attorney should have with the client in order to assess the safety risk to the client.

Additionally, if the victim applies for public assistance, the victim will be required to open a case with Montana CSED. If opening a case with CSED puts the victim at risk of further abuse, the victim can request a good cause exemption, which would allow her to qualify for public assistance without CSED opening a child support case. Victims of domestic violence may also request that CSED keep their information confidential from the abuser.

**Attorney's Fees.** Domestic violence victims commonly lack access to financial resources to retain an attorney for their family law case. One option victims might consider is asking that the court order the other party to pay their attorney's fees. "The court . . . after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 and for professional fees, including sums for legal and professional services."<sup>21</sup> Further, the Montana Supreme Court has determined that "attorney services may be a 'necessary article' under § 40-2-210, MCA, when they are provided to a wife to obtain orders of protection from an abusive spouse, thereby obligating the spouse to pay the attorney fees so incurred."<sup>22</sup>

**Marital Estate Distribution.** Montana Code Annotated § 40-4-202(1) requires that a court equitably divide the marital estate *without regard to marital misconduct*. [Emphasis added.] However, in *In re Petition of Fenzau*, 2002 MT 197, 311 Mont. 163, the Montana Supreme Court held:

The statutory prohibition against considering marital misconduct does not foreclose the district court from considering the medical and financial needs of a spouse which result from the other spouse's physical, mental, or emotional abuse during

17 See the Power and Control Wheel that was developed by the Domestic Abuse Intervention Project in Duluth, Minnesota, available at [www.theduluthmodel.org/pdf/PowerandControl.pdf](http://www.theduluthmodel.org/pdf/PowerandControl.pdf).

18 Mont. Code Ann. § 40-4-212.

19 *Id.* at § 40-4-212(1)(f); *Id.* at § 40-4-212(1)(l).

20 See Melissa Jeltsen, Financial Abuse Takes Heavy Toll on Domestic Violence Survivors, Huffington Post (July 24, 2014), available at [http://www.huffingtonpost.com/2014/07/24/domestic-violence\\_n\\_5611887.html](http://www.huffingtonpost.com/2014/07/24/domestic-violence_n_5611887.html).

21 Mont. Code Ann. § 40-4-110(1).

22 *Missoula YWCA v. Bard*, 1999 MT 177, ¶ 24, 983 P.2d 933.



**Evidence**, from page 17

**39-71-2903. Administrative procedure act and rules of evidence applicable.** All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. **The workers' compensation judge is bound by common law and statutory rules of evidence.** (Emphasis added).

#### **Asbestos Claims Court**

M.C.A. Title 3, Chapter 20, contingently provides for an Asbestos Claims Court.<sup>16</sup> I could not readily figure out what the contingency is, and I do not know of any use of these provisions. I include this potential court in my list of "Montana courts of limited subject matter jurisdiction" because such a court is statutorily restricted to a single type of case: "A civil action involving an asbestos-related claim." M.C.A. 3-20-102; see also M.C.A. 3-20-101 for a definition of "asbestos-related

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<sup>16</sup> All of the sections in this chapter contain the notation "Effective on occurrence of contingency." I did not pursue this any further because my subject is simply what rules of evidence if such a court ever does spring into being, and there is a clear answer to that question.

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**Violence**, from previous page

the marriage. Consideration of the economic effects of abuse, such as medical expenses and a person's ability to work and earn an income, is not an interjection of fault or an assignment of blame which is contemplated by the statutory prohibition of judicial consideration of marital misconduct. If the economic impact of abuse is excluded from consideration in making a division of the marital estate, a truly equitable apportionment cannot result.

The holding in *Fenzau* demonstrates the critical importance of understanding the dynamics of domestic violence and applying this knowledge to the intricacies of family law. Without recognizing and considering the economic impact of abuse in a divorce involving domestic violence, a marital estate cannot truly be equitably divided.

#### **Mediation in family law cases, domestic violence**

An issue that will likely arise in a family law case involving domestic violence is mediation. In 2011, the Montana Supreme Court held in *Hendershott v. Westphal* that district courts were explicitly prohibited from authorizing or continuing mediation where there is a reason to suspect emotional, physical, or sexual abuse.<sup>23</sup> This is because domestic violence creates inherently unequal bargaining power among the parties, which can make mediation difficult, and often impossible.

However, the Montana legislature recognized in 2013 that *Hendershott* completely disallowed victims of domestic violence the right to mediate if they so chose. By passing House Bill 555,

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<sup>23</sup> *Hendershott v. Westphal*, 253 P.3d 806, 360 Mont. 66 (2011).

claim." Even though I don't think that the Asbestos Claims Court has ever been constituted, I do know that if it ever is, it is subject to the MRE:

All proceedings before the asbestos claims judge must be conducted in accordance with the rules of evidence and procedure governing district courts.

M.C.A. 3-20-102(2).

#### **CONCLUSION**

You can carry your Montana Rules of Evidence with assurance into any and every state court in Montana, although you should be very careful to remember that different rules of procedure apply in the Justice and City Courts. Male or female, grab the MRE with confidence.

This ends the series on the applicable rules of evidence in all of Montana's courts. Next month, I will return to specific subjects under the M.R.E., which we know now will cover all but the federal and tribal courts.

***Cynthia Ford is a professor at the University of Montana School of Law where she teaches Civil Procedure, Evidence, Family Law and Remedies.***

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the legislature allowed victims to opt-in to mediation in family law cases if both parties provide written, informed consent.<sup>24</sup>

If an attorney is representing a victim of domestic violence who provides informed consent to participate in mediation, the attorney should advise the client of several helpful safeguards for the mediation, such as using separate rooms for the victim and the abuser, and taking measures to ensure that each party enters and leaves the mediation location at separate times in order to avoid face-to-face contact between the parties. The victim should know that she has the right to conclude the mediation at any time and for any reason; that she may have her attorney present for any and all of the mediation; that she may ask for a break at any point; and that she may ask to speak privately with the mediator, the settlement master, her advocates, support persons, or attorney at any point during the mediation or settlement process.

The opportunity to represent a victim of domestic violence in a family law case will likely arise for every attorney in the state of Montana. The next time this opportunity presents itself, don't run in the opposite direction. Take it. And if you're not well versed in family law or domestic violence, don't let that stop you. Reach out to your local domestic violence agency for training on domestic violence and reach out to other professionals to learn how to provide competent representation to victims. Although these cases can be complicated, providing representation in a family law case involving domestic violence might be the single most important thing you can do for a victim and her children.

***Brandi Ries is a partner at Rubin and Ries Law Firm, PLLC. Hilly McGahan is staff attorney for Montana SAFE Harbor.***

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<sup>24</sup> Mont. Code Ann. § 40-4-301.



### Dick Ackerman

DARBY – Dick Ackerman, 81, of Darby, passed away Feb. 28, 2015, at the Marcus Daly Hospice. He was born Nov. 8, 1933, in Beverly Hills, California, the son of William and Helen Ackerman.

Dick attended Beverly Vista Grammar School and Beverly Hills High School. He was an avid tennis player and while attending high school was a member of the tennis team that won the national championship for three years. Dick also was a basketball player; their high school team won the High School League Championship. While in high school, Dick joined a YMCA Club called the Corsairs. This group has met every single year since 1949. The reunions over the past 66 years have been a high point of Dick's life.



Ackerman

In 1951, Dick started at UCLA and in 1955 he received his B.S. in business administration. One of Dick's most memorable memories at UCLA is having played junior varsity basketball under the tutelage of the nationally renowned John Wooden. He was a member of the Beta Theta Pi fraternity. During his senior year at UCLA, Dick married Diane Boyce. After graduating, Dick worked as a CPA at Price Waterhouse.

Dick and Diane had four children: Valerie, Laurie, Susan and Bill. In 1959, Dick simultaneously started his CPA practice in West Los Angeles and began night law school at University of

Southern California. After five nights a week for four years, Dick received his law degree.

Dick met Barbara in 1978 and they were married in 1979. Barbara had a young son, Jonathan, and was pursuing her career as an electrical engineer specializing in satellite communications. Dick and Barbara became active with Earthwatch Expeditions, a group that sponsors volunteer work all over the world in myriad disciplines. Dick and Barbara went on 10 Earthwatch Expeditions, including Nepal to study Rhesus monkeys in the temples of Kathmandu, Swaziland to unearth Middle Stone Age tools, Chile to locate and exhume pre-Colombian mummies in the Atacama Desert, Switzerland to dig up Plateosaurus bones, and Zimbabwe to study the nutrition of pregnant Ndebele women. Dick and Barbara also enjoyed other world travel to places including Greece, Russia, Peru, Italy, Kenya, Tanzania, Rwanda and the Caribbean.

Dick is survived by his wife, Barbara; his five children, Valerie, Laurie, Susan, Bill and Jonathan; his sister, Carol Barnes; and his grandchildren, Anaya, Courtney, Carly, Camille and Will.

A funeral Mass was March 14 at St. Francis Church in Hamilton with Father Jim Connor celebrating. Condolences may be left for the family at [dalyleachchapel.com](http://dalyleachchapel.com).

In lieu of flowers, the family would prefer donations to Marcus Daly Hospice Endowment Fund, 1200 Westwood Drive, Hamilton, MT 59840.

### Dan Ross Howard

Dan Ross Howard, 66, of Cary, N.C., died Monday, Jan. 12.

Born in Glasgow, Mont., son of Fred and Opal Howard. After high school graduation, Howard spent a year at Montana State University before entering the U.S. Military Academy at West Point and graduating in 1971. In 1972, he married Eileen Daly. He received his law degree from the University of Montana (1976-79) and began employment as a patent attorney with Dow Chemical Co. in Midland, Mich., where they raised their five children.

Dan and Eileen moved to Cary in 2008; he continued to

work for Dow Chemical until his death.

Dan is survived by his children; Brian Howard and Dan Howard (Kelly) of Apex, N.C., Annmarie Ruppert (Mike) of Baltimore, and Susan Howard and Jonathan Howard of Michigan; his grandchildren, Nadia, Ross and Millie of Apex; and siblings Jerry Howard, Doreen Gertz and Deb DeBoer of Montana. He is predeceased by his parents Opal and Fred.

A celebration of life was held Jan. 24 at St Francis of Assisi Church in Raleigh.

In lieu of flowers, the family requests donations to the Wounded Warrior Project or a food pantry.

### Message, from page 3

squandered by usually finding a way to enjoy ourselves at State Bar gatherings with a bit of food and drink. I discovered things have not changed.

*Judge Word:*

*"I would say that the report made by the chairman of the committee is perfectly fair and more coherent than it was last night. We went to the Lambs Club, which Mr. Hartman was loathe to talk about, for he had had a high ball or two and he sort of opened up, and as the high balls kept coming, he kept on*

*coming until I think he could reform the procedure in Montana as well as all the other states and even in England."*

No gizmo or "app" can help us tell good from bad; juggle competing emotions between warring parties with prejudices as ancient as mankind itself; or move the debate on an important issue along in a humane way. We need to meet, as we do, and muddle through as has been the tradition for years. I imagine that if I would have time traveled to a 1914 meeting of the Montana Bar Association and foretold the gizmos we work with now, there would have been panic and teeth-gnashing then, as we are looking at now among some. We can handle technology if we are smart enough to not let it handle us.

### Evelyn Stevenson

RONAN – Evelyn “Evie” Stevenson passed away peacefully at St. Luke Hospital in Ronan, with family by her side, on Thursday, March 12, 2015, after dealing with various health problems over the years. She was born March 24, 1939, to Bill and Eva Matt Case in Blue Bay, where her folks were living at the time. Evie grew up hiking, fishing and picking huckleberries in the mountains.

In 1960, she married Dan Stevenson while working at Boeing in Seattle, and they traveled extensively with the aircraft industry. She still managed to go home to the reservation almost every summer. They had two children, Tisa and Craig, whom they adored. Although they divorced after 17 years, they remained great friends always.



Stevenson

While raising a young family in San Francisco, Evelyn was very active in the civil rights movement and American Indian causes. She was involved in the Alcatraz occupation in the early 1970s and went to the island in a rowboat for six months. She decided to become an attorney, finished her undergraduate degree and attended Golden Gate University Law School in San Francisco. She began working with the Salish and Kootenai Tribal Court System in the summer of 1974 after tribal sovereignty became more of a goal upon enactment of the Indian Education and Self-Determination Act. Together with Judges Donny Dupuis and Louise Burke – and other pioneering warriors of that time – they began building a modern, sophisticated Tribal Court system. They provided the first prosecutor, the first tribal advocate program and court adviser. Everyone wore many hats and the system worked on integrity.

Evelyn and her dear friend, Kathleen Fleury, were the first Indian women to pass the Montana Bar, and Evelyn became the first in-house legal counsel. During her first year with the tribes, she spent the winter in Washington, D.C., learning of the past litigation and Court of Claim cases that large firms had previously handled. The tribes were becoming prepared to stand on their own, supporting their ancestors’ wishes in becoming a sovereign nation. She flew back and forth. People joked that she could have lunch with the president, have afternoon pie and coffee with a homeless person, and then tuck her kids into bed late that night across the country.

Evelyn, along with several other very dedicated individuals, was instrumental in the effort to help win the eight-year legal battle to prevent a hydroelectric project at Kootenai Falls. This was

a sacred site for the Kootenai people, off the reservation. Evelyn always said, “This was a great victory.” In fact, it was unprecedented. At no other time in U.S. history had a large-scale construction project been halted through litigation. She was always humble about things, and this was probably the first time that her children realized that their mom was pretty amazing, as they watched her on TV refusing to back down to her adversaries.

Evelyn worked with other attorneys back East in developing the Indian Child Welfare Act of 1978. She fiercely defended the law with an unrivaled devotion and dedication. She rarely lost in court. One day, she stated her advantage. “My opponents were fighting for a paycheck, and I was fighting for my family.” That federal law became her lifelong passion, designed to hopefully avoid further destruction of the American Indian family. She became a nationally recognized expert on the subject.

In 1979, she was severely burned in a gasoline explosion while burning brush for her small log home on Finley Point. Although they tried to airlift her to a burn center, she refused to leave the reservation. She wanted to be close to traditional healers and her friends and family. They set up a makeshift burn unit in the Polson hospital and she recovered beautifully. The traditional healers visited her daily. She had extensive superficial and inhalation burns, but did not have much scarring, which surprised all of the specialists. She conducted business from her hospital bed, covered in bandages.

One of Evelyn’s greatest experiences was a sabbatical in New Zealand, where Evelyn was invited to speak at seminars with the Maori people in order to assist them in developing something similar to the Indian Child Welfare Act as they, too, faced the destruction of their families. She said the cultural exchanges were invaluable. She later went back with her attorney-friend, Virginia, to visit the many wonderful people she had met.

For years, she has been involved with the Native American Rights Fund on the board of directors, Tribal Law and Policy board of directors, the Montana ACLU and the Mission Valley Animal Shelter board. She also served on the advisory board for the CASA program, as well as the National Indian Justice Center. She was appointed by two governors for the Montana Human Rights Commission for 12 years. She also helped with the local stock car race track for many years.

Funeral Mass was March 16 in Elmo, with burial at the Ronan Cemetery. Memories or condolences may be sent to [thelakefuneralhomeandcrematory.com](http://thelakefuneralhomeandcrematory.com).

# 406-683-6525

## Montana’s Lawyers Assistance Program Hotline

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

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**ASSOCIATE ATTORNEY:** Brown Law Firm, P.C., with offices in Billings and Missoula, is seeking an associate with 0 - 5 years' experience for its office in Billings. The position will concentrate on civil defense litigation. We offer a competitive salary, benefit package including profit sharing and 401(k). Please send a letter of application and resume to Brown Law Firm, P.C., Attn: Teresa Delvo, P. O. Box 849, Billings, MT 59103-0849. All applications will be confidential.

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- Advising the MMIA Board of Directors
- Making coverage determinations on member claims
- Managing retained defense counsel in litigation against our members
- Advising and representing the MMIA in mediation proceedings and before the Montana Workers' Compensation Court on disputed Workers' Compensation Claims
- Assisting in the review and revisions of MMIA coverage forms and serving as an internal staff resource on claims issues and HR issues.

The successful firm will be a Montana-based law firm with a minimum of five attorneys that specializes in insurance, insurance defense and corporate work. If your firm is interested in receiving a copy of the Request for Qualifications, please contact:

Alan W. Hulse, CEO  
Montana Municipal Interlocal Authority  
PO Box 6669  
Helena MT 59604-6669  
1-800-635-3089 ext 124  
[ahulse@mmia.net](mailto:ahulse@mmia.net)

All submittals must be received by the MMIA in the requested format no later than 5:00 p.m. on Tuesday, May 5, 2015.

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### MEDIATION

**MEDIATION SERVICES:** Effective Jan. 1, 2015, Stuart Kellner will provide mediation services under the name Kellner Mediations. He plans to operate primarily electronically regarding scheduling, engagement letters, receipt of mediation memos and billing at [kellnermediations@montana.com](mailto:kellnermediations@montana.com).

Any necessary mailings may be sent to P.O.Box 1166, Helena, MT 59624. His business cellphone is 406-431-1027.

**MEDIATIONS & ARBITRATIONS:** As former executive vice president and chief counsel of ninth largest private employer in the U.S. and with over 45 years legal experience, my practice focuses on mediation and arbitration. Available as a neutral resource for complex commercial, class-action, ERISA and

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**AVAILABLE FOR MEDIATION AND ARBITRATION:** Brent Cromley, Of Counsel to Moulton Bellingham P.C., Billings, 406-248-7731, or email at [brent.cromley@moultonbellingham.com](mailto:brent.cromley@moultonbellingham.com).

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ADA compliant. Contact [jwalker@hagenwalkerlaw.com](mailto:jwalker@hagenwalkerlaw.com).

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## Would you like to boost your income while serving low- and moderate-income Montanans?

We invite you to participate in the Modest Means program {which the State Bar sponsors}.

If you aren't familiar with Modest Means, it's a reduced-fee civil representation program. When Montana Legal Services is unable to serve a client due to a conflict of interest, a lack of available assistance, or if client income is slightly above Montana Legal Services Association guidelines, they refer that person to the State Bar. We will then refer them to attorneys like you.

## What are the benefits of joining Modest Means?

**While you are not required to accept a particular case, there are certainly benefits!**

You are covered by the Montana Legal Services malpractice insurance, will receive recognition in the Montana Lawyer and, when you spend 50 hours on Modest Means and / or Pro Bono work, you will receive a free CLE certificate entitling you to attend any State Bar sponsored CLE. State Bar Bookstore Law Manuals are available to you at a discount and attorney mentors can be provided. If you're unfamiliar with a particular type of case, Modest Means can provide you with an experienced attorney mentor to help you expand your knowledge.

## Questions?

Please email: Kathie Lynch at [klynch@montanabar.org](mailto:klynch@montanabar.org). You can also call us at 442-7660.



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## CONSULTANTS & EXPERTS

### FORENSIC DOCUMENT EXAMINER:

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

### COMPUTER FORENSICS, DATA

**RECOVERY, E-DISCOVERY:** Retrieval and examination of computer and electronically stored evidence by an internationally recognized computer forensics practitioner. Certified by the International Association of Computer Investigative Specialists (IACIS) as a Certified Forensic Computer Examiner. More than 15 years of experience. Qualified as an expert in Montana and United States District Courts. Practice limited to civil and administrative matters. Preliminary review, general advice, and technical questions are complimentary. Jimmy Weg, CFCE, Weg Computer Forensics LLC, 512 S. Roberts, Helena MT 59601; (406) 449-0565 (evenings); [jimmyweg@yahoo.com](mailto:jimmyweg@yahoo.com); [www.wegcomputerforensics.com](http://www.wegcomputerforensics.com).

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

## ARCHITECTURAL EXPERT FORENSIC

**INVESTIGATION & ANALYSIS:** 43 years architectural experience. Specializing in Contract Administration; Specifications; and Architect / Owner /Contractor relationships. Extensive knowledge of building systems, materials, construction methods; Accessibility Regulations and Standard of Care; and forensic architectural investigation. Provides consulting and expert witnessing services. Attorney references upon request. Frank John di Stefano, PO Box 1478, Marion, MT, 59925, Phone: 1-406-212-7943.

## EVICCTIONS

**EVICCTIONS LAWYER:** We do hundreds of evictions statewide. Send your landlord clients to us. We'll respect your "ownership" of their other business. Call for prices. Hess-Homeier Law Firm, 406-549-9611, [ted@montanaevictions.com](mailto:ted@montanaevictions.com). See website at [www.montanaevictions.com](http://www.montanaevictions.com).

## INVESTIGATORS

**PRIVATE INVESTIGATOR:** Accurate Private Investigator for civil or criminal cases. Licensed in Montana for over 30 years. Zack Belcher, 541 Avenue C, Billings, Montana, 59102. Phone:1-406-248-2652.

### INVESTIGATIONS & IMMIGRATION

**CONSULTING:** 37 years investigative experience with the U.S. Immigration Service, INTERPOL, and as a private investigator. President of the Montana P.I. Association. Criminal fraud, background, loss prevention, domestic, worker's compensation, discrimination/sexual harassment, asset location, real estate, surveillance, record searches, and immigration consulting. Donald M. Whitney, Orion International Corp., P.O. Box 9658, Helena MT 59604. (406) 458-8796 / 7.

# DO YOU NEED PRO BONO HOURS?

*The Legal Services Developer Program coordinates legal document clinics for low-income Montanans aged 60 and older to assist in the preparation of estate planning documents.*

*Attorneys and paralegals can volunteer for three to seven hours of pro bono services that qualify for credit under Rule 6.1 of the Montana Rules of Professional Conduct.*

***If you are interested in volunteering for the clinics, or referring low-income seniors to the clinic for services, please contact the Legal Services Developer at:***

**1-800-332-2272**

## Legal Document Clinic Schedule

March 26	Estate Planning Clinic	Fort Benton
April 22	Estate Planning Clinic	Red Lodge
May 26	<i>Indian Wills CLE</i>	Missoula
May 27	<i>Indian Wills Clinic</i>	Missoula
June 25	Estate Planning Clinic	Billings
July 23	Estate Planning Clinic	Missoula
August 26	Estate Planning Clinic	Pablo
August 27	<i>Indian Wills Clinic</i>	Pablo
September 22	Estate Planning Clinic	Hardin
September 23	<i>Indian Wills Clinic</i>	Hardin
October 21	Estate Planning Clinic	Harlem
October 22	<i>Indian Wills Clinic</i>	Harlem

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