

Also inside: Court orders — Access to Justice Commission, Appellate Pro Bono Program,

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State Bar
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Montana

June/July 2012
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*Lawyers disproportionately die by suicide
Final story in series, Page 16*



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CORRECTION: The issue number for the May edition of Montana Lawyer was incorrect. It should have read Vol. 37, No. 7

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At some time in our lives we are all a one

“Tolerance implies a respect for another person, not because he is wrong or even because he is right, but because he is human.”

-- John Cogley

I attended a diversity reception at the ABA Mid-Year meeting in San Francisco a few years ago at the request of then-President Cindy Smith. While walking over to the reception, I met a lovely woman named Ruthe, who confirmed that I was heading in the right direction for the reception. Ruthe, a former governor of the State Bar of California, immediately took me under her wing to make sure I got to the right place.

We arrived and Ruthe invited me into a large glass-enclosed room where people were obviously meeting and debating some significant issues. I later determined it was a meeting between the diversity sections of the State Bar of California and the American Bar Association. It was a power-meeting to be sure.

After seating myself at the table in a tall leather chair, I glanced around the room. I was the only white person in the room. I noticed a number of quizzical looks on the faces of people around me. Indeed, the chairman sent a staff person to obtain personal information from me – the interloper.

After the meeting, a reception queue formed to greet me. Apparently it was quite a novelty for a gay, white male from Montana to attend such a meeting. I was a minority in a group of minorities, and welcomed for it.

Diversity isn't a front-burner issue for many in this state largely because our state isn't very diverse. Montana has a rather homogenous population with whites comprising almost 90% of the population and most ascribing to a Christian faith tradition. Especially in rural areas, the greatest and most obvious divergence among people is between owners of Ford vs. Chevy trucks. We otherwise look and act a lot alike.

Our bar is even more white-washed than the general population with 97% of the respondents in our 2011 Membership Survey reporting their race as “White”. The largest minority in both the general population and the bar is Native Americans.

Why is diversity important? Because bias and prejudice can creep into our legal system and how it addresses minority members of our society. Although Lady Justice may be blind, her agents – attorneys and judges – are not, and may

be significantly influenced by bias, stereotypes, cultural misunderstandings and outright bigotry. We are the gatekeepers of justice and fairness, and hold a special duty to avoid acts of discrimination and prejudice. Truly, how we treat the one who is different from us in thought, color or creed speaks volumes about our society, for at some time in our lives we are all a one. Depending on circumstances, each of us will be a minority.

We know that bigotry and prejudice are learned behaviors. No one is born a bigot. As we grow we become aware of ourselves and learn how others are different from us. Too often we are taught to fear and loath the differences, whether by outright comments, or by more subtle avoidance.

For instance, I grew up in a rural, Eastern Montana community where people looked alike and, for the most part, thought the same. Thankfully the only derogatory jokes I heard growing up were about Norwegians (I am 15/16ths Norwegian) and North Dakotans (I was born in Williston, ND).

However, my father (bless his soul) had a significant prejudice against Native Americans. Our family lived near the Fort Peck reservation and my father had several negative experiences with Natives. He attributed those negative experiences broadly to the entire race. Dad didn't necessarily indoctrinate us with his prejudice, but I am sure he wanted us to share in his feelings. Because of that history, I remain mindful of my interactions with, and thoughts and feelings about, Native Americans.

In short, as legal practitioners and adherents of the rule of law, we need to look for the similarities not the differences among people. We need to build community not tear it apart. We need to be examples to our society of tolerance and acceptance. That is the core objective of diversity.

As part of that objective, we should pursue developing diversity in our offices, our firms, our public officials and our judiciary. Certainly our judiciary should model the diversity of our general population, or we risk excluding a voice in the administration of justice.

Preserving reasonable suspicion

Why Montana should not follow Florence v. Burlington

By Anna Conley

Introduction

Would it surprise you to learn that failing to pay a speeding ticket could result in a forced strip search and visual body cavity inspection? In *Florence v. Burlington*, 132 S.Ct. 1510 (2012), a narrow majority of the U.S. Supreme Court held that a jail can strip search any and all detainees prior to admitting them to general population. The court held strip searching detainees, which includes visual inspection of body cavities by jail personnel, are constitutional even when the person was arrested on a warrant for not paying a fine, he has not yet been charged with a crime, his suspected offense is non-violent and non-drug related, and no reasonable suspicion exists that he may be carrying contraband. *Florence* reversed the long-existing rule and current federal practice of allowing strip searches of detainees only upon reasonable suspicion.

The Federal Bureau of Prisons and U.S. Immigration and Customs Enforcement (ICE), continue to require reasonable suspicion prior to a strip search of detainees based on the privacy invasion inherent in such searches. With Montana's heightened constitutional protections and emphasis on the right to privacy, we should retain our unique constitutional standard regarding unreasonable searches and seizures that implicate invasions of privacy, and, at the very least, require reasonable suspicion prior to searches of detainees arrested for minor non-violent and non-drug related crimes or warrants. Ten other states have enacted statutes requiring reasonable suspicion prior to strip searching an individual arrested for a non-violent and non-drug related reason.

Background

A "strip search" is a totally nude visual inspection of a detainee by jail personnel that may include "directing detainees to shake their heads or to run their hands through their hair to dislodge what might be hidden there; or it may involve instructions to raise arms, to display foot insteps, to expose the back of the ears, to move or spread the buttocks or genital areas, or to cough in a squatting position."¹ Federal courts have long recognized that visual cavity searches are a "severe, if not gross interference with a person's privacy."²

The Federal Bureau of Prisons' policy states that detainees charged with misdemeanors, committed for civil contempt, or held as material witnesses "may not be searched visually unless there is reasonable suspicion that he or she may be concealing a weapon or other contraband."³ Similarly, the ICE

Detention Standards provide "[a] strip search will be conducted only when there is reasonable suspicion that contraband may be concealed on the person, or when there is a reasonable suspicion that a good opportunity for concealment has occurred, and when properly authorized by a supervisor."⁴

"Reasonable suspicion" is defined as "suspicion that would lead a reasonable correctional officer to believe that a detainee is in possession of contraband. It is a more permissive (lower) standard than probable cause, but it is more than a mere hunch." *Id.* It includes unusual or suspicious appearance or behavior, evasive or inconsistent responses to questions, discovery of contraband in less-invasive searches, criminal history involving crimes involving violence, weapons, contraband or illegal substances, whether the arrest involved drugs or violence, and any history of confinement. The ICE Detention Standards require "[b]efore strip searching a detainee to search for contraband, an officer should first attempt to resolve his or her suspicions through less intrusive means."⁵

These policies evidence a consistent practice of only allowing strip searches for minor offenses upon reasonable suspicion or belief. This is consistent with the bulk of federal law that existed until the last two years, which has consistently held that reasonable suspicion is necessary prior to strip searching detainees arrested for minor offenses.⁶ The logic behind this is that arrestees for minor offenses are not yet charged or found guilty of a crime, and the nature of their arrest and alleged offense does not suggest they are dangerous to a degree sufficient to justify the extreme personal invasion inherent in strip searches with visual inspection of body cavities.

Florence v. Burlington

In April of this year, the U.S. Supreme Court solidified the growing trend authorizing blanket strip searching of all detainees entering a jail's general population. Albert Florence was stopped in his automobile by a state trooper in Burlington County, New Jersey. The officer arrested Florence due to an outstanding warrant which was based on an error in a statewide database showing he had not paid a fine. In fact, Florence had paid the fine. There was no other basis for Florence's arrest, and he was not charged with any crime.

Florence was taken to the Burlington County Correctional Detention Center, where he was showered with a delousing agent, and subjected to a strip search in which he was required take off all of his clothes, and "open his mouth, lift his tongue, hold out his arms, turn around, and lift his genitals."⁷ After

No. 12-0028

In the matter of establishing an Appellate Pro Bono Program

On January 13, 2012, the Court entered an order calling for public comment on a proposal to establish an Appellate Pro Bono Program to further access to justice for civil litigants who lack financial means to retain counsel. Having now considered the comments submitted,

IT IS HEREBY ORDERED that there is established within this Court an Appellate Pro Bono Program (APBP) designed to offer the assistance of appellate counsel to qualified litigants in cases in which the Court has determined that supplemental briefing would be beneficial to the Court. The APBP will be developed and coordinated by the Montana Supreme Court's Pro Bono Coordinator and its Pro Se Law Clerk in accordance with the following guidelines:

1. Volunteer counsel:

The Montana Supreme Court's Pro Bono Coordinator will develop a volunteer database and registry for attorneys and law students who volunteer to assist pro se litigants in appeals pending before the Supreme Court. Each volunteer will fill out an online application which will include, among other information, areas of the attorney's or student's subject matter expertise and interest. Experienced appellate attorneys may volunteer to mentor less experienced volunteer attorneys in supplemental briefing and arguing the appeal, should argument be ordered. Law students under supervision of the UM Law School also may apply to participate as volunteer counsel in accordance with the Court's student practice protocol.

2. Program Eligibility:

Cases involving at least one self-represented party may be selected by the Court for participation in the program where the Court determines, after briefing has been completed, that the Court will benefit from additional briefing on one or more issues. The Court's staff and Law Clerks may bring appropriate cases to the Court's attention during the briefing process on appeal or, in original proceedings involving self-represented litigants, during their review of motions or petitions.

Once the Supreme Court identifies an appeal where pro bono assistance may be beneficial to the Court, the Montana Supreme Court's Pro Se Law Clerk (PSLC) will provide the identified self-represented litigant with an application form for participation in the program, which explains eligibility requirements and the scope of representation. Should the litigant choose not to participate in the program, the case will be submitted on the litigant's pro se briefing.

Financial eligibility for the program will be determined in accordance with the criteria used to determine eligibility for services from the Montana Legal Services Association (MLSA). Appointment of pro bono counsel will be coordinated with MLSA's pro bono referral process to ensure proper financial eligibility screening for litigants and provision of malpractice insurance coverage for pro bono counsel who otherwise lack such coverage.

If the litigant applies and is approved for appointment of counsel under the Appellate Pro Bono Program, the Pro Bono Coordinator will circulate a case-specific confidential memorandum to a pool of volunteer attorneys for determination of conflicts of interest. The Pro Bono Coordinator will select an attorney from the qualified pool. The Pro Bono Coordinator will notify the volunteer attorney or student and the litigant of the attorney or student selected.

In the event multiple parties to the appeal are appearing pro se, volunteer counsel will be offered as described above for each qualified self-represented litigant.

3. Volunteer counsel/student:

The volunteer counsel will provide the litigant with an engagement letter and file a notice of appearance (noting the appointment is under the Appellate Pro Bono Program). The Court will set a briefing schedule and the Montana Rules of Appellate Procedure will apply as in all other proceedings.

4. Supreme Court:

Volunteer counsel shall advise the Court whether oral argument is requested. The Court will consider the preferences of counsel and whether the case is appropriate for oral argument in determining whether to classify the case for argument.

Want to serve?

Watch the State Bar and Court websites for application information and links. If you are interested in serving in the program, please contact the Supreme Court's Statewide Pro Bono Coordinator, Patty Fain, at 794-7824 or pfain@mt.gov.

The Court shall schedule the oral argument and determine the time allowed to each party in accordance with its Internal Operating Rules.

5. Pro Bono Coordinator/ProSe Law Clerk:

The Pro Bono Coordinator and Pro Se Law Clerk will be cross-trained so that the appointment of counsel is not interrupted due to the temporary unavailability of either. Back-up staff may be trained as needs are identified. The Pro Bono Coordinator will develop the database and access to attorneys and law student volunteers. A rotation or randomized system of selecting counsel will be established.

The PSLC will prepare the case-specific confidential memorandum for each case with review and oversight by the Court. The PSLC and Pro Bono Coordinator will develop the forms required to support this program.

6. Appeal Costs

Except for court fees waived in accordance with existing rules, transcripts and other costs associated with the appeal will continue to be the responsibility of the parties.

IT IS FURTHER ORDERED that the Program will take effect July 1, 2012.

Justice James C. Nelson, dissenting.

I dissent from this Court's Order establishing the "Appellate Pro Bono Program" (APBP). While I do not impugn the good intentions of those promoting APBP, I suggest that the proposal is ill thought-out and will likely create more work and problems than it solves. Indeed, on the scant record presented, I suggest that the proposal is premature at best and, more likely, is not needed at all.

According to the materials circulated to this Court and to the public, APBP

is envisioned to offer the assistance of pro bono appellate counsel to “qualified litigants.” The Court’s Order does not provide any concrete criteria for identifying which self-represented litigants will “qualify” to receive the special assistance of APBP and which self-represented litigants will not so “qualify.” Evidently, the assistance will be provided to those self-represented litigants whose cases this Court, subjectively and arbitrarily, decides will “benefit” from additional briefing on one or more issues. Attorneys, as well as law students, are encouraged to offer their services to the program, and the Court will require oral argument in “appropriate” cases. The Court’s staff and law clerks may bring “appropriate” cases to the Court’s attention during the briefing process on appeal or, in original proceedings involving self-represented litigants, during their review of motions or petitions. Again, no criteria are provided as to what constitutes an “appropriate” case. If both parties are self-represented on appeal, both will be offered the benefit of APBP. There is a financial eligibility requirement and, apparently, the implicit requirement that attorneys and law students taking part in APBP will be referred through the Montana Legal Services Association so that such practitioners can take advantage of that organization’s malpractice insurance coverage—assuming that the volunteer does not have his or her own errors-and-omissions insurance. There is, of course, more in the circulated materials and in the Court’s Order—details that involve, among other things, labor and time-intensive coordination, possible mentoring and supervision of law students, and additional duties imposed on this Court’s Pro Bono Coordinator and this Court’s ProSe Law Clerk. However, the above fairly sums up the proposal.

At the outset, I question the premise upon which this entire program is based—namely, that this Court is faced with a sufficient number cases involving self-represented litigants where “supplemental briefing” and oral argument would be “beneficial.”

Indeed, I suggest that APBP is a solution in search of a problem. This much

can be seen from the skeletal nature of the program outlined in the Court’s Order and the amorphous standards (rather than concrete criteria) articulated by the Court regarding the cases to which the program will apply. If there were truly a need for APBP, one would expect the Court’s Order to identify with some sort of specificity the cases to which it will apply rather than just saying, somewhat vaguely, that we’re creating an appellate pro bono program and will apply it whenever we think it’s “appropriate” or “beneficial” to do so. Anecdotally—and that is about all there is to rely on here—I can recall one or maybe two self-represented cases in the last two years that, in my view, would have “benefited” from supplemental briefing.

And that is the fundamental problem. We are presented with no actual data or statistics demonstrating the depth and seriousness of the problem to which APBP is presumably directed. The gross numbers and anecdotal evidence reflecting the increase in cases involving self-represented litigants, generally, say nothing about the necessity to create APBP. Those numbers and conventional wisdom show that more and more people cannot afford to hire attorneys—or, at least, attorneys who are interested in representing them in their particular case. And, as I expect most of us would agree, self-represented cases, as a class, would all benefit from supplemental briefing by pro bono counsel. Typically, such cases are not well briefed in the first place, and very often the trial court record is equally inadequate for appellate review.

The Court has decided, however, that a select number of those cases should be entitled to the benefit of supplemental briefing by counsel or a law student. Resorting to my own conventional wisdom and anecdotal experience, I suggest that there are very few appellate cases where there is one or more self-represented litigants and where the case actually merits supplemental briefing, much less oral argument. In the couple of cases where additional briefing might have been helpful, there were other problems that no amount of supplemental briefing could have fixed.

In point of fact, cases involving self-represented litigants—especially those who represented themselves in the trial

court—typically are burdened with serious procedural problems including: the failure to make and preserve an adequate record in the trial court; the failure to make contemporaneous objections; the failure to raise and argue appropriate theories and arguments supporting the objections that were made; the failure to produce and to get admitted the necessary testimonial and documentary evidence—the list goes on and on. In the face of these problems and shortcomings, our staff, our law clerks, and our Pro Se Law Clerk—most of whom already have sufficient other work to keep them busy—apparently will now be required to examine all self-represented appeals and original proceedings (the latter being even rarer than the former)—all of which theoretically could benefit from supplemental briefing—and ferret out those cases which, under this Court’s non-test, are “appropriate” and “will benefit” from supplemental briefing and oral argument. This, I assume, presupposes that in addition to “brief checking” (for procedural compliance with the Montana Rules of Appellate Procedure), which our law clerks already are required to do, they will also be expected to read the briefs, motions, and petitions filed by self-represented litigants and examine the adequacy of the district court record—a daunting task—so as to find “appropriate” cases (whatever those are) to bring to the Court’s attention. I suggest there are few, if any, clerks who have that kind of time.

Furthermore, by its terms, APBP is not just restricted to appeals. It obviously covers those, but also covers “original proceedings,” “petitions” (which encompasses a vast array of other proceedings including not only true “original proceedings” but also petitions for habeas corpus, supervisory control, mandamus, prohibition, and postconviction relief, all of which are “civil proceedings”), and the “motions” that self-represented litigants file. In short, if APBP operates as set out, it will quickly morph into one that this Court does not have adequate personnel or resources to administer.

But more to the point, what is it that supplemental briefing is supposed to accomplish? Is pro bono appellate counsel

supposed to propose and argue new theories, issues, and errors that were not preserved in the trial court? If so, this flies in the face of caselaw prohibiting that very sort of practice by attorneys and by those self-represented litigants whose cases apparently do not merit “supplemental briefing.”¹

Also, as for the costs of transcripts and the costs of transmitting the record on appeal to the Clerk of this Court, we know from the Court’s Order that those will remain the responsibility of the self-represented litigant. As we are all aware, however, self-represented litigants often cannot afford the costs of necessary transcripts, and the case comes to this Court without a sufficient record to review for legal error. If that is the sort of case which merits supplemental briefing-and this Court may determine that it is, absent the benefit of being able to first review the transcripts-then it seems to me that we are creating an untenable situation: engage pro-bono counsel who will be forced to argue the case without reference to the oral record or will be required to fund the cost of the transcripts himself or herself in order to do the briefing and oral argument properly-the latter being an unlikely possibility for law students. Moreover, by this Court’s assisting “qualified litigants” in setting forth their arguments on appeal and then deciding those same arguments, we are inviting ethical problems and setting the stage for violations of the right to an impartial tribunal.

For the foregoing reasons, if it is going to work at all, APBP must necessarily presume that the self-represented litigants on appeal were represented by counsel in the trial court proceedings. This is a necessary assumption if the record-preservation problems discussed above are to be avoided. That happens sometimes-trial counsel bails out before the appeal because he or she and the client had a falling out or, more likely, because the client has run out of money.² But, for a substantial

number of self-represented cases, there will have been no representation in the trial court and the case will come to this Court burdened with the aforementioned procedural problems that nothing, short of a remand for retrial in the district court, will fix. That is certainly true for appeals, and is even more likely when we throw motions, original proceedings, and petitions for habeas corpus, supervisory control, mandamus, and prohibition into the mix.

This brings me to the issue of fairness. On one hand, we pick and choose those few cases (although I expect that, since we now have a “program,” the number will mushroom exponentially) for which supplemental briefing will be beneficial and, at the same time, implicitly tell untold numbers of other self-represented litigants that they are stuck with their inadequate records, their inadequate briefs, their inadequate arguments, and, perhaps, their ineffective trial counsel. Rightly, those people should be heard to say, “Why not me? Why not my case?” Furthermore, in those cases where one party has counsel and the other does not, we will appear to be punishing the litigant who had the ability to hire an attorney: he or she will be required to pay for more briefing and, perhaps, a remand or an oral argument. The represented litigant may not be able to take advantage of inadequacies and mistakes made by the self-represented client. While this observation may strike some as harsh and unfair, it is part and parcel of what litigation is all about: making a good case for your client and taking advantage of your opponent’s mistakes. Assisting those who cannot afford counsel by encouraging, generally, pro bono service or by lobbying for legislation that would fund representation for a wider variety of cases is one thing. However, targeting certain self-represented litigants with certain cases and then offering and providing those individuals with the sorts of services that might well help them prevail against the other party is a wholly different matter. Doing so removes this Court from its proper position of arbiter and places it into the position of

advocate instead.

Finally, besides the aforementioned structural problems, the seminal problem remains. We are presented with no actual data or statistics that would enable this Court to determine the actual number of cases involving self-represented litigants where an adequate record has been preserved for appellate review and where supplemental briefing would be beneficial and could be ordered without a remand-versus the number of cases where that is not so. In short, the existence of a problem to which APBP is addressed has not been established with anything other than anecdotal evidence. Correspondingly, we are provided with no real structure to APBP and how the aforementioned problems inherent in the program will be adequately and fairly addressed and resolved. Furthermore, unless APBP contemplates that pro bono appellate counsel will simply be turned loose to create the proverbial silk purse of a supplemental brief from a sow’s ear of a trial court record, I suggest that this lack of data, statistical evidence, and structure militates in favor of either dropping the idea altogether or, at least, putting it on hold until such time as adequate facts, data, statistics, structure, and criteria-as opposed to good intentions-are available for review.

The devil is always in the details; and, in that regard, I suggest that there are many important details in this proposal for which no actual data or evidence has been presented to this Court. I maintain that what we have before us does not demonstrate that there is actually a problem which mandates the solution proposed. Indeed, in my view-and assuming that we are still addressing the very few self-represented cases which come before this Court for which supplemental briefing might actually be beneficial-this Court can, as we already have done on occasion, contact the Pro Bono Coordinator and request that she attempt to locate an attorney willing to represent the self-represented litigant on a pro bono basis.

For the foregoing reasons, I decline to join this Court’s Order. I dissent.

1. The well-established general rule is that this Court will not consider issues not raised before the trial court or new legal theories raised on appeal. In *reM W.*, 2012 MT 44, ¶ 14, 364 Mont. 211, 272 P.3d 112; *State v. Montgomery*, 2010 MT 193, ¶ 11, 357 Mont. 348, 239 P.3d 929; *Whitehorn v. Whitehorn Farms, Inc.*, 2008 MT 361, ¶ 21, 346 Mont. 394, 195 P.3d 836; *State v. LaFreniere*, 2008 MT 99, ¶ 11, 342 Mont. 309, 180 P.3d 1161; *State v. Courville*, 2002 MT 330, ¶ 5, 313 Mont. 218, 61 P.3d 749.

2. It goes without saying that, with some notable exceptions (parental rights termination proceedings and commitment proceedings, for example), there is no general right to appointed counsel in civil proceedings. There is no “civil Gideon right.” There should be, but the fact is there is not, and it is highly unlikely that Montana’s legislative and executive branches will fund a civil Gideon program within the lifetimes of anyone currently involved in this matter.

No. AF 11-0765

In RE the establishment of an Access to Justice Commission

The Montana Supreme Court Equal Justice Task Force petitioned this Court to establish an Access to Justice Commission to replace the Equal Justice Task Force, and to set forth certain aspects of the Access to Justice Commission's composition and activities. Having reviewed the petition and public comments, and for good cause shown, the petition is GRANTED.

IT IS ORDERED that the Access to Justice Commission (ATJC) is established as an advisory commission to this Court. The Equal Justice Task Force (EJTF) is abolished. Further, the Commission on Self-Represented Litigants is abolished and reinstated as a standing committee of the ATJC.

IT IS FURTHER ORDERED that the ATJC shall perform the following duties:

- Assess the legal needs of low- and moderate-income Montanans, evaluate the extent to which those needs are going unmet, and coordinate efforts to better meet those needs;
- Assess the ability of all court users to access the courts, and make recommendations to improve rules, statutes, and judicial processes to assure accessibility to all;
- Provide long-range, integrated planning among legal assistance providers and other interested entities and people in Montana, and continue to facilitate networking and communication among them;
- Foster the development of a statewide integrated civil legal services delivery system, design and implement new programs to expand opportunities for access to justice, and work toward the most efficient use and delivery of resources relating to civil access to justice;
- Work toward securing and maintaining adequate funding for civil access to justice, and coordinate

statewide efforts to do so;

- Serve as the advisory council for the Montana Legal Services Association VISTA project;
- Conduct regular meetings to achieve the ATJC's purposes;
- Establish the former Self-Represented Litigants Commission as a permanent ATJC committee to continue the Self-Represented Litigants Commission's mission, including forms development for self-represented litigants;
- Report to the Montana Supreme Court at least biennially the findings, accomplishments, plans, and recommendations of the ATJC for assuring access to justice for all Montanans.

IT IS FURTHER ORDERED that the ATJC consists of 18 members appointed by the Court, who will serve staggered 3-year terms. The ATJC Chairperson(s) will be appointed by the Court and will submit nominations for officers and members as needed to the Court for approval.

IT IS FURTHER ORDERED that the ATJC will consist of representatives from the following entities:

- Office of the Attorney General
- Montana House of Representatives
- Montana Senate
- Montana Supreme Court Justice
- District Court Judge (#1)
- District Court Judge (#2)
- Court of Limited Jurisdiction Judge
- Clerk of a District Court
- Clerk of a Court of Limited Jurisdiction
- Montana-Wyoming Tribal Judges Association
- Montana Justice Foundation
- Montana Legal Services Association
- State Bar of Montana
- School of Law at the University of Montana

- Business/Communications Leader (#1)
- Business/Communications Leader (#2)
- Two representatives of any of the following: Native American communities; the Governor's Office of Indian Affairs; entities that advocate for individuals with disabilities; entities that advocate for Montana's senior citizens; Montana Department of Public Health and Human Services; State Bar of Montana Paralegal Section; Access to Justice Committee and/or Dispute Resolution Committee; and entities working with low-income people in Montana.

IT IS FURTHER ORDERED that, because the former EJTF members do not necessarily correspond with the ATJC composition set forth above, the Equal Justice Coordinator from the State Bar of Montana will facilitate communications among the former EJTF members and the entities listed above that are currently not represented to develop a list of nominations and staggered terms of ATJC members for the Court's approval within 4 months from the date of this order.

IT IS FURTHER ORDERED that the State Bar of Montana will provide administrative support for the ATJC. The Court will recognize any change of name adopted by the State Bar's Access to Justice Committee to avoid confusion with the ATJC.

The Clerk is directed to distribute this Order to the district court judges and the judges of the courts of limited jurisdiction, and to Janice Doggett, Equal Justice Coordinator of the State Bar of Montana, with the request that it be publicized in the Montana Lawyer as well as to all entities that will have representatives on the ATJC. The State Bar of Montana also shall distribute this order to EJTF members and members of the Commission on Self-Represented Litigants.

This Order shall become effective on the 1st day of October, 2012.

Court Orders

Commission on Practice election and appointment

Summarized from a May 22 order:

Following an election among resident members of the State Bar of Montana Area G, comprised of Yellowstone, Big Horn, Carbon and Stillwater Counties (Thirteenth and Twenty-Second Judicial Districts), the Court has appointed Don Harris to the Commission on Practice.

Discipline

Summarized from a May 15 order:

On May 31, 2011, a formal disciplinary complaint was filed against Montana attorney Clinton H. Kammerer. The disciplinary complaint may be reviewed by interested persons in the office of the Clerk of this Court.

The Commission on Practice held a hearing on the complaint on January 19, 2012, at which hearing Kammerer

was present and testified on his own behalf. On March 22, 2012, the Commission submitted to this Court its Findings of Fact, Conclusions of Law, and Recommendation for discipline. Kammerer did not file any objections within the time allowed.

The Commission has concluded Kammerer violated the Montana Rules of Professional Conduct (MRPC) by continuing to practice law after he had been placed on inactive status with the State Bar of Montana as a result of his failure to comply with mandatory continuing legal education requirements. (Violation of Rules 1.16(a), 3.4(c), and 5.5, MRPC.) The Commission recommended that Kammerer be suspended 30 days and to pay the costs of these proceedings.

The Court accepted and adopted the Commission's Findings of Fact, Conclusions of Law, and Recommendation.

The suspension begins on June 15, 2012, and ends on July 15, 2012. Pursuant to Rule 30 of the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE), Kammerer is directed to give notice of his suspension, within 10 days of the date of this Order, to his clients, co-counsel, opposing counsel, and courts in which he appears as counsel of record in any pending matter.

Kammerer shall pay the costs of these proceedings in accordance with the statement to be provided by the Office of Disciplinary Counsel. Kammerer shall have 10 days from the date of service of the statement of costs within which to file with the Commission any objections to the costs assessed against him. Should he so desire, Kammerer may request a hearing before an adjudicatory panel on whether the amount of such costs is reasonable and necessary.

Orders, Page 13

Letters to the Editor

Dear Montana Lawyer:

I had the honor of clerking for Judge James Browning after my graduation from law school at the University of Montana. Like so many others who were lucky enough to spend time with Judge Browning, I was forever changed by the

experience. He taught humility, hard work, and compassion—and he did so by example. He shared his deep love for family, friends and colleagues, and that love showed in him through his gentle and kind spirit. He was one of the good guys, a real saint of our times. And he left this world a better place for the rest of us.

I express my sincere condolences to Mrs. Browning and the rest of the family for their loss. Thank you for sharing him with us.

Respectfully,
Matt Hayhurst

Montana and Member News

First Judicial District Bar names pro bono award winners

The First Judicial District Bar Association held its' annual Pro Bono Awards ceremony at Miller's Crossing in Helena on May 3, 2012. This year's award winners, Ole Olson of the Attorney General's Office and Kirsten Bowers of the Department of Environmental Quality, were presented their awards by former Chief Justice Karla Gray.

Court appoints new deputy disciplinary counsel

The Montana Supreme Court has appointed Jon G. Moog Deputy Disciplinary Counsel. The Court made the appointment on the recommendation of

Disciplinary Counsel Shaun Thompson. There were 32 applicants. Moog assumed his duties at ODC on May 1.

At the time of his appointment, Moog was Regional Deputy Public Defender for the Helena area. Moog was an assistant public defender for several years and has had extensive trial experience. Before Moog's employment with the Office of the State Public Defender, Moog was an associate attorney with Gough, Shanahan, Johnson, and Waterman, a Helena law firm. Moog began his legal career as a law clerk for the Honorable Thomas Honzel in the First Judicial District following his graduation from St. Mary's School of Law in 2001.

Moog is a fourth-generation Montanan. Moog and his wife, Kim, have two daughters.

New associate judge named to Montana Water Court

Chief Justice Mike McGrath has selected Russell McElyea to serve as the newly created associate judge of the Montana Water Court. McElyea's appointment is effective July 1, 2012. McElyea was selected from a list of five candidates recommended by the Judicial Nomination Commission.

"After interviewing all candidates, it was clear Russ was the person most qualified to help move the water rights process toward its conclusion. He understands what needs to be done to provide finality to water users," said Chief Justice McGrath. "I am confident he and Chief

NEWS, Next Page

Student, state bars continue successful partnership

During the school year, the State Bar and Student Bar Association coordinate panel discussions for students at the University of Montana School of Law. The topics vary depending on student interest.

All presentations are sponsored by the State Bar and the Student Bar Association. They take place over the noon hour at the law school. The Bar invites the participants, organizes the event and buys pizza; the student bar association gives us the topics, provides drinks, advertises the program and reserves the room.

“We are grateful to the Bar for reaching out to our students with these programs and increasing their opportunity to ask questions and to benefit from the wide array of experiences represented by the speakers. The University of Montana School of Law is proud to partner with the Montana State Bar for acts of mentorship, outreach, education, and service,” says Dean Irma Russell.

State Bar President Shane Vannatta shares similar sentiments, “Participating in the State Bar presentations is incredibly rewarding. I enjoy the opportunity to help shape the next generation of attorneys, and walk away with renewed enthusiasm for the practice of law.”

Here’s a quick breakdown of topics and presenters from the final panel for the 2011/2012 school year in April:

State Bar History and Overview: Chris Manos, Shane Vannatta, Matt Thiel, Tammy Wyatt Shaw.

Clerkship Panel — How to Apply to be a Law Clerk/ What You Do Once You are Hired: Justice Nelson, Justice Baker, Judge Todd, Jori Quinlan (Frackie), Hillary Wandler, and Robin Turner (as past law clerks).



State Bar Executive Director Chris Manos and new-lawyer panelists address Law School Students at a recent State Bar/Student Bar presentation. The panelists are Robin Turner, Randy Tanner, Ross McLinden, Erica Grinde, Jordan Kilby, and Dylan McFarland, (Mike Talia appeared by video).

Nontraditional Practice Panel — How to Get This Kind of Job, the Upside and the Downside: Jon Bennion, lobbyist Montana Chamber of Commerce; Kathleen Magone vice president in wealth management with U.S. Bank; Michael Magone Lolo School District K-8 superintendent; Susan Witte, Regulatory and Compliance Office for the Montana University System, former in-house corporate counsel and lobbyist; Jennifer Lutey WorldWide IDEA Executive Director.

New Lawyers: What I Wish Had Known ... — Robin Turner, Randy Tanner, Ross McLinden, Erica Grinde,

Jordan Kilby, and Dylan McFarland, Mike Talia appeared by video.

Pro Bono and Community Service Opportunities: Judge Kurt Krueger; Shane Vannatta, State Bar President; Amy Sings In The Timber, Montana Justice Foundation; Beth Hayes, Montana Legal Services Association in Missoula; Janice Frankino Doggett, Equal Justice Coordinator, State Bar of Montana; Associate Dean Andrew King-Ries, co-chair of the Equal Justice Task Force;

Technology and Practice: Betsy Brandborg, State Bar counsel, moderated a panel that included Joe Sullivan and Stacy Gordon.

NEWS, Continued

Water Judge Bruce Loble will work together to finish this project, which is vital to water users and recreationists in Montana.”

The Associate Judge position was created by the 2011 Legislature to expedite the adjudication of water rights in Montana. The Water Court was created

by the 1979 Montana Legislature. It has exclusive jurisdiction over the adjudication of all water-rights claims in Montana. More than 200,000 water rights claims will eventually be adjudicated through the Water Court.

McElyea, of Bozeman, is currently the Chief Operating Officer for Moonlight Basin Resort. Prior to his time at Moonlight Basin, he practiced primarily

water and real estate law in Bozeman. He received this law degree from the University of Colorado and bachelor’s degree in economics from Northern Arizona University. McElyea is active in a variety of recreational pursuits with a special interest in shooting sports.

McElyea’s appointment is for a four-year term. He will earn \$113,928 per year.

Law Day: Local bars, schools put in great effort

In 1958, the 34th President-elect Dwight D. Eisenhower, declared May 1 of each year to be Law Day. The proclamation was the brainchild Eisenhower's legal counsel and former president of the American Bar Association, Charles S Rhyne. This declaration was later codified into public law on April 7, 1961.

This day of observation was created with the purpose of inspiring appreciation in the American public for their liberties and a reaffirmation of their loyalty to the United States, as well as to encourage a rededication to the ideals of equality and justice under law and for the cultivation of the respect for law that is so vital to our democratic way of life.

Each year the American Bar Association chooses a different theme as a suggested focus for local bars to use in creating their own Law Day events. This year's theme of "No Courts, No Justice, No Freedom" was chosen in order to draw attention to the increasing problem of underfunded courts and the difficulties that reduced public support produce as courts attempt to meet their obligations in maintaining a civil society.

This year, local bars in the great state of Montana performed a good deal of exceptional work and put forth a lot of thoughtful effort to reach out to the public and increase general awareness of the indispensable benefits an independent judiciary provide to a democracy.

In Missoula, Mayor Jon Engan dedicated the week of April 30-May 4 as Law Week. Lawyers were also recruited to speak to students in Cascade, Fergus, Gallatin, Hill, Lewis and Clark, and Missoula counties. They spoke to students about government structure, the importance of an independent judiciary, and what legal issues they face when they reach 21.

In addition to these efforts, one teacher at Big Sky High School in Missoula instructed his class to conduct a mock trial, and in Bozeman students heard oral arguments presented to the Montana Supreme Court. This event also included an essay contest which gave students the opportunity to win a scholarship underwritten by the Gallatin County Bar.

The response from teachers and the public to this year's Law Day has been overwhelmingly positive with some bars reporting that it was their most successful to date.

Thanks

The Montana State Bar would like to recognize and thank some of the dedicated individuals whose efforts made Law Day 2012 a success:

Organizers/ coordinators:

Karla Bosse, Craig Buehler, Bob Cambell, Brenda Desmond, Leslie Halligan, Ryan Jackson, Gregg Smith, Amy Pfeifer

Participants/ volunteers:

Josh Campbell, Charles Carpenter, Ryan Cooney, Justice Patricia O'Brien Cotter, Justice Beth Baker, Mike Black, Jason Brown, Shaun Deola, Nick Domitrovich, Mayor John Engen,

Erin Farris, Dan Flaherty, Don Foucar, Mark Fowler, Harley Harris, Kelley Hubbard, Danna Jackson, Kurt Jackson, Jonathan Krauss, Mark Lancaster, Meghan Lulf-Sutton, Mark Mackin, Judge Mike McGrath, Dan McLean, Mark Meyer, Brian Miller, Jim Molloy, Justice Brian Morris, Justice James C. Nelson, Stuart Segrest, Chad Spraker, Colin Stevens, Mike Talia, Marcia O'Dell, Ole Olson, Rob Olsen, Greg Pinski, Justice James A. Rice, John "Laurie" Simms, Justice Mike Wheat, Jay Weiner (names provided by local bar associations)

The State Bar of Montana would also like to express gratitude for the work of the staff and administration of Bozeman, Helena, Great Falls, Lewistown, and Missoula school districts; the Hill County Library Association; the University of Montana Bozeman; the Cascade County, Central Montana, Gallatin County, 12th Judicial, and 1st Judicial Bar Associations. We would also like to thank those who contributed to the success of Law Day programs and support efforts that create greater transparency of the law and our courts. Thank you for your contribution.



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Orders

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Summarized from a May 29 order: Montana attorney Ann C. German was indefinitely suspended from the practice of law in Montana for not less than six months beginning on May 1, 2011, in this Court's Cause No. PR 10-0428. She has not petitioned for reinstatement from the period of suspension imposed under that cause number.

On March 27, 2012, the present formal disciplinary complaint was filed against Ann C. German. The six-count complaint, which may be reviewed by any interested persons in the office of the Clerk of this Court, is based on acts and omissions alleged to have occurred before German was suspended in Cause No. PR 10-0428. Briefly stated, the complaint alleges German failed to competently represent, expedite litigation on behalf of, and consult with a client in violation of Rules 1.1, 1.3, 1.4, and 3.2 of the Montana Rules of Professional Conduct (MRPC); that she failed to comply with a hearing examiner's scheduling order, to appear for a status conference before the hearing examiner, or to provide a written explanation for those failures, in violation of Rule 3.4, MRPC; and that she failed to withdraw from the representation of the client when her physical or mental condition materially impaired her ability to represent that client, in violation of Rule 1.16, MRPC.

German has tendered a Conditional Admission and Affidavit of Consent made pursuant to Rule 26 of the MRPC. On April 20, 2012, the Commission held a private hearing on this matter, at which German appeared and addressed the Commission. The Commission filed its recommendation that the Court approve German's admission and the discipline to which she has consented.

The Court has accepted the Commission's recommendation. The discipline is as follows: German shall be indefinitely suspended from the practice of law for a period of not less than six months, which suspension shall run consecutively to the suspension imposed in Cause No. 10-0428; German shall continue to undergo regular addiction counseling with a licensed therapist, counselor, psychologist, or psychiatrist, with whose treatment recommendations she shall comply; German shall provide the Commission with HIPAA-compliant releases for all records generated by her addiction counselor; and German shall be assessed with the costs of these proceedings. German shall have 10 days from the date of service of the statement of costs within which to file with the Commission any objections to the costs assessed against her. Should she so desire, German may request a hearing before an adjudicatory panel on whether the amount of such costs is reasonable and necessary.

Summarized from a May 29 order: On October 13, 2011, a formal disciplinary complaint was filed against Montana attorney Bradley L. Aklestad. The disciplinary complaint may be reviewed by any interested persons in the office of the Clerk

of this Court. The complaint alleges that, while Aklestad was on probationary status as an attorney as a result of previous disciplinary proceedings against him, he: (1) failed to answer multiple requests by the Office of Disciplinary Counsel (ODC) that he respond to three informal complaints filed against him; (2) failed to appear before the Commission on Practice in response to an order to show cause why he had failed to respond to ODC's requests regarding the informal complaints; and (3) failed to comply with the requirements of the previous disciplinary order entered against him.

The Commission held a hearing on the formal complaint against Aklestad on January 19, 2012, at which hearing Aklestad was present and testified on his own behalf. On March 29, 2012, the Commission submitted to this Court its Findings of Fact, Conclusions of Law, and Recommendation for discipline. The Commission has concluded that Aklestad has violated Rules 8.1(b) and 8.4(d) of MRPC.

The Commission recommends that Aklestad be suspended from the practice of law in Montana for an indefinite period of not less than seven months. The Commission also recommends that Aklestad be ordered to pay the costs of these proceedings.

Aklestad filed written objections to the Commission's recommendation, and the Office of Disciplinary Counsel has filed a response. Aklestad states he believes the Commission's recommendation is not commensurate with his violations or appropriate under the circumstances. He proposes that he be disciplined either by a public censure or by a shorter period of suspension beginning June 1, 2012. He also requests a public hearing. ODC responds that Aklestad already has been afforded a public hearing in this matter, and that he has given no excuse for his failure to respond to ODC's requests other than his dissatisfaction with the disciplinary process. ODC also points out that Aklestad has stated he recognizes "the need to at least temporarily stop practicing law" and that Aklestad was already on probationary status when these violations occurred. ODC observes that, with the minimum seven-month suspension recommended by the Commission, Aklestad will be required to petition for reinstatement and prove his fitness to practice law before he may resume practice.

The Court accepted and adopted the Commission's findings. The order shall be effective as of June 15, 2012. Pursuant to Rule 30 of the Montana Rules for Lawyer Disciplinary Enforcement, Aklestad shall give notice of his suspension to his clients, co-counsel, opposing counsel, and any court in which he appears as counsel of record in a pending matter.

Aklestad shall pay the costs of these proceedings in accordance with the statement to be provided by the Office of Disciplinary Counsel. Pursuant to Rule 9(A)(8) of the Montana Rules for Lawyer Disciplinary Enforcement, Aklestad shall have ten days from the date of service of the statement of costs within which to file with the Commission any objections to the costs assessed against him. Should he so desire, Aklestad may request a hearing before an adjudicatory panel on whether the amount of such costs is reasonable and necessary.

being held for six days, Florence was transferred to the Essex County Correctional Facility where he was subjected to a delousing shower, pat-frisk, clothing search, and was then searched in the Body Orifice Screening System (“BOSS”) designed to identify hidden metal. Despite these precautions, he was again subject to a strip search in which he “was required to lift his genitals, turn around, and cough in a squatting position as part of the process.”⁸ These searches were conducted pursuant to policies requiring strip searches of all arriving detainees regardless of the circumstances of the arrest, the suspected offense, the detainee’s behavior, or their demeanor or criminal history.

Florence brought suit alleging that this blanket policy allowing strip searches of all detainees regardless of the nature of the alleged offense and without a finding of reasonable suspicion violated the Fourth Amendment’s protection from unreasonable search and seizure. The U.S. Supreme Court held that the blanket policy requiring strip searches of all detainees released into the jail’s general population was constitutional based on penological concerns including protecting inmates in general population, preventing the spread of lice and diseases, treating injuries or wounds of the arrestee, checking for gang-related tattoos, and obtaining contraband. The majority emphasized that “[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals,” and determined that it would be an administrative hardship for jail personnel to determine each arrestee’s suspected offense and criminal history.⁹

Both the majority and the concurring justices emphasized the narrowness of the Court’s holding by emphasizing that it only applies where a facility introduces detainees into the jail’s general population. Justice Kennedy noted that “[t]his case does not require the Court to rule on the types of searches that would be reasonable in instances where, for example, a detainee will be held without assignment to the general jail population and without substantial contact with other detainees. . . . The accommodations provided in these situations may diminish the need to conduct some aspects of the searches at issue.”¹⁰

In his concurrence, Justice Roberts pointed out that the plaintiff was “not detained for a minor traffic offense but instead pursuant to a warrant for his arrest, and that there was apparently no alternative, if Florence were to be detained, to holding him in the general jail population.”¹¹ This observation suggests that strip searching arrestees who are detained without a warrant for minor non-violent non-drug related offenses remains unconstitutional.

Similarly, Justice Alito cautioned in his concurrence “the Court does not hold that it is *always* reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population.”¹² Alito noted that for the majority of individuals arrested for minor offenses, they are released from custody prior to their initial appearance, their charges are dropped, or they are released

on their own recognizance or with minimal bail. “For these persons” Alito wrote, “admission to the general jail population, with the concomitant humiliation of a strip search, may not be reasonable, particularly if an alternative procedure is available.”¹³ The loud message taken from the majority and concurrences is the suggestion that jails segregate arrestees, particularly those arrested for non-violent and non-drug related crimes, from general population as an alternative to subjecting them to invasive strip searches as a blanket rule.

The dissent took issue with the majority’s finding that safety interests justified a blanket strip search policy that did not require reasonable suspicion. These four justices pointed out that a visual body cavity search does not detect lice, diseases, wounds or gang tattoos. The dissent further noted the absolute dearth of cases or examples in which a body cavity search revealed contraband where reasonable suspicion was not present.¹⁴

Montana Law regarding Search and Seizure and Invasions of Privacy

Ten states impose more restrictive safeguards by statute requiring reasonable suspicion before detainees arrested for minor offenses can be strip searched. A typical example of these statutes is Missouri Stat. Ann. §544.193.2 (2002), which states: “No person arrested or detained for a traffic offense or an offense which does not constitute a felony may be subject to a strip search or a body cavity search by any law enforcement officer or employee unless there is probable cause to believe that such person is concealing a weapon, evidence of the commission of a crime or contraband.” Other states with similar laws include Kansas, Iowa, Illinois, Kentucky, Tennessee, Colorado, Florida, Michigan and Washington.¹⁵

Montana’s Constitution provides numerous heightened protections beyond the U.S. Constitution.¹⁶ Our Supreme Court has interpreted the Montana Constitution’s inclusion of a right to privacy to require heightened protections against unreasonable search and seizure. *See State v. Hill*, 322 Mont. 165, 94 P.3d 752, ¶19 (2004) (“[t]he right to be free of unreasonable searches and seizures is augmented by Montana’s right of privacy articulated in Article II, Section 10”). Pursuant to Montana law, to determine whether an unreasonable search or seizure has occurred, Montana courts must consider both whether the individual had an objectively reasonable expectation of privacy and whether the government had a compelling government interest in infringing that individual’s privacy. *Id.*

The Montana Supreme Court has determined “[r]equiring a person to take off his or her clothing in front of another person or persons, no matter how professionally and courteously conducted, is a degrading, embarrassing, and humiliating experience, and an **invasion of personal privacy.**” *Deserly v. Dept. of Corrections*, 298 Mont. 328, 995 P.2d 972, ¶28 (2000). An individual arrested on a warrant for failure to pay a fine, or for a minor offense, such as a traffic violation, violation of a leash law, non-violent political protest, credit card fraud, writing a bad check, or unpaid parking tickets, has a reasonable

Preserving

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expectation that such arrest will not include showing and manipulating his genitalia prior to being charged, arraigned, or found guilty. Where there is no reasonable suspicion that an individual is carrying contraband, there is no compelling interest to violate that person's right to privacy. Speeding up the booking process is not a compelling state interest. As stated by the U.S. Supreme Court, "the Constitution recognizes higher values than speed and efficiency."¹⁷

The necessary result pursuant to Montana law is that

detainees entering a jail after arrest for a minor non-violent non drug-related offense should not be strip searched unless reasonable suspicion exists. Montana should adopt legislation requiring at least reasonable suspicion prior to conducting a strip search, thus ensuring that Montana continues to be at the forefront of protecting privacy rights and protecting citizens against unreasonable search and seizure.

Anna Conley is a staff attorney and Director of the Jails and Prison Project for the ACLU of Montana. She can be reached at annac@aclumontana.org

Endnotes

- i. 132 S.Ct. at 1515.
- ii. *Blackburn v. Snow*, 771 F.2d 556, 564 (7th Cir. 1985).
- iii. U.S. DOJ Program Statement 5140.38.
- iv. ICE/DRO Dec. 2, 2008 Detention Standard: Searches of Detainees.
- v. *Id.*
- vi. *Logan v. Shealy*, 660 F.2d 1007 (4th Cir. 1981); *Stewart v. Lubbock County*, 767 F.2d 153 (5th Cir. 1985); *Weber v. Dell*, 804 F.2d 796 (2d Cir. 1986); *Swait v. Spiney*, 117 F.3d 1 (1st Cir. 1997); *Masters v. Crouch*, 872 F.2d 1248 (6th Cir. 1989); *Hill v. Bogans*, 735 F.2d 391 (10th Cir. 1984).
- vii. *Id.* at 1514.
- viii. *Id.*
- ix. *Id.* at 1520.
- x. *Id.* at 1523.

- xi. *Id.*
- xii. *Id.* at 1524.
- xiii. *Id.*
- xiv. *Id.* at 1528-1531.
- xv. See Kansas Stat. Ann.22-25-21(a); Iowa Code 804.30 Ill. Comp. Stat., ch. 725, 5/103-1(c); 501 Ky. Admin. Regs. 3:120, Tenn. Code Ann. 40-7-119, Colo. Rev. Stat. Ann. 16-3-405(1), Fla. Stat. 901.211(2), Mich. 764.25a(2), Wash Rev. Code 10.79.130(1).
- xvi. *Butte Community Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (1986) (overruled on other grounds, 282 Mont. 424, 938 P.2d 658 (1997) (our Supreme Court "need not blindly follow the United States Supreme Court when deciding whether a Montana statute is constitutional pursuant to the Montana Constitution").
- xvii. *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973).

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We need to move
beyond the notion
that those who die
by suicide ‘couldn’t
handle’ the stress
of law practice.

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SUICIDE

Montanans, lawyers

By Virginia Bryan

If you do an internet search on lawyers and suicide, you'll be surprised and saddened by the stories that pop up. A Washington, D.C. lawyer who presented several cases before the U.S. Supreme Court died by suicide after receiving a layoff notice from his firm.¹ A Texas plaintiff's lawyer died by suicide after his symptoms of depression weren't recognized during a hospital stay.² In early 2012, a Fargo, North Dakota criminal defense attorney died from suicide at a highway rest stop.³ Just after returning to work following maternity leave, a London lawyer drowned in the River Thames. The coroner ruled it a suicide.⁴

It's interesting to me that lawyer suicides are considered so newsworthy. Something about how we work makes others want to read about how we die. If you think that as a Montana lawyer you are immune from suicide, think again. Both our profession and our location put us at high risk.

In 2007, Montana had the second highest number of suicides in the nation. Montana has consistently been among the states with the highest rates of suicide for decades.⁵

Suicide is a leading cause of premature death among lawyers.⁶

The same study that put lawyers at the top of the list among professionals for depression puts them at the top of the list for suicide.⁷

Lawyer deaths by suicide are six times higher than in the general population. Suicide is the third leading cause of lawyer death after heart disease and cancer.⁸

Suicide is increasing nationwide; some say it's an epidemic among lawyers.⁹

A Campbell University study revealed that 11% of North Carolina lawyers think about suicide every month.¹⁰

Male lawyers have twice the suicide risk of the general population. Risks increase for male lawyers between 48 and 65.¹¹

A haunting death

When I was a young lawyer in Billings in the early 1980s, a local lawyer died by suicide. I am still haunted by his death.

“Did you hear what happened?” A colleague stepped into my downtown law office on a cold January weekend afternoon.

E AND THE BAR

disproportionately die by their own hand

| What is suicide?

Suicide, by definition, is fatal. Suicide is a leading cause of death in the United States. In 2007, more than 34,000 suicides occurred in the U.S – a rate of 94 suicides per day or one suicide every 15 minutes. While suicide affects people of all ages, it is the second leading cause of death among 25-34 year olds and the third leading cause of death among 15-24 years old. High rates of suicide also exist for those who are middle-aged and elderly. Although males are nearly four times as likely to take their own lives as females, women attempt suicide two to three times as often as men.

While a high rate of suicide exists, more people attempt suicide than actually die. For every one suicide, there are approximately 25 attempts. In 2008 alone, 376,306 people were treated in emergency departments for self-inflicted injuries. Of those, 163,489 were hospitalized due to self-inflicted injuries.

A correlation exists between suicide, depression, and other mental health issues, including substance abuse. Statistics suggest that many who commit suicide were under the influence at the time of death. In one study, approximately one third of those who committed suicide were positive for alcohol at the time of death and approximately 1 in 5 had evidence of opiates.

Suicide victims don't necessarily want to die. Instead, they want relief for their intense psychological pain. They often feel hopeless and that there is no solution. Fortunately, help is available for those at risk of suicide.

Statistics obtained from the CDC's National Center for Injury Prevention and Control

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He could barely speak and was visibly pale.

"Jim Sinclair shot himself in Arnie Berger's parking lot yesterday." I don't remember much else about the conversation, except that the lawyer who knocked on my door wasn't known as a guy who expressed his feelings often. That day, he was pretty shook up. He needed to talk and my office lights were on.

The Yellowstone County Bar Association held its annual dinner dance the night before at the Northern Hotel. It wasn't a celebratory crowd. The news of Jim's death hung heavy on the shoulders of the lawyers who'd gathered. I hadn't gone to the YCBA event, but I'd heard the news.

Jim and Arnie were former partners. For reasons unknown to me, their seven man firm had dissolved some time earlier and everyone went their separate ways. One of the last times Jim and I spoke, we were outside the chambers of Judge Diane Barz. He talked of retirement, a plan to buy a bar in Hawaii and leaving Montana's blizzards behind.

Jim's funeral, held in a small downtown Episcopal Church, was packed with lawyers. Stories told at the reception remembered him

as a merry prankster who enjoyed a drink or two. Then we all back to work and nobody talked about it anymore.

I've reflected on Jim's death many times over the years. Had he become the lawyer everyone loved to hate? He handled many high asset divorces in a solo practice after his firm's breakup. He was quick on his feet and a sometimes gruff adversary. Underneath it all, I think there was a very kind hearted man who was loved dearly by those closest to him. Was he in a personal, financial or professional bind, unable to find a way out?

In 1997, about 15 years after Jim's death, there was a rash of lawyer suicides in Nova Scotia. In response, the Canadian Bar Association Lawyer's Assistance Program published the first-ever study on the high incidence of lawyer suicide.

Big wake up call

Lawyer suicide clusters are more common than you might think. One suicide can trigger others. Eight lawyers died by suicide

LAWYERS, Page 18

Nearly 75% of suicide victims have either talked about it or given some sort of signal to another person. Call it a warning sign or call it an awkward plea for help. They aren't intent on dying. They simply can't see any other options.

Lawyers

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in Mecklenburg County, North Carolina over a seven year period in the 1980s. In neighboring South Carolina, suicide killed six lawyers in 18 months.¹²

Before 2007, suicide claimed the lives of a dozen Montana lawyers over a span of four years. Missoula, Helena and Great Falls were particularly hard hit. Shock waves rippled through the affected communities as children and spouses grieved and colleagues were left to pick up the pieces.

"It was a big wake up call," said former State Bar President Joe Sullivan of Great Falls. "There was no pattern. There was no single issue we could identify." But the factors Sullivan noted are among those frequently cited when lawyers die by suicide: untreated depression, the downward spiral of addiction, overwhelming stress, financial problems, or a highly publicized career mishap that seemed insurmountable.

"We were in crisis mode," recalls State Bar President Shane Vannatta, then a Missoula trustee. "We were simply unprepared to handle the large number of distress calls from lawyers." Back then, troubled lawyers could call a 24 hour hotline and peer-to-peer counseling was available through the Lawyers Helping Lawyers Committee of the State Bar. But

the system only worked when a lawyer initiated contact.

Vannatta remembers the discussion turning from "what might we have done" to "what can we do." By the end of 2006, Montana created its own Lawyer Assistance Program (LAP) and hired Mike Larson full-time as its director.

"We went from reactive to proactive," Vannatta said. Now, at the slightest hint that a lawyer is having difficulty of any kind, by self-referral or a third-party call, Larson contacts the lawyer and offers assistance. All contacts with the Montana LAP are confidential. Larson won't claim lawyer suicides have been eliminated by the State Bar's efforts.

"Oftentimes, we just don't know. Many suicides go unreported," Larson said. "This is an on-going process of outreach and education."

Ask without knowing the answer

Part of Larson's job is to dissuade us from our false notions about suicide. Nearly 75% of suicide victims have either talked about it or given some sort of signal to another person. Call it a warning sign or call it an awkward plea for help.¹³ They aren't intent on dying. They simply can't see any other options. Regrettably, suicide is a permanent solution to a temporary problem.

Talking about suicide with someone

you suspect is at risk does not reinforce intent. It has the opposite effect. It provides an avenue of assistance that the other person might not have known about or believed was unavailable. Your expression of concern may turn out to be a lifeline. Forget law school trial tactics class where it was drilled into you to never ask a question when you don't know the answer. Ask even then. Better to be embarrassed than remorseful.

Whether there is an active plan of suicide or not, encourage your distressed family member, friend or colleague to seek professional help and offer assistance to make the call. If there is a plan and a concern about immediate action, take whatever steps are necessary to get help. Call 911 or accompany the person to the nearest hospital emergency room.

Vannatta believes we need to move beyond the notion that those who die by suicide "couldn't handle" the stress of law practice. "We can all do something about it," he said. "We can learn how to intervene. We can recognize how we contribute to the nastiness and adversarial climate in our respective communities and change our behavior. It does start with you or me."

Editor's note: *This is last in a series of stories on mental health and lawyers. The author, Virginia Bryan, has practiced law for 20 years and is also a writer and consultant.*

Endnotes

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3. <http://www.wdabajournalaz.com/event/article/id/12216>
4. <http://www.dailymail.co.uk/news/article-1202733/Im-sorry-Last-text-message-suicide-lawyer-struggling-juggle-motherhood-City-career.html>
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9. <http://abnormaluse.com/2012/03/the-lawyers-epidemic-depression-suicide-and-substance>
10. Depression and Suicide Among Lawyers, http://www.lpac.ca/main/Courses_01/depression_02.aspx
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12. <http://abnormaluse.com/2012/03/the-lawyers-epidemic-depression-suicide-and-substance-abuse>; Adrian Hill, Men's Experience with Grief, <http://bereavedbysuicide.com/articles/personal-stories/mens-experience-with-grief>
13. Depression, http://www.lpac.ca/main/Courses_01/depression_02.aspx

Suicide

from page 17

| Warning signs

- Threatening to hurt or kill oneself or talking about wanting to hurt or kill oneself
- Looking for ways to kill oneself by seeking access to firearms, available pills, or other means
- Feeling hopeless
- Feeling rage or uncontrolled anger or seeking revenge
- Acting reckless or engaging in risky activities - seemingly without thinking
- Feeling trapped - like there's no way out
- Increasing alcohol or drug use
- Withdrawing from friends, family, and society
- Feeling anxious, agitated, or unable to sleep or sleeping all the time
- Experiencing dramatic mood changes
- Seeing no reason for living or having no sense of purpose in life

| Suicide prevention

Prevention strategies do exist for suicide. The most effective strategy is to identify the warning signs of suicide and to take the signs seriously. Once warning signs are identified, the individual may receive professional help, which may include medication or therapy.

Be willing to talk about suicide. Increasing public awareness through dialogue and education helps to eliminate the stigma associated with suicide, encouraging more people to seek help.

| How suicide affects lawyers

Lawyers are not immune to suicide. As research suggests that lawyers experience depression and substance abuse at higher rates than the general population, lawyers may be at a greater risk for suicide.

Lawyer assistance programs (LAPs) are here to support lawyers, judges, students and other legal professionals who are at risk for suicide or who know someone at risk. Contact your state or local LAP.

| How to help a colleague

If you believe a colleague may be at risk for suicide, encourage him/her to seek help. If you believe someone might be a harm to themselves, contact your local LAP. Additionally, the National Suicide Prevention Helpline recommends the following when someone is threatening suicide:

- Be direct. Talk openly and matter-of-factly about suicide.
- Be willing to listen. Allow expressions of feelings. Accept the feelings.
- Be non-judgmental. Don't debate whether suicide is right or wrong, or whether feelings are good or bad. Don't lecture on the value of life.
- Get involved. Become available. Show interest and support.
- Don't dare him or her to do it.
- Don't act shocked. This will put distance between you.
- Don't be sworn to secrecy. Seek support.
- Offer hope that alternatives are available but do not offer glib reassurance.
- Take action. Remove means, such as guns or stockpiled pills.
- Get help from persons or agencies specializing in crisis intervention and suicide prevention.

Information from http://www.americanbar.org/groups/lawyer_assistance/resources/suicide.html. Last Updated: 06/21/2011

Summer Indian Law Program under way

Classes run through June

The University of Montana School of Law is pleased to announce its Summer Indian Law Program. Available to both law students for academic credit, and to attorneys for CLE credit. The one week courses are offered in the mornings and cover a variety of issues in Indian County. The State Bar of Montana CLE Commission has approved all classes. All classes are worth 15 CLE credits.

June 11-June 15, Law, Culture & Environment (Course #17370) — Prof. Melissa Tatum, Associate Director, Indigenous Peoples Law & Policy Program, University of Arizona. This course examines the domestic and international laws that govern this delicate balance. Examples of such laws include the Endangered Species Act, the UN Declaration on the Rights of Indigenous

People, the National Environmental Policy Act, the National Historic Preservation Act, and the American Indian Religious Freedom Act.

June 18- June 22, Cultural Property (Course #17377) — Prof. Angela Riley, University of California School of Law— This course considers the importance of the preservation of cultural property as a means of maintaining group identity, self-determination, and collective rights. It examines both international and domestic law governing these issues.

June 25- June 29, Indian Gaming (Course #17371) — Melissa Schlichting, Staff Attorney, National Indian Gaming Commission. This class will review federal statutes, regulations, and case law pertaining to Indian gaming. The course will also include a review of legislative initiatives seeking to amend laws affecting Indian gaming, the gaming regulation system,

and contemporary issues facing “gaming” tribes. Special emphasis will be placed on Montana tribal gaming concerns.

July 9- July 13, Economic Development in Indian Country (Course #17373) — Prof. Gavin Clarkson, University of Houston Law Center. This class will analyze this crucial topic and explore the practical and theoretical issues facing American Indian governments in bringing economic development to their reservations that is profitable, sustainable, and culturally appropriate.

For the full program information, go to: <http://umt.edu/xls/summer/programs/indianlaw/default.aspx>. For registration information, please visit: <http://umt.edu/xls/summer/programs/indianlaw/studentinfo.aspx>. Registration fees for CLE credits are paid directly to the Law School

For more information, contact: Jim Taylor at jim.taylor@umontana.edu

Innocence Project presents Eyewitness to Innocence: Memory Science Fundamentals

Learn about eyewitness identification, the leading cause of wrongful convictions and a key factor in a wide range of criminal and civil cases. Find out common flaws in memory and perception, along with practices that can improve the accuracy

of lineups and other fundamental issues attorneys should understand for their civil and criminal casework.

Details: Wednesday, June 13 from 8 to 9:30 a.m. in conference room of Garlington, Lohn & Robinson, 350 Ryman

St., Missoula. Register by June 11, space limited. For more information, email info@mtinnocenceproject.org or call (406) 243-6698. \$30 per person, includes 1.5 CLE credits and a light breakfast.

State Bar sponsored/related live CLE

For the latest information and to register go to montanabar.org -> For Our Members -> Continuing Legal Education.

NOTE: 5.0 ethics credits required every 3 years – 1 of them must be a Substance Abuse/Mental Impairment (SAMI) credit.

June 12 — QDROs and FLOs. Family Law Section (FLS) noon phone CLE. 1.00 Live CLE Credit.

June 20 — Cybersleuth's Guide to the Internet. Holiday Inn, Bozeman. 6.00 CLE credits. Featuring authors Carole Levitt and Mark Rosch, recognized experts on the subject of using the Internet for research and technology tools to practice law more effectively.

July 10 — Negotiating Parenting Plans, Resources Available. Family Law Section noon phone CLE. 1.00 Live CLE credit.

August 2-3 — Annual Bankruptcy Section CLE. Big Sky CLE starts at Noon on Thursday, Aug. 2, and continues all day Friday, Aug. 3. For hotel reservations, call 406-995-5000 (in state); or, 1-800-548-4486 if out of state. A variety of accommodations reserved, but reservations must be made BEFORE JULY 2. Rates quoted do not include tax and service fees of approximately 17%. Be sure to advise you want a room in the State Bar Bankruptcy Section room block. A flier will be mailed to all In-state attorneys and paralegals shortly.

September 20-21 — Annual Meeting of the State Bar of Montana. Crowne Plaza Hotel, Billings. Featuring Retired Supreme Court Justice Sandra Day O'Connor as the keynote speaker, following the Thursday evening Banquet. 9 to 10 hours of CLE.

UPCOMING FREE CLE

Bozeman Roadshow is June 29 at the Holiday Inn from 2 to 5 p.m. It qualifies for 3 ethics credits and 1 SAMI credit: Topics include: Limited Scope Representation & Ghostwriting, Conflicts of Interest, Technology & Purloined Documents, SAMI. RSVP Robert Padmos at (406) 447-2202 or rpados@montanabar.org

Hi-Line and Eastern Montana Roadshow stops in Havre on July 11, Glasgow on July 12, and Miles City on July 13. Good for 3 CLE (ethics). Topics include Guardianship Capacity Decisions and Conflicts, Technology Tips for Solo and Small Firms, State Bar Updates. RSVP Robert Padmos at (406) 447-2202 or rpados@montanabar.org

Continuing Legal Education

- **June 5** — Charitable Planned Giving 2.00 Yellowstone Boys & Girls (406) 656-8772
- **June 6** — The Art of Advocacy, 3.25 credits; webcast; Periakto Productions, LLC (605) 787-7099
- **June 6** — MT Legislative Developments; 1.50 credits; AIPLA 703-412-1302
- **June 7** — Charitable Planned Giving; 2 credits; Yellowstone Boys & Girls Foundation; Transwestern Billings (406) 656-8772
- **June 11** — Charitable Tax Planning; 2 credits; Great Falls Public Schools Foundation; MSU-COT Great Falls (406) 268-7340
- **June 12** — Municipal Securities Rulemaking Board Essentials; 1.50 credits; NABL 202-503-3300
- **June 12** — MT Employee Rights; webinar; 1.25 credits; NSBA 703-838-6722
- **June 13** — Clarence Darrow: Crimes, Causes & the Courtroom; webcast, 3 credits, 3 ethics; Periakto Productions (605) 787-7099
- **June 13** — Eyewitness to Innocence: Memory Science Fundamentals; 1.5 credits; MT Innocence Project, Missoula (406) 243-6698
- **June 14** — Charitable Planned Giving; 2 credits; Yellowstone Boys & Girls Foundation, Miles Community College (406) 656-8772
- **June 15** — MT Mediation Training; 5th Day; 8 credits/1.50 ethics; Center for

June 29-30 — Family mediation training at the Comfort Inn, Bozeman. Offered by CCS. The course is for mediators who wish to expand their practice to the complex, emotion filled areas of divorce and other family issues. The course will focus on the characteristics of family disputes that require mediator skills. Instructors include Carson Taylor, Advanced Family Practitioner with Family mediator designation from the MT Mediation Association. MCLE is pending. Registration and further details contact lynnf@cmcmontana.org and on the website www.centerforcollaborativesolutions.com.

Collaborative Solutions, Bozeman (406) 587-2356

- **June 18** — Basic & Advanced Mediation Training; 40 credits/3.50 ethics; Community Dispute Resolution Center of Missoula County, Ruby's Inn (406) 543-1157
- **June 19** — Estate Planning for Closely Held Business Owner; 1.50 ethics; Cannon (800) 775-7654
- **June 20** — Ben Franklin on Ethics, webcast, 1.25 credits/1.25 ethics; Periakto Productions, LLC (605) 787-7099
- **June 26** — Don't Let the Cloud Rain on You; webcast; 1.50 credits/1.50 ethics; ALPS (406) 728-3113

- **June 27** — Thurgood Marshall's Coming; webcast; 2.75 credits/2.75 ethics; Periakto Productions (605) 787-7099
- **June 29** — Charitable Planned Giving; 2 credits; Yellowstone Boys & Girls Foundation, Holiday Inn Bozeman (406) 656-8772
- **July 11** — Ben Franklin on Ethics; webcast; 1.25 credits/1.25 ethics; Periakto Productions, LLC (605) 787-7099
- **July 18** — Clarence Darrow: Crimes, Causes & Courtroom; webcast; 3 credits/3 ethics; Periakto Productions, LLC (605) 787-7099
- **July 24** — Helping Clients Achieve Asset Protection Objectives; 1.5 credits; Cannon (800) 775-7654
- **July 24** — MCIA Annual Conference; Montana Captive Insurance Association, Lodge at Whitefish Lake (866) 388-6242
- **July 25** — Lincoln on Professionalism; 1 credit/1 ethics; Periakto Productions, LLC (605) 787-7099
- **July 25** — Spotlights on Conflicts of Interest; 1 credit/1 ethics; Attorney Protective (260) 486-0443
- **July 26** — Montana Agriculture; 9.75 credits; The Seminar Group (800) 574-4852

For the most up-to-date CLE listing check the CLE page at www.montanabar.org -> For our Members -> Continuing Legal Education

Bookstore and CLE Materials

CLE materials available from the State Bar Bookstore

Materials in the Bookstore are considered self-study or "other" credits. Montana attorneys are limited to 5.0 credits per year by this method. Order online at montanabar.org, or use the form on page 22

RULES UPDATE - 2011

Credits vary for each topic. 7 Audio CDs, including written material, for \$250 as a set. Individual presentations/materials for \$50 each.

- Montana Rules of Civil Procedure Revisions and Practicing under those Revisions (1 cr.)
- Bankruptcy Court's Local Rules (1 cr.)
- Fed. Rules of Civil Procedure Revisions (1 cr.)
- Federal Pleading Standards Changes (0.5 cr.)
- Workers Compensation Court Rules (0.5 cr.)
- Water Law Adjudication (0.5 cr.)
- Changes to Rules on Lawyer Disciplinary Enforcement (1 cr.)

PHONE CLES - VARIOUS TOPICS

1 CLE credit for each topic.

\$50 each for audio and written materials.

- Probate Update - Dec. 14, 2011
- Appellate Practice Tips: Ground Zero, presented by Justice Jim Nelson. - Feb. 2, 2012.
- Phys & Mental Exams under Rule 35, M.R.Civ.P. - Feb. 8, 2012
- Appellate Practice Tips: Brief Writing and Oral Argument - March, 2012

- New M.R.Civ.P - Electronically Stored Information - March 21, 2012.
- Recurring Issues in the Defense of Cities and Towns - March 2012.
- Contested Case Procedures Before the Dept. of Labor and Industry - April 2012

FAMILY LAW PHONE CLES

1 "other" CLE credit for each topic. Audio recordings and written materials for \$50 each.

- Statutory Pitfalls in Child Support Calculations - Aug. 2011
- Drafting Family Law Briefs to the Montana Supreme Court - Sept. 2011
- Landlord-Tenant Law from a Family Law Perspective - Oct. 2011
- Summary of Proposed Modifications to the MT Child Support Guidelines - Dec. 2011
- Valuing the Family Business in Property Settlements - Nov. 2011
- Children and Divorce - Jan., 2012
- Representing Military in Divorce - March 2012.
- Age Appropriate Continuity and Care Factors - April 2012.

- Valuing Real Estate and the Influence of the Internet - May 2012.

SAMI PHONE CLES

1 Ethics/SAMI credit each for each topic. Audio recording and written materials for \$50 each.

- Basic SAMI - Ethical Duties and the Problem of Attorney Impairment - Sept., 2011
- Dependency Warning Signs - Nov., 2011
- Is It Time to Retire? - Dec., 2011
- SAMI Smorgasbord - Jan., 2012

TECH WEBINARS

1.00 "other" CLE credit for each topic. 1-hr audio recording and written materials for \$50 each.

- Social Media - April 2011
- E-Mail for Lawyers - Nov. 2011
- Collaborative Tools - Dec. 2011
- Online Resources for Attorneys - Jan. 2012
- Security Steps for Unsecured Networks - April 2012
- All Things Google for Lawyers - May 2012

Montana State Bar Legal Publications

Montana Real Estate Transactions

- 2010, 360 pages, book plus 2011 supplement CD \$205.
- 2011 Supplement, 82 pages, \$25 for CD.

Supplement includes discussion of the law of Ownership of the Beds of Navigable Streams, discussion of Fraud, Constructive Fraud, and Negligent Misrepresentation under Montana Law, and elements of Adverse Possession, Prescriptive Easements, and Reverse Adverse Possession.

Montana Civil Pleading & Practice Formbook.

2012, 489 pages, book plus all forms in editable format on CD, \$225

2012 Lawyers' Deskbook & Directory

Book, \$50; Mid-year update CD for 2012, \$20; Both for \$60

MT Family Law Form Book

2005, 93 pages incl. 26 forms
Book and CD \$150

Civil Jury Instructions

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

Montana Probate Forms

2006, 288 pages
Book plus CD \$150

Criminal Jury Instructions

2010 edition
650 pages, on editable CD only \$130

Handbook for Guardians & Conservators

2005, 60 pages incl. 5 forms
Book plus CD \$150

Public Discipline Under MT Rules of Professional Conduct

2010, 192 pages annotated
CD \$35

Statute of Limitations Manual

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

Step-parent Adoption Forms

2003, 5 forms
Book \$20

U.S. & Montana Constitutions

Pocket-sized booklet
\$4 each

Public Information Flyers tri-fold brochures, \$10/bundle of 100

- Client Bill of Rights
- Dispute Resolution
- Divorce in Montana
- How Lawyers Set Their Fees
- Purchasing Your Home
- Renting a House or Apartment
- Small Claims Court
- After an Auto Accident
- When You Need a Lawyer
- Wills & Probate

Montana Citizens' Guide to the Courts

2010, 20 pages, print copy \$10
Free download at www.montanabar.org

Montana Students' Guide to Turning 18

2008, 22 pages, CD \$10
Free download at www.montanabar.org

UM student publications:

- University of Montana Law Review
Subscribe at www.umt.edu/mlr
- Public Resources and Lands Law Review
Subscribe at www.publiclandlawreview.com

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To order and pay by credit card, please see the online Bookstore at www.montanabar.org. For more information, call the State Bar at (406) 442-7660.

1-888-385-9119

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)

Written materials from previous CLEs

(These are considered publications only, and except for a few noted exceptions for SAMI, are not eligible for CLE credit)

FAMILY LAW I – 3/4/11, Great Falls (\$35)

- Military Retirement in Dissolution and Family Law Matters
- “Guard” vs. “Active Duty”
- Do’s and Don’ts of Appearing Before Standing Masters
- Third Party Parental Rights and Limiting the Scope of Representation
- Mediation with Property and Parenting Issues
- Interview Techniques
- Client Control and Ethical Considerations
- Interest-Based Bargaining

NATURAL RESOURCE PERMITTING – 4/8/11, Helena (\$35)

- 310 Permits – Stream Bed Protection
- Alberta’s Ordinance on Viewshed
- Corps of Engineers 404 Permits (Wetlands)
- Floodplain Regulations
- Subdivision Review and Natural Resources;
- Gravel Permitting
- Wind Energy Market Dynamics: Translating Resources into Viable Wind Energy

PRACTICAL PRACTICE TIPS – 4/29/11, Missoula (\$35)

- Basic Law Office Management
- Top 10 Malpractice Traps and How to Avoid Them
- Trust Account Maintenance
- Records Retention and Closing Your Practice
- Basic Tech Needs of the Solo or Small Firm

CONSTRUCTION LAW INSTITUTE – 9/30/11, Bozeman (\$35)

- To Arbitrate or Not to Arbitrate: A Case Study of Arbitrator’s Role in Disputes Involving Non-Parties;
- Developing Arbitration Law
- Care and Feeding of Expert Witnesses
- Overview of Montana Supreme Court Cases
- Construction Lien Priority Issues;
- *Markovich Construction v. Chippewa Cree Comm Development and Gram Sage Graves*:
- Discussion of Issues Raised
- Practical and Procedural Considerations: Getting the Right People to the Party

MEDIATION: CURRENT ETHICAL AND OTHER CHALLENGES – 10/7/11, Bozeman (\$35)

- *Hendershott v. Westphal*: Review of Decision

- Four Competencies for Ethical Mediation
- Mediator Ethics Panel
- Types of Mediation
- Appellate Mediation Report to MT Supreme Court and Report on April, 2011 MT Mediation Association Conference
- Standards of Conduct and Ethics

CLE & SKI – 1/13-15/12 – Big Sky (\$35)

- Business on the Docket: Review of Important State and Federal Business Cases
- Working with Revised M.R.Civ.P.
- Planning for Conflict of Interest Transactions Under the MT Business Corporation Act: Analysis and Application of the Safe Harbor Rules
- Status of Medical Marijuana in Montana
- Overview of Current Law Firm Management Problems and Solutions
- Supreme Court Case Update
-

COMMERCIAL REAL ESTATE -- 2/17/12, Fairmont Hot Springs (\$35)

- Tying up Property — Letters of Intent, Options, Rights of First Refusal, and Lease Options
- 1031 Exchanges, Entity Selection and Tax Consequences— Joint Ventures, LLCs and Other Entities
- Buy-Sell Agreements— Due Dilligence to Closing
- Title Insurance and Endorsements
- Closing Issues—Escrow Instructions, Holdbacks and Deed
- Financing the Purchase—Negotiating Loan Terms and Documents, Seller Financing

REAL ESTATE UPDATE – 2/18/12, Fairmont Hot Springs (\$35)

- Easement Law: Options and Rights of First Refusal and Community Property Update;
- Best Practices for Drafting Easements
- Successfully Litigating Easement Cases;
- Trustee’s Duties in Nonjudicial Foreclosures: *Pomeranky v. Peterson*
- Structuring Effective Loan Workouts
- Receivers and Rents: Issues to Consider

INSURANCE UPDATE (Annual St. Patrick’s Day CLE) 3/16/12, Butte (\$35)

- Medicare, Medicaid, Federal Liens, and Other Settlement Pitfalls
- Settlement, Contribution, and Indemnity in the Context of Insurance Defense Litigation
- Insurance Law Update
- A Wrigged Game: Are Non-Compete, Non-Solicitation, and Confidentiality Agreements Ever Enforceable?
- Working with the 2011 Montana Rules of Civil Procedure
- Oops, I Should Have Retired 5 Years Ago (1.00 SAMI Ethics credit)

LITIGATION TOOLS — 3/30/12, Great Falls (\$35)

- Mock Voir Dire with Mock Jury
- Independent Medical Examination Issues
- Medicare and Federal Liens
- Ethical Obligations and Issues in Discovery of Electronic Documents

FAMILY LAW UPDATE — 4/13/12, Helena (\$35)

- Military Retirement Benefits and Divorce
- Montana Supreme Court Pro Bono Limited Scope
- Child Support Regulation Changes
- The Future of the Legal Profession
- Military Benefits for Families of Service Members
- Working with Revised Rules of Civil Procedure

BENCH-BAR CONFERENCE — 4/20/12, Missoula (\$35)

- Use What You Know But Forgot
- Unacceptable Approaches to the Court, Unacceptable Communication with Counsel and How We Handle It
- Ethical Misconduct in Discovery
- Electronic Filing, Document Service and Notice Issues in Western Montana and with the Montana Supreme Court- What Lawyers Need to Know and What’s on the Horizon
- Election of Supreme Court Justices by District Debate
- Speaking in Code: Everything You Never Thought You’d Need to Know About Bankruptcy But Found Out Otherwise
- Social Media in Litigation

BASIC BANKRUPTCY TIPS, FEDERAL COURT FILING TIPS, AND CIVIL AND APPELLATE RULE CHANGES — 04/27/12, Billings (\$35)

- Collection Issues and Current Rules; Drafting Pleadings for Attorney Review, Ethical and Legal Issues
- Creditor Strategies
- Clerk’s Perspective: Origins and Current Impact
- Logging into Federal Court: New Rules & Filing Tips
- Keeping Things Civil: Changes to Rules of Civil Procedure and Appellate Rules
- Technology Tips

DUI: FROM STOP TO APPEAL — 5/11/12, Bozeman (\$35)

- Law Enforcement’s Perspective
- DUI Prosecution: Cases, Jury Instructions, Choices, Evidence, Appellate Issues
- DUI Defense
- What We’ve Heard from DUI Jurors
- Alcohol Abuse and Addiction in the Legal Profession: Case Studies and Resources

No Montana Lawyer in July

The Montana Lawyer prints 10 times per year, with July and January being off months. If you would like to contribute articles to the Montana Lawyer, please email Peter Nowakowski at pnowakowski@montanabar.org.

CLE Institute set for planning meeting; ideas wanted

The State Bar CLE Institute is meeting in Big Sky on June 22. Are there CLE topics you

would like to see offered, or areas that you think need more emphasis? Send ideas to Gino Dunfee at gdunfee@montanabar.org.

On-demand CLE available

Recorded CLEs are now available for immediate listening or viewing on your computer. You will need to set up a separate account with the vendor, InReach. You can access the on-demand store at www.montanabar.org and selecting "Self-study CLE" from the "Store" drop-down menu. You can also access through a link on the CLE

page of the Bar's website. There are just over a dozen available now on-demand. All of the mail-order selections of 1-hour phone CLEs and webinars will eventually be available on-demand.

Save the date — Annual Meeting is in September

The annual meeting starts a week later this year — Sept. 20-21, at the Crowne Plaza Hotel in Billings. Check www.montanabar.org for info as the date nears.

Cybersleuth's Guide to the Internet

Learn from experts Carole Levitt and Mark Rosch | June 20, Bozeman | 6 CLE



Learn how the Internet is changing the way legal professionals need to research and run their practice to competently represent their clients. Find out if failing to "Google" as part of the due diligence process could keep you from winning a case or successfully completing a transaction. Uncover the best **research strategies and learn to master Google**. Discover how attorneys are using **free public record sites** and sites with **free "publicly available" information**, including social networking sites (Twitter, Facebook, MySpace, Google Plus, and LinkedIn) for discovery, trial preparation, background checks, and locating missing persons.

Don't be left behind in exploiting this gold mine of information that will assist you in meeting your investigative research obligations. Come join Carole Levitt and Mark Rosch, internationally recognized Internet trainers and American Bar Association authors of five American Bar Association books, who will show you how to be a cybersleuth to unearth information free (or at low cost!) on the Net.

Each attendee will receive the latest copy of the 500-page book, **The Cybersleuth's Guide to the Internet**, 12th edition. Registration is \$325 for attorneys with five or more years of practice; \$300 for attorneys with less than five years and for members of the Bar Paralegal Section or Tech Committee. Register at www.montanabar.org. Call (406) 447-2206 for more information.

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Why do people call the LRIS? Most people don't know who to call and the State Bar is recognized as a trusted source for referrals. Your participation assures the public that they will receive a referral to a capable, experienced Montana attorney and rewards you professionally at the same time.

The LRIS is not a pro bono or reduced fee program! Potential clients are advised that we do not provide pro bono or reduced fee services and that participating attorneys independently set their own fees. We do the advertising - you charge a fee for your work. The benefits from participating in the LRIS are almost identical to those some attorneys pay thousands for!

How does the LRIS work? The LRIS is staffed by an experienced paralegal and other trained staff. Calls coming into the LRIS represent every segment of society with every type of legal issue imaginable. Many of the calls we receive are from out of State or even out of the country, looking for a Montana attorney. When a call comes into the LRIS line, the caller is asked about the nature of the problem or issue. Many callers "just have a question" or "don't have any money to pay an attorney". As often as possible, we try to help people find the answers to their questions or direct them to another resource for assistance. If an attorney is needed, they are provided with the name and phone number of an attorney based on location and area of practice. It is then up to the caller to contact the attorney referred to schedule an initial consultation.

It can increase your business: The Lawyer Referral and Information Service (LRIS) is a national program of the ABA that exists in some form in every State in the nation. The Montana LRIS fields thousands of calls per year and makes thousands of referrals to participating attorneys in their practicing fields of law throughout the State. It's a great way to increase your client base and an efficient way to market your services!



It's inexpensive: The yearly cost to join the LRIS is minimal: free to attorneys their first year in practice, \$125 for attorneys in practice for less than five years, and \$200 for those in practice longer than five years. Best of all, unlike most referral programs, Montana LRIS doesn't require that you share a percentage of your fees generated from the referrals!

You don't have to take the case: If you are unable, or not interested in taking a case, just let the prospective client know. The LRIS can refer the client to another attorney.

You pick your areas of law: The LRIS will only refer prospective clients in the areas of law that you register for. No cold calls from prospective clients seeking help in areas that you do not handle.

It's easy to join: Membership of the LRIS is open to any active member of the State Bar of Montana in good standing who maintains a lawyers' professional liability insurance policy. To join the service simply fill out the Membership Application at www.montanabar.org -> For Our Members -> Lawyer Referral Service (<http://bit.ly/yXI6SB>) and forward to the State Bar office. You pay the registration fee and the LRIS will handle the rest. **If you have questions or would like more information, call Kathie Lynch at (406) 447-2210 or email klynch@montanabar.org.** Kathie is happy to better explain the program and answer any questions you may have. We'd also be happy to come speak to your office staff, local Bar or organization about LRIS or the Modest Means Program.

Ninth Circuit mourns loss of legendary Chief Judge Emeritus James R. Browning

Editor's note: *The Ninth Circuit's Public Information Office released this story on May 7, 2012.*

SAN FRANCISCO – The Honorable James R. Browning, a legendary Chief Judge Emeritus of the United States Court of Appeals for the Ninth Circuit and the longest serving appellate judge in the history of the federal judiciary, died peacefully Saturday night (May 5, 2012) at a Marin County hospital. He was 93.

“While we are always saddened by the loss of a valued colleague, the passing of Judge Browning truly marks the end of an era for the Ninth Circuit. Judge Browning served on our court for more than 50 years, including 12 years as our chief judge. In that time, his name became synonymous with that of the Ninth Circuit and he is rightfully the eponym for our historic headquarters building in San Francisco,” said Chief Judge Alex Kozinski.

“On the bench, Judge Browning was a distinguished jurist who cared deeply about achieving justice. In judicial governance, he was an innovative administrator, who cajoled the court into the computer age. As importantly, perhaps, he was a genuinely warm and caring human being, famous for the twinkle in his eye, who brightened the lives of everyone around him,” Judge Kozinski added.

Other colleagues offered similar sentiments:

“Judge Browning was a perfect match of heart and mind. He was a brilliant jurist and chief judge. But his more enduring legacy may be his compassion, his relentless optimism, and his uncanny ability to draw the best out of everyone around him. He was a great mentor and a close friend. I will miss him terribly.” – *Judge Sidney R. Thomas*

“Judge Browning was a remarkably capable judge who wrote carefully crafted

Justice Anthony M. Kennedy remembers Judge Jim Browning

In one of the marble hallways of the Supreme Court in Washington, D. C., there is a charming picture of a young man with a charming smile. He was Jim Browning, then the Clerk of the Court. He brought his charm and his smile to San Francisco, where he served for so many decades as a judge on the Court of Appeals for the Ninth Circuit. Jim's smile was the smile of one who was immensely proud to dedicate his life to public service, and to being a fair-minded man and a mentor to all with whom he served.

After the Loma Prieta earthquake, the Courthouse that was the center for the Ninth Circuit was closed for years of renovation and reconstruction. Together with the other judges on the court, Jim Browning gave valuable assistance in the effort to find temporary office and courtroom space in San Francisco, insuring that the city would remain the real, as well as the official, headquarters of a federal circuit of immense size and influence. He succeeded in all respects. The Court has returned to that Courthouse, the Courthouse that now bears his name. He loved the Ninth Circuit and was devoted to maintaining its cohesion, its collegiality, and its judicial excellence.

In the end a Court is made of people. Jim Browning made it his first order of business to insure that all of its people—its judges, its law clerks, and its excellent staff—were his friends. And they were. The court, the judiciary, and the country will give thanks for his service and will honor his memory.

opinions. Even more important was his effect on the collegiality of the judges. He and his wife, Marie Rose, did much to create the tradition of friendship among the judges and spouses on our court.” – *Senior Judge Procter R. Hug, Jr.*

“Chief Judge Emeritus James Browning was an extraordinary leader, progressive administrator, outstanding judge and friend. It was a joy to share a courtroom with him for his warm, open, compassionate and friendly demeanor encouraged judges and lawyers alike to focus on what was “just” and “fair”. His support for the Western Justice Center as a member of its Board helped promote the peaceful resolution of conflict among

children, the courts, and in the community. He is irreplaceable.” – *Senior Judge Dorothy W. Nelson*

“He is remembered by his colleagues for his mellow and collegial personality, which over his 12 years as chief contributed to building a culture of collegiality and civility that made for pleasant working conditions for everyone on a very busy court.” – *Senior Judge Alfred T. Goodwin.*

“I have known Jim Browning and considered him a good friend since 1970 when I first became a judge. Jim served on a committee I chaired, reorganizing the Judicial Conference of the circuit

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-- a three-year project during the time Dick Chambers was Chief Judge. When Jim became Chief Judge, he assigned me to be his representative for the Circuit Conference Executive Committee and my reports to him and discussions were frequent. He had a unique understanding of judicial administration which led us through the growth years. Jim felt that there should be no bumps on the road, and if there were any problems between judges, the judges themselves should solve them – and he encouraged us to do so. Jim had a quiet leadership technique which was always pleasant and rarely assertive. Jim took a great interest in the work of the Judicial Conference of the United States and when Bill Rehnquist became Chief Justice, he asked Jim to chair a committee on the committees of the conference which not only resulted in change of committee jurisdiction but also the establishment of the Executive Committee. All in all, I think Jim Browning has made a great contribution to the federal courts.” – *Senior Judge J. Clifford Wallace*

“Judge Browning was a truly remarkable judge and the finest of men I have ever known. He was foresighted in transforming the court to adapt to the increased numbers of judges and the vastly increased number of cases, helping us all into the computer age. All the while, he was gracious, kind and understanding.” – *Senior Judge Betty Binns Fletcher*

“I can still see the twinkle in Judge James Browning’s eye the day I interviewed to be his clerk in 1972. He hired me, a woman with a year old child, when most other judges in San Francisco would never have done such a thing at the time. That hiring decision was typical of him. Throughout his more than 50 years on the bench, Judge Browning’s proceeded from a basic sense of justice, and of doing the right thing, quietly and without any desire for recognition. As a result, and certainly not because he intended to

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Carl Maurice Davis

Carl Maurice Davis, 89, of Dillon, passed away on May 3, 2012. He was born November 21, 1922, on the family farm on Blacktail Creek to Florence and Loren Davis. He attended public schools in Dillon, graduating from Beaverhead County High School in 1940, and then spent two years at Western Montana College. Carl served as a Marine night fighter pilot in the Pacific Theater during World War II for which he was awarded the Distinguished Flying Cross.

Carl attended the University of Montana on the GI Bill and graduated from the law school in 1949. While in Missoula, he met his future wife Martha Brown. In 1950, they were married in St. Ignatius, Montana, and Carl established a private law practice in Dillon. He enjoyed his tenure as the Western Montana College assistant coach from 1949 to 1952. Carl was called back into military service during the Korean Conflict. Carl,

Martha and baby Susan were stationed in El Toro, California, where he helped implement the new Military Code of Justice.

Carl practiced law with partners Leonard Schulz, John Warren, and Bill Hiritsco for 58 years. He served as Beaverhead County Attorney from 1950 to 1970. He was a long-time member of the Supreme Court Commission on Practice, Supreme Court Judicial Nomination Commission, and the Montana Judicial Standards Commission. Carl developed expertise in water rights, serving on the Governor-appointed Montana Reserve Water Rights Compact Commission. In 1999, Carl was the recipient of William J. Jameson Award from the Montana Bar Association for his significant contributions to Montana’s legal profession.

Deeply committed to serving his state and community, Carl was instrumental in obtaining federal funding for

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Robert William Hurly

Lifelong Valley County resident and attorney Robert William Hurly, 89, died of natural causes Sunday, March 4, at the Glasgow hospital where he was born.

Robert was born Sept. 14, 1922. He was the son of Judge John T. Hurly and Jeanette Jamma Hurly. He was raised in Glasgow, became an Eagle Scout, and left only to attend the University of Montana. His professors there fueled his interest in geology, but World War II interrupted his studies. He served in the newly developed Army Air Corps, training as a navigator.

He married his high-school sweetheart, Marie Forsyth, in Brownsville, Texas, during the war. They made their first home in an 8x10 trailer at Muroc Air Station, Calif. After the war, they returned to Montana, where he worked nights in the sawmills of Missoula while attending law school full time during the day. He graduated with honors in 1948. He and Marie sold the home they built on Rattlesnake Creek in Missoula and

returned to Glasgow. They built three other homes in Glasgow, and he served two terms as county attorney. They had two daughters, Candace and Irene, and twin sons, who preceded him in death. Robert and Marie later divorced.

In 1964, Robert and Dorothy Allison were married in Great Falls. They added two sons to the family, Robert Jr. and Dirk Walter Hurly. They were happily married for over 40 years and celebrated their wedding anniversary every month of their marriage. They traveled extensively, enjoying vacations in Morocco, Hawaii and Jamaica. They delighted in their summer home on Whitefish Lake, where they hosted yearly gatherings of the extended Hurly family each July. They gardened in both Glasgow and Whitefish, winning many awards.

He devoted his long life to Valley County residents and issues, both in his legal career and his writings. He was a prolific writer, with a long list of correspondents. His letters were regularly featured in newspapers throughout

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be, Judge Browning was a guiding light for me, for my colleagues on the Ninth Circuit, and for the judiciary and bar nationally. He was a judge who grasped the core of a case quickly and communicated his views – often in “per curiam” opinions, but no one was fooled – succinctly but completely, always keeping the fact that individual people’s welfare was at stake firmly in mind. And he was a leader who lead by persuasion and vision; all who dealt with him knew they had been listened to and taken into account, yet he did not yield on issues that most mattered to him and was tenacious in pursuing them. I remember him saying once that the Ninth Circuit was his life, and in large part it was. That I will be working for the rest of my judicial career in the James R. Browning United States Courthouse will be a daily reminder of his dedication to and enormous impact on what he always reminded us was the best Circuit. We will all miss him – including the twinkle in his eye, which never left him – profoundly.” – *Judge Marsha Berzon, a former law clerk to Judge Browning*

“I believe I speak on behalf of all his former law clerks who share the privilege of working for a judge who possessed a rare combination of a piercing intellect, passion for justice and fairness, a calm temperament which engendered collegiality in time of controversy, and a genuine and disarming humility. We learned from a judge who listened attentively, contemplated with care, and wrote with precision, clarity and economy.” – *District Judge Edward Chen of San Francisco, a former law clerk to Judge Browning*

“I shall always treasure the warm friendship Judge Browning shared with me and my family, from the day in 1986 he administered the oath of office to me in his San Francisco chambers to our last panel sitting together a few years ago. He was the prototypical Chief Judge, supremely collegial, caring and self-effacing yet relentlessly effective and a national pace-setter in the United States Judiciary. My wife Maura joins me in extending our deepest condolences to Marie Rose and their family.” – *Judge Diarmuid F. O’Scannlain*

Judge Browning’s passing was quickly noted in his home state of Montana.

“Judge Browning shaped the Ninth Circuit Court and the law of the West, and Montanans are proud to have called him one of us. Mel and I send our thoughts and prayers to his family and friends. As we all mourn the loss of a great jurist and a great Montanan, we know his legacy will live on for generations to come.” – *U.S. Senator Max Baucus, who carried the legislation that named the San Francisco courthouse after Judge Browning.*

Judge James Robert Browning was born in Great Falls, Montana, on October 1, 1918. He received his law degree from the University of Montana School of Law in 1941, graduating with the highest scholastic record in his class and serving as editor-in-chief of the law review. With the onset of World War II, Judge Browning entered the Army. He served from 1943 to 1946, rising to the rank of first lieutenant and winning a Bronze Star Medal.

Judge Browning began his professional career in 1941 as an attorney in the Antitrust Division of the U.S. Department of Justice. Returning to the Antitrust Division after the war, he held a number of positions of increasing authority and responsibility before serving as the Executive Assistant to U.S. Attorney General James P. McGranery from 1952 to 1953. He left the Justice Dept. in 1953 to become a partner in a law firm formed by Philip Perlman, a former Solicitor General.

In 1958, Chief Justice Earl Warren appointed Judge Browning to serve as Clerk of the Supreme Court of the United States. As the clerk, he held the Bible when President John F. Kennedy was sworn into office on January 20, 1961. He was the last clerk to do so as that later became the task of the President-elect’s spouse.

President Kennedy nominated Judge Browning to the Ninth Circuit Court of Appeals on September 6, 1961. He was confirmed by the Senate on September 14, 1961, and received his judicial commission on September 18, 1961.

Judge Browning served as an active judge for nearly 40 years. He took senior status on September 1, 2000, but continued to hear cases for many more years. He was astoundingly productive. He sat on 7,987 panels, either three-judge or en banc. He authored 388 majority

opinions, 60 dissenting opinions, 34 concurring opinions, and possibly thousands of unpublished dispositions. Judge Browning was known for advocating ‘per curiam’ opinions and panels on which he sat published 1,005 ‘per curiam’ opinions.

Judge Browning’s contributions to Ninth Circuit jurisprudence include *Lessig v. Tidewater Oil Co.*, 327 F.2d 459 (1964), a watershed antitrust ruling that held an exclusive-dealing and tying agreement between an oil company and a service station operator could violate antitrust law without proof that defendants may achieve a monopoly. While still influential today, the decision was ultimately overruled by the Supreme Court.

Judge Browning also authored one of the first decisions to set aside a criminal conviction because of ineffectiveness of defense counsel. *Brubaker v. Dickson*, 310 F.2d 30 (1962). In *Brubaker*, Judge Browning held that a trial in which defendant’s counsel ignored obvious defenses would not constitute the fair trial for an accused as contemplated by the Due Process Clause. In *Cooper v. Fitzharris*, 586 F.2d 1325 (1978), he elaborated a standard for ineffectiveness of counsel that presaged the standard later adopted by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984).

As chief judge, Judge Browning was renowned for court administration, demonstrating how a large appellate circuit can work effectively. He introduced the use of technology in court administration; created administrative units to help manage the circuit; championed the adoption of a limited en banc court; and played a leading role in the adoption of the 1980 Judicial Conduct and Disability Act.

Judge Browning was the recipient of numerous awards, most notably the Edward J. Devitt Distinguished Service to Justice Award in 1991, and the American Judicature Society’s Herbert Harley Award in 1984.

Judge Browning is survived by his wife of 70 years, Marie Rose. The couple met in high school and married soon after he graduated from law school. Marie Rose was well known to many judges and their spouses through her work on circuit conferences and other endeavors. Judge Browning is also survived by his daughter and son-in-law, Jeanne and Scott Sommer, and three grandchildren,

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construction of Clark Canyon Dam in the early 1960s. In 1972, Carl was elected as a delegate the Montana Constitutional Convention, serving on the Education subcommittee. He later was the Hearing Examiner for the Colstrip 4 and 5 power projects. Always a strong advocate for public education, Carl was a member of the Governor's Commission Post Secondary Education Commission for Higher Education. He was instrumental in ensuring the future of University of Montana -Western in Dillon. He served various terms on Western's Local Executive Board. For his advocacy, guidance and service, Carl received the University of Montana-Western Foundation Distinguished Service and Alumni awards.

Carl was a Dillon Presbyterian Church Elder for many years, and worked hard to help finance and build the church at its present site. He was active in the Veterans of Foreign Wars, Dillon Kiwanis Club and Jaycees for many years, and was part of numerous civic and charitable projects.

Carl's engagement, compassion, and generosity touched many people's lives.

Throughout this busy life, Carl cared foremost about family and served as the rudder of a large extended one. Passionate about the outdoors, Carl and Martha organized countless family picnics and campouts, fishing trips, and excursions to many fishing streams and mountain lakes in his beloved Beaverhead County. Carl's family also was blessed with his inquisitive mind and broad perspectives about a wide array of global issues. Carl especially enjoyed playing cards and games with friends and family, and betting on about anything. His humor, grace and great love of family, friends, community and life will be deeply missed.

Carl is preceded in death by his infant son Loren; parents Florence and Loren; sisters Dorothy Anne Forrester and Hazel Marsh; brothers Bill, Lloyd and Raymond (Buzzy); sisters-in-law Lillian Davis, Millie Davis and Margery Brown; and brothers-in-law Roy Forrester, John Husted, Hewitt Martinell and Bill Flynn.

Carl is survived by his wife of 62 years, Martha; sister Dolores Husted; daughters Susan (Bob) Briggs and Alice

(Dan) Huttunen; sons Carl Jr. (Sara) and Steve (Bob); sister-in-laws Tempie Ray, Carlene Davis, Boots Davis and Jan Davis; and brother-in-law Firman (Melvon) Brown. He also survived by grandchildren Anne (Mark) Fuller, Loren (Kalin) Briggs, Emmalee Briggs, Madeline Davis, Spencer Davis and Ben Evans; great-grandchildren Lisa, Rob, Emma and Cody Fuller, and Carter, Jamison, Molly and Holden Briggs; and numerous nieces, nephews, extended family and friends.

Special thanks are extended to all of the doctors, nurses and caregivers in Dillon for their compassionate care of Carl.

A memorial service will be held at the Presbyterian Church in Dillon on Monday, May 7, at 10:30 am.

There will be community reception in Carl's honor at the University of Montana-Western Arena at noon on the same day.

Memorials can be made to the University of Montana-Western Foundation, the Presbyterian Church, or charity of choice.

Obituary from Brundage Funeral Home.

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Montana, and he wrote a column in local newspapers. He connected deeply with people, sharing a strong sense of humor and a lively curiosity. He dryly commented that he "only practiced law for the first two years; after that, I knew what I was doing." He worked faithfully for his clients up until the day before his death, 64 years in total. For over 30 years, Debbie Dulaney, who was like a daughter to him, provided invaluable skill and assistance.

He loved northeastern Montana from his childhood on. He was an expert on the geology of the area, and developed Brazil Creek Bentonite mining. He kept copious records of weather trends, invasive plant species and wildlife changes. He hunted in the area, knew where entire

dinosaur skeletons could be found, fished the rivers, took his family for regular picnics, built his home of stones dug from its hillsides and continually photographed the place he loved. He enjoyed entering his photographs, canned pickles, flowers, fruits and vegetables in the Valley County Fair.

Preceding him in death were his parents; his sisters, Marjorie Hurly Elfers and Jean Hurly White; his brother, Dr. John Hurly; his wife, Dorothy Hurly; his sons, Douglas and Robert Jr.; and grandchild Bill Krewer.

Left to mourn him are his daughters, Candace (Henry) Krewer of Tampa, Fla., and Irene (Bill) Jones of Whitefish; his son Dirk Hurly and fiancée Denae Hanson of Kalispell; his grandchildren, Alyssa and Kerstin Jones of Missoula, Hilary Jones of Seattle, Kathleen Krewer

of Tampa, Christopher Krewer of Oakland, Calif., and Lt. J.G. Sebastian "Bud" Krewer, serving in Tokyo, and Tana, Steven and Robert Hurly, all of Kalispell; and his great-grandchild Emma Marie Sasko (Kathleen Krewer) of Tampa. He will be missed by his younger sister, Mary Jo Hurly Fox of Kalispell; as well as numerous nieces and nephews.

He also leaves an extended "family" of the many customers he valued and cared so very much about.

The family is thankful for the many community members who enriched Dad's last years. Taking special care of him were Debbie and Mark Dulaney, Diane and John Peterson, Dr. Iman, and Jim and Nancy Carney.

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CLASSIFIEDS POLICY

All ads (up to 50 words) have a minimum charge of \$60. Over 50 words, the ads are charged at \$1.20 per word. Ads also run a www.montanabar.org. Ads will run through one issue of the Montana Lawyer, unless we are notified that the ad should run for more issues. A billing address must accompany all ads. Email Pete Nowakowski at pnowakowski@montanabar.org or call (406) 447-2200.

ATTORNEY POSITIONS

ASSOCIATE ATTORNEY: Busy trial oriented Missoula law firm seeks associate attorney with 2-3 years' experience capable of writing signature quality briefs. Familiarity with WordPerfect and task based billing a plus. Please send resume and writing sample to maria@bigskylawyers.com

MARINE CORPS JUDGE ADVOCATE:

Looking for certified lawyers that are 29 years of age or younger to practice law as a U.S. Marine Corps Judge Advocate. Lawyers must have passed the BAR exam in any state, and graduated from an accredited law school. Need SAT scores (min 1000 math/verbal combined) or ACT scores (min 22 composite) and require an LSAT of 150 or higher. Also request that interested persons be committed to service, have leadership experience, and be in decent physical condition. It is required to be able to pass the Marine Corps physical fitness test with a first class score (225 pts+). The test includes: crunches, pull-ups, and a 3 mile run. Candidates selected to attend Officer Candidate School will attend a 10-week course in Quantico, VA. Upon graduating, candidates will receive their commissions as a second lieutenant in the U.S. Marine Corps. Interested persons should contact the Spokane Officer Selection Team at 509-353-2953 for more information and to complete a basic screening process. Compensation: \$45-50,000/yr, Medical/Dental benefits, life insurance, accelerated promotions.

STAFF ATTORNEY: Crow Tribe of Indians, Office of Legal Counsel. Full-time in-house attorney in the area of child protection law, Crow Agency, MT. 3+ years experience preferred. Candidates must be admitted to practice law on the Crow Reservation and in the State of Montana or be willing and able to obtain admission through the next available bar examination(s). Candidates should have strong research and writing skills, respect for and familiarity with Native

American and Crow tribal law, culture, and history, and working knowledge of child protection law and practice and the Indian Child Welfare Act. Must be an aggressive advocate, with time management skills and ability to maintain calendars in multiple courts. Day to day practice includes interaction with social workers from Tribal, State, and Federal jurisdictions, as well as contact with the community. Job duties include preparation and presentation at the Tribal level of all filings related to child protection issues; representation of the Tribal interest in state dependency cases and addressing sovereignty issues relating to ICWA. Position also entails regular involvement with law enforcement and prosecution. Salary DOE. Position open until filled. Crow Tribal and Native American preference apply. Please submit cover letter, resume, writing sample, and references to: Office of Legal Counsel, Crow Tribe, ATTN: Heather Whitemanrunshim, P.O. Box 340, Crow Agency, MT 59022, or email heatherw@crownations.net. All applications confidential.

ATTORNEY: Missoula-based process serving company seeks FT attorney to fill in-house counsel position. Knowledge of human resources, process serving, private investigation, non-judicial foreclosure sales and bankruptcy code preferred. Please mail resume and cover letter to Equity Management Inc, P.O. Box 4906, Missoula, MT 59806. No phone calls, emails, or office visits please.

STAFF ATTORNEY: Crow Tribe of Indians, Office of Legal Counsel. Full-time in-house attorney, Crow Agency, MT. 3+ years experience preferred. Candidates must be admitted to practice law on the Crow Reservation and in the State of Montana or be willing and able to obtain admission through the next available bar examination(s). Candidates should have strong research and writing skills and respect for and familiarity with Native American and Crow tribal law, culture, and history. General and flexible practice areas include Indian gaming and various tribal governmental legal issues. Salary DOE. Position open until filled. Crow Tribal and Native American preference apply. Please submit cover letter, resume, writing sample, and references to: Office of Legal Counsel, Crow Tribe, ATTN: Heather Whitemanrunshim, P.O. Box 340, Crow Agency, MT 59022, or email heatherw@crownations.net. All applications confidential.

STAFF ATTORNEY - FORECLOSURE ASSISTANCE PROJECT: This position with

Montana Legal Services Association will provide legal services to clients throughout the state of Montana in the area of foreclosure assistance and loss mitigation, including housing, consumer, bankruptcy, and related civil legal issues. Services provided will range from brief counsel and advice, to more extended assistance, including representation. Requires travel within and outside Montana. This position will handle all aspects of legal representation including client contact, pleading preparation, research, file maintenance, and hearing and trial work. The staff attorney will also participate in MLSA's statewide initiatives, implement grant and contract requirements through casework and foster pro bono involvement with the private bar. Full job description and application instructions are at <http://www.mtlsa.org>.

SUPERVISING ATTORNEY – FORECLOSURE ASSISTANCE PROJECT:

This position with Montana Legal Services Association will provide legal services to clients throughout the state of Montana in the area of foreclosure assistance and loss mitigation, including housing, consumer, bankruptcy, and related civil legal issues. This position also will be responsible for supervising other personnel on the Foreclosure Assistance Project, and providing overall direction and oversight for MLSA's Foreclosure Assistance Project. Requires travel within and outside Montana. Direct legal services provided will range from brief counsel and advice, to more extended representation. This position will handle all aspects of legal representation including client contact, pleading preparation, research, file maintenance, and hearing and trial work. The position will also participate in MLSA's statewide initiatives, implement grant and contract requirements through casework and foster pro bono involvement with the private bar. Full job description and application instructions are at <http://www.mtlsa.org>.

ATTORNEY: Southwestern Montana practitioner seeking to hire attorney for general practice. 2-5 years experience preferred. New graduates may apply. Please send letter of application, references, resume, transcript, and writing sample to W.G. Gilbert, III, P.O. Box 345, Dillon, MT 59725. All applications confidential. Open until filled.

ATTORNEY POSITIONS SOUGHT

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tort law; two decades of experience in bankruptcy matters; a quick study in other disciplines. UM Journalism School (honors); Boston College Law School (high honors). Negotiable hourly or flat rates. Excellent local references. mdenevi@bresnan.net. (406) 541-0416

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MULTIPLE LAW FIRM POSITIONS: Kalispell firm filling a variety of needs with one or more people. Potential full-time or part-time position. Experienced paralegal needed for trust administration, probate proceedings & estate planning. Must be accountable to attorneys & personable with clients. Additional needs include billing, bookkeeping, general clerical & reception. You must be hard-working, ethical, detail-oriented, efficient, organized, a team player, able to perform with minimal supervision & demonstrate initiative. Must be computer savvy & experienced with Microsoft Office. Other programs include Quickbooks & Timeslips. Wage DOE. Send resume & cover letter to: angie@kalviglaw.com or Box 1678, Kalispell, MT 59903.

LEGAL ASSISTANT: Garlington, Lohn & Robinson, a mid-sized law firm in Missoula, MT seeks an experienced corporate and business transactional legal assistant. Min. 5+ years experience in a corporate and business transactional legal environment required. Estate planning experience a bonus but not a requirement. Must possess strong interpersonal, administrative and organizational skills and be able to work independently as well as part of a team. Must be able to work in a fast paced, deadline driven environment with attention to detail and the ability to multi-task. Candidate should have excellent written and verbal communication skills and be proficient with Microsoft Office Suite. Interested candidates

should send resume and salary requirement to hr@garlington.com.

LEGAL RESEARCH & SUPPORT SERVICES

VIRTUAL BANKRUPTCY ASSISTANT: Virtual bankruptcy preparation can save you time and money. Your bankruptcy petitions will be processed in a skillful and timely manner. I have over 15 years bankruptcy petition preparation experience. Member of the National Association of Virtual Bankruptcy Assistants. Let me help you help your clients. AnnAdlerVBA@gmail.com

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LIBBY: Opportunity available for office sharing and/or purchase of a well-established, solo general practice law office in beautiful Northwestern Montana. Please send resume to libbymt2002@yahoo.com or for more information contact Patti at 406-293-1462.

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