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Bucy says her experience as a prosecutor and overseeing state licensing makes her a great fit as disciplinary counsel.

ON THE COVER

New State Bar Section. Board of Trustees approves new Animal Law Section. Page 18

‘HE WAS A TRUE TREASURE’

Friends, colleagues remember Damon Gannett as an example for the legal profession

PLEASE EXCUSE THE DELAY WITH THIS ISSUE

The Montana Lawyer apologizes for the delay in getting this issue of the magazine delivered to our readers. We will be back on a regular schedule starting next month.
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I have read many President’s Messages in the Montana Lawyer. Each of our past presidents has a unique perspective and I always look forward to reading the next one. As part of volunteering to run for the position of President, I thought about the different columns I would write over the next few months. However, I did not anticipate I would be writing one about my mentor, friend, and cheerleader, Damon Gannett, who left us all too soon just a few short weeks ago. Although my favorite Griz fan would probably encourage me to write about someone else or another topic, I cannot think of anyone I would rather pay tribute to than Damon, who taught me so much, not just as an attorney but about life in general.

I first met Damon 20 years ago when I was fresh out of college and was just hired as a naive, yet energetic, social worker at Child Protective Services in Billings. Damon was a guardian ad litem, one of only two in Billings at the time (as he always reminded me over the years, he had been doing this work since the year before I was born). As I began to rely on him for answers to my questions about the legal field and life in general, I knew there was something special about this man. Although he would joke that he tried to talk me out of going to law school, he consistently supported me through all my ups and downs as an attorney. We were together weekly during our time on the Family Drug Court team, we traveled to many parts of the state for State Bar meetings over the past six years, we spent one scary Friday in November traveling to a Cat - Griz game (that did not turn out the way Damon preferred but I enjoyed the outcome), I saw him and his family at church regularly, and most recently I had the honor of being his office mate. I always strived to follow in his footsteps, and I proudly joined him as a guardian ad litem in Billings two years ago. Damon taught me countless life lessons, but for purposes of this (supposedly) short President’s message, I focus on three: integrity, selflessness, and courage.

I have never met anyone who did not respect Damon. Only a man of integrity would carry such respect. Whenever I had an ethical dilemma in my career, Damon would talk me through it. He took the time to listen to me and talk me through any problems or questions. He told me to follow my gut, and this is something I will always remember. His integrity and honesty helped make him a force to be reckoned with in the courtroom. Fellow attorneys and judges knew if Damon said something in the courtroom, it was the truth. It may be something simple and obvious, but so important in our profession.

Damon believed in taking care of others, and his selflessness permeated his entire life. He always put his family first – his wife, kids, grandkids, and many other family members. Although I was not one of his children, he certainly was a father figure in my life, and he took good care of me. No matter where I was over the past 20 years, Damon took the time to check in with me frequently. For those of you who are solo practitioners, you know how important time is and what those phone calls took out of Damon’s day.

In addition to taking care of his family and his fellow attorneys, Damon spent his professional career taking care of the often-forgotten abused and neglected children of Montana. I first met Damon 20 years ago, and I will never forget his bravery and dedication to the children of Montana. His memory will live on in the hearts of all those who knew him and in the lives of the children he touched.

See pages 20-21 for photos and more memories of Damon.
**CAREER MOVES**

**Youpee-Roll joins Munger, Tolles & Olson LLP**

April Youpee-Roll has joined Munger, Tolles & Olson LLP as a Litigation Associate in the firm’s Los Angeles office.

Youpee-Roll grew up in Poplar and received her A.B. in sociology from Harvard College in 2008. She earned her J.D., with honors, from Alexander Blewett III School of Law at the University of Montana in 2017.

After law school, she clerked for Chief Judge Sidney R. Thomas of the U.S. Court of Appeals for the Ninth Circuit and Judge Brian Morris of the U.S. District Court for the District of Montana. She is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

**Burke joins as associate at Moulton Bellingham**

Moulton Bellingham PC is pleased to announce that Bryce Burke has joined the firm. Burke graduated with honors from the University of Montana School of Law in 2019.

Burke was born in Butte and later moved to Billings where he graduated from Billings Central High School. After high school, he attended the University of Montana and graduated with honors, earning a B.S. in business administration with an emphasis in finance and a minor in economics. Bryce also spent a semester studying abroad through Gonzaga University in Florence, Italy.

Prior to law school, Burke was a credit analyst, loan officer, and vice president at Bank of Montana where he enjoyed assisting entrepreneurs and helping small business owners finance and expand their businesses. While in law school, he completed clinical work with the Honorable Benjamin P. Hursh, chief judge of the United States Bankruptcy Court for the District of Montana.

**LaRance joins LaRance & Syth in Billings**

LaRance & Syth, P.C. is delighted to welcome attorney Lauren M. LaRance. LaRance is a lifetime Montanan. She was raised in Great Falls. She earned a bachelor’s degree in accounting from Montana State University and received her law degree from the University of Montana School of Law.

While in law school, LaRance interned for the Honorable Brian Morris, worked at ASUM Legal Services, and worked at the Veterans Advocacy Clinic. She was also a member of the National Moot Court team. LaRance’s practice will focus on family law and criminal law.

**Sudduth Law opens, focusing on water, property, land use**

Benjamin Sudduth is pleased to announce the opening of his firm, Sudduth Law, PLLC.

Sudduth is originally from Littleton, Colo. He received a B.S. in natural resources from Cornell University and received his law degree from the University of Montana. He is licensed to practice in Montana.

Prior to forming his own firm, Sudduth worked as a water master at the Montana Water Court for six years, achieving senior status in that time. At the Water Court, he managed a diverse docket of cases, presided over evidentiary hearings, and conducted settlement conferences. During law school, he performed his clinical study in the Land Use Clinic and interned at a small plaintiff firm.

Sudduth is part of the Water Law Section of the State Bar of Montana, and he is a board member for both the Community Mediation Center in Bozeman and the College of Agriculture and Life Sciences Alumni Association at Cornell University. He is also a certified mediator for the Montana Mediation Association with a focus on water.

Sudduth Law, PLLC specializes in water, property, land use, real estate, and mediation. Sudduth can be contacted at benjamin@sudduthlaw.com or 406-272-2390.

**Brooks, Feller join Kalispell firm as associates**

Moore, Cockrell, Goicoechea & Johnson, P.C. in Kalispell has announced the addition of two associates to the firm, Eric Brooks and Katrina Feller.

Brooks joins the firm after serving in the Judge Advocate General’s Corps of the United States Air Force. As a Judge Advocate, he performed a wide variety of legal services for our nation’s military. His primary role was as a litigator, and he gained valuable trial experience in his time on active duty. He received his J.D. from Cornell Law School and his B.A. from Haverford College.

Feller joined the firm in August after

MORE NEWS, PAGE 8
The firm also welcomes the following additional Associates and Senior Counsel:

**Associates** - Maggie Brockel (Bismarck, ND) and Emily Ramage (Williston, ND)

**Senior Counsel** - Mike Smith (Cheyenne, WY)

**Lucas H. Forcella**
practices in the firm’s Billings, MT office. His practice focuses on commercial transactions, tax and estate planning. Prior to his legal career, Lucas served in the United States Marine Corps. He received his J.D. from the University of North Carolina and joined Crowley Fleck in 2019.

**Montana Funk**
practices in the Billings, MT office. Her practice focuses on commercial and tort litigation. Montana received her J.D. from the University of North Dakota and joined Crowley Fleck in 2019.

**Gabrielle Gee**
practices in the firm’s Missoula, MT office. Her practice focuses on commercial litigation and employment law. Gabrielle received her J.D. from the University of California-Hastings and joined Crowley Fleck in 2019.

**Marina Horsting**
practices in the firm’s Billings, MT office. Her practice focuses on tort litigation. Marina received her J.D. from Tulane University and joined Crowley Fleck in 2019.

**Michael J. Klepperich**
practices in the firm’s Billings, MT office. His practice primarily focuses on banking, finance, and creditor’s rights. Michael received his J.D. from the University of Wyoming and joined Crowley Fleck in 2019.

**Jasmine Morton**
practices in the firm’s Kalispell, MT office. Her practice focuses on commercial transactions, tax, and estate planning. Jasmine received her J.D. from the University of Montana and joined Crowley Fleck in 2019.

**Alexa "Lexi" J. Pyette**
practices in the firm’s Billings, MT office. Her practice focuses on healthcare law and tort litigation. Lexi received her J.D. from the University of North Dakota and joined Crowley Fleck in 2019.

**Isaac B. Smith**
practices in the firm’s Helena, MT office. His practice focuses on commercial transactions, tax, trusts and estates. Isaac received his J.D. from the University of Montana and joined Crowley Fleck in 2019.

**Peter B. Taylor**
practices in the firm’s Bozeman, MT office. His practice focuses on energy & environmental projects, and commercial litigation. Prior to his legal career, Peter ranched in Kirby, MT. He received his J.D. from the University of Montana and joined Crowley Fleck in 2019.
graduating from Penn State Law. Feller will be focusing primarily on general civil litigation, insurance defense, medical malpractice defense. Feller was born and raised in Billings and received her undergraduate degree in Journalism from the University of Montana in 2010 — go Griz! Following graduation, she worked first as a television news producer and then moved to sales and marketing. In 2016, Feller moved to Pennsylvania for law school. She’s excited to be back home and practicing in Big Sky Country.

Bloomquist Law Firm welcomes Story, Brown

Bloomquist Law Firm, P.C., is pleased to announce that Betsy Story and Travis Brown have joined the firm as associate attorneys.

Story earned her law degree from the University of Montana School of Law as well as her undergraduate degree in political science with minors in Russian and Arabic studies. Her practice focuses on water law, natural resources, private and public lands issues, and administrative law. She may be reached at bstory@helenalaw.com.

Brown earned his law degree from the University of North Dakota School of Law. Prior to attending the University of North Dakota, he was an oil and gas land man with a focus on title and leasing mineral rights. His practice focuses on water law, natural resources, oil and gas, private and public lands issues, and commercial litigation. He may be reached at tbrown@helenalaw.com.

Kelly joins Church, Harris, Johnson & Williams

The law firm of Church, Harris, Johnson & Williams, P.C. is pleased to announce that Grant Kelly has joined the firm. Kelly is a member of the firm’s litigation and bankruptcy group. He grew up in Billings and attended the University of Dallas. He then transferred to the Catholic University of America in Washington, D.C., graduating summa cum laude in philosophy in 2015. He then earned a Master of Arts in philosophy in 2016 from the Catholic University of America. Kelly attended the University of Montana’s School of Law where he earned his Doctor of Jurisprudence in 2019. While studying at the University of Montana, he had the opportunity to attend summer classes at University College Dublin, in Ireland. There he focused on International Intellectual Property Law and International Children’s Rights.

Kelly’s work experience includes clerking at a small litigation firm in Missoula, as well as taking a summer position at the Montana Department of Labor and Industry (MTDLI). While with the MTDLI, he worked enforcing Montana’s employment and human rights laws and assisted in the revision of the Montana Human Rights Commission handbook. He completed his clinical internship at the Montana State University Legal Services, sponsored by the Associated Students of MSU. There, he worked full-time on student-legal issues, becoming familiar with landlord tenant law, small nonprofit taxation, misdemeanor criminal defense, and business organization and formation.

Kelly is a sixth-generation Montanan. When not in the office, he enjoys traveling, entertaining, playing board games, and exploring all that Montana has to offer, including hunting with family at their farm near Cut Bank and spending...
time at their cabin outside Choteau.

Church, Harris, Johnson & Williams is a full-service law firm located in Great Falls, Helena and White Sulphur Springs. The firm has been serving quality businesses and individuals, in a wide range of legal disciplines, since 1949. Kelly can be reached at 406-761-3000. Visit chjw.com for more information.

Rogers opens criminal defense firm in Missoula

Abigail Rogers is pleased to announce that Abigail Rogers Law, PLLC opened in Missoula on August 1. The boutique criminal defense firm defends all types of federal and state criminal matters across Montana. While attending the University of Montana School of Law, Rogers was a member of the national trial team and interned at the Office of the State Public Defender. As an associate attorney before opening her practice, she focused exclusively on defending criminal matters. She is a member of numerous criminal defense associations and serves on the Missoula CJA Panel. Additionally, Rogers is the defense attorney for Missoula County’s DUI Court, a court designed to facilitate the rehabilitation of adults convicted of alcohol and drug-related traffic offenses.

Please visit abigailrogerslaw.com for more information.

Morton joins Kaufman Vidal Hileman Ellingson

Kaufman Vidal Hileman Ellingson PC in Kalispell is pleased to announce its newest associate attorney, Nicole F. Morton.

Morton was born and raised in Kalispell. She earned a B.A. in history and a minor in political science, with high honors, from the University of Montana. She graduated from the University of Montana School of Law, receiving her J.D. As a law student, she interned for the Montana Office of the State Public Defender and volunteered for Montana AAA Legal Services.

Prior to returning to Kalispell, Morton practiced in Great Falls. She is admitted to practice in all Montana courts and the United States District Court for the District of Montana. Practice areas include civil litigation, personal injury and insurance defense.

Burke joins as associate at Moulton Bellingham

Moulton Bellingham PC is pleased to announce that Bryce Burke has joined the firm. Bryce graduated with honors from the University of Montana School of Law in 2019.

Bryce was born in Butte and later moved to Billings where he graduated from Billings Central High School. After high school, he attended the University of Montana and graduated with honors, earning a B.S. in Business Administration with an emphasis in Finance and a minor in Economics. Burke also spent a semester studying abroad through Gonzaga University in Florence, Italy.

Prior to law school, Bryce was a credit analyst, loan officer, and Vice President at Bank of Montana where he enjoyed assisting entrepreneurs and helping small business owners finance and expand their businesses. While in law school, Bryce completed clinical work with the Honorable Benjamin P. Hursh, Chief Judge of the United States Bankruptcy Court for the District of Montana.

Dolphay joins Holland & Hart

Environmental attorney Matthew Dolphay has joined Holland & Hart in Billings.

Dolphay advises energy companies and mineral producers on environmental and natural resource matters including permitting, compliance, administrative appeals, and litigation. He has represented clients involving state and federal regulations relating to Montana water quality, environmental cleanup and responsibility, major facility siting, underground storage tank, sage grouse habitat conservation, and metal mine reclamation issues. In addition to his natural resource and environmental work, he has represented clients before the Montana Tax Appeal Board and the Montana Public Service Commission.

Dolphay had a background in science before becoming an attorney, as he studied civil engineering with a focus in environmental engineering and worked as an environmental engineer. Prior
to entering private practice, he served as a law clerk to Montana Supreme Court Justice Laurie McKinnon and Justice Jim Rice. He received his J.D. from the University of Montana School of Law and a B.S from Montana State University.

LeTang joins Silverman Law Office in Helena

Silverman Law Office, PLLC, is pleased to announce the addition of Nick LeTang to the firm. After spending a year in New York City to grow his knowledge in tax law, Nick LeTang is excited to return to Montana to begin his career as an attorney. Nick decided to join Silverman Law Office for its reputation, commitment to excellence, and team of tax attorneys that are committed to helping clients solve their legal and tax issues with the utmost competence and diligence.

Nick grew up in Colstrip, Montana. He knew he wanted to be a transactional attorney ever since taking his business law course in undergraduate school. Nick graduated with Honors from the University of Montana, with degrees in both Accounting and Finance. As an undergrad, Nick received the Montana Society of CPA’s Medallion Award for most outstanding senior accounting student. After his undergraduate studies, Nick stayed at Montana’s flagship university for his Master of Accountancy and Juris Doctorate degrees. While at the University of Montana School of Law, Nick completed a judicial clinic with the U.S. Magistrate Judge Jeremiah C. Lynch of the Missoula Division of the District of Montana. Nick was also involved in the Women’s Law Caucus and served as Co-Editor-in-Chief of the Montana Law Review.

After law school, Nick clerked at the Thirteenth Judicial District Court, Yellowstone County for both the Honorable Judge Russell Fagg and Honorable Judge Donald Harris. While clerking, Nick drafted memoranda, orders, and opinions for numerous legal issues. Upon finishing his clerkships, Nick completed his LL.M. in Taxation at New York University in 2019.

In his free time, Nick enjoys golfing, sipping coffee at any of Helena’s coffee shops, having a craft brew at one of Montana’s breweries, hiking the Beartooth Wilderness, camping in Yellowstone Park, and working on the pottery wheel.

Nick has passed all sections of the Uniform CPA Examination and is currently working on obtaining his CPA license. Nick is licensed to practice law in Montana and assists in all client matters at Silverman Law Office.

Leman joins Luxan & Murfitt

Luxan & Murfitt, PLLP is pleased to welcome Liz Leman as an associate with the firm.

Liz is originally from the Washington, D.C., area but has been a Montanan at heart since she first laid eyes on Big Sky Country in 2011. After receiving her undergraduate degrees in history and international studies from Elon University, she spent a year doing conservation work and wildland firefighting in Missouri and Montana, then moved to Helena and worked for two years at Montana Legal Services Association.

She returned to D.C. to receive her law degree from American University Washington College of Law, graduating magna cum laude in 2017. Following law school, she clerked for 15 months at DC’s Superior Court before fulfilling her dream of returning to Montana in 2019. Leman’s practice focuses on civil litigation and she enjoys working with clients to understand their goals and priorities and to provide them with the information they need to make informed choices. Outside of the office, Liz’s hobbies include playing outside, baking, and musical theater.

HONORS

Cox attains membership in Int’l Society of Barristers

Randy J Cox of Boone Karlberg PC has been admitted to membership in the International Society of Barristers. Membership is attained by invitation extended only after a rigorous screening process that considers the lawyer’s ability, experience, accomplishments and ethical standards as assessed by trial lawyers and judges in jurisdictions in which the lawyer has practiced.

ISOB members mutually support common goals – safeguarding the right to trial by jury, improving advocacy, recognizing courtroom advocacy as a specialty, encouraging and promoting ethical conduct in litigation and protecting the rights of citizens in the judicial process.

Cox has advocated on behalf of clients in a wide range of legal areas in state and federal courts across Montana. In addition, he has been devoted to teaching trial advocacy through trial colleges in Montana and Texas, coaching the University of Montana Law School trial competition teams and teaching at dozens of legal education programs in Montana, California, Utah, Idaho, Kansas and Quebec. Cox will be formally inducted into ISOB in March 2020 in South Carolina.

American College of Trial Lawyers inducts Whipple

Bozeman attorney Ashley J. Whipple has been inducted as a fellow of the American College of Trial Lawyers.

Whipple became a fellow during the 2019 Annual Meeting of the College in Vancouver, British Columbia. The meeting had a total attendance of 950.

Founded in 1950, the College is composed of the best of the trial bar from the United States and Canada. Fellowship in
Worden Thane P.C. welcomes Clare Kealey to the team.

Worden Thane is pleased to introduce its newest attorney, Clare Kealey to the team. Clare is a native of Dublin, Ireland having graduated from Trinity College Dublin, School of Law. She brings with her an L.L.M. from the University of Pennsylvania and a J.D. from Rutgers Law School. Clare practiced law in New Jersey, working in the areas of Personal Injury, Product Liability and Commercial Litigation. Her Irish background and diverse experience allows her to naturally connect with clients. She enjoys Montana’s outdoors and the opportunities that the Missoula and surrounding communities have provided, with her family, friends and two Australian Shepherds.

the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers of diverse backgrounds, who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of fifteen years trial experience before they can be considered for Fellowship.

Membership in the College cannot exceed 1% of the total lawyer population of any state or province. There are currently approximately 5,800 members in the United States and Canada, including active Fellows, Emeritus Fellows, Judicial Fellows (those who ascended to the bench after their induction) and Honorary Fellows. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. The College is thus able to speak with a balanced voice on important issues affecting the legal profession and the administration of justice.

Whipple is the managing member of Whipple Law Offices in Bozeman. She has been practicing in Montana with her husband, Todd S. Whipple, for 21 years. She is a graduate of the University of Montana School of Law.

MTLA announces annual award winners

The Montana Trial Lawyers Association held its Awards Dinner Aug. 8 in Missoula. The following awards were presented:

- Outstanding New Lawyer Award – Matthew J. Murphy, for professional excellence in trial practice and service to MTLA and Montana’s citizens.
- Al Smith Public Service Award – Gov. Steve Bullock. MTLA cited Bullock’s numerous contributions to protect Montanans by increasing health care coverage, championing campaign finance reforms, protecting the civil justice system, and advocating for consumers.
- Citizens of the Year Award – Holly McGowan & Alexis Nunez, who were cited for their selfless efforts and extraordinary courage to protect children from abuse by seeking justice and accountability in the courts.
- Appellate Advocacy Award – Dennis P. Conner, for outstanding appellate advocacy.
- Career Achievement Award – J. David Slovak, for his enduring contributions to the law and the citizens of Montana. MTLA said Slovak’s stellar record of trial and appellate successes reflect his meticulous trial preparation, keen legal insights and bulldog determination that have served his clients, his profession and Montana well.
- Trial Lawyer of The Year Award – Mark M. Kovacich & Ben A. Snipes, for outstanding trial advocacy.

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WWW.MONTANABAR.ORG
Changes to MRPC, Uniform District Court Rules are now in effect

Extensive revisions modernizing the Montana Rules of Professional Conduct went into effect on Jan. 1.

Before this revision, proposed by the State Bar of Montana in spring of 2019, the MRPC contained 29 rules not identical to the ABA’s Model Rules. Under the revisions approved by the court, 10 unique Montana rules remain unchanged, 11 were amended to directly (or with minimal adjustment) correspond to the ABA Model Rules, seven were amended slightly and one ABA model rule was rejected entirely.

The bar’s Ethics Committee reviewed Montana’s rules that differed from the ABA Model Rules before making its recommendations, which the Board of Trustees approved in spring of 2019.

Most significant are amendments to the confidentiality rule and to the rule addressing an organization as the client.

Also notable is the modification of the Preamble creating a discipline safe harbor for attorneys who advise cannabis industry businesses.

Montana’s last comprehensive rules review was 2002-2004. While certain rules had been amended in the interim, the court concluded that these changes were needed considering 21st century developments in technology, business and law.

An article explaining the rules was in the March 2019 Montana Lawyer. An updated version of that article, along with the new rules, is posted at www.montanabar.org under “Latest News.”

Uniform District Court

Revisions to the Montana Uniform District Court Rules went into effect on Jan. 1.

The most substantive is the addition of a new Rule 6: Simplified Procedure for Civil Cases. The stated purpose of the Simplified Procedure is to protect the right to trial by jury in civil actions; to provide maximum access to the district courts and opportunity for citizens to participate in the civil justice system in civil actions; to enhance the provision of the just, speedy, and inexpensive determination of civil actions; to facilitate limited discovery and decrease expenses; and to provide opportunities or counsel to train in civil trial practice. The Simplified Procedure applies to all civil actions in which a jury trial has been requested. Attorneys are required to educate and consult with their clients about it and be prepared to elect or decline the Simplified Procedure process at the initial scheduling conference.

MORE COURT, NEXT PAGE
Water Court posting orders, reports online

The Montana Water Court recently announced steps it has taken to make its case information more accessible to the public.

Each month, the court will be posting its previous month’s masters’ reports, orders adopting and amending and other substantive orders. The orders will be available at https://courts.mt.gov/courts/water/orders for one month before being replaced at the beginning of the next month.

Water Court Administrator Sara Calkins said the court has worked closely with Supreme Court Electronic Services Coordinator Kevin Cook to implement the project.

Additionally, the court is now submitting its orders to major legal research services.

Ryan McLane, the chair of the State Bar’s Water Law Section, said the section is excited by the Water Court’s efforts to make its orders widely available online.

“While the Water Court regularly decides significant issues concerning Montana water rights, absent an appeal to the Supreme Court, many of these decisions are not widely known,” said McLane, an attorney at Franz & Driscoll in Helena. “Having wider access to these decisions really improves our representation of clients in water-rights matters, and speeds up the litigation of some of these issues when in the Water Court.”

ABA anti-stigma campaign tells recovery stories of lawyers, judges, law students

The American Bar Association’s Commission on Lawyer Assistance Programs has begun a campaign that will feature a series of videos highlighting the recovery stories of lawyers, judges, and law students who have overcome addiction and mental health problems.

The commission, known as CoLAP, aims to break down the stigma, shame, and fear it says often prevent legal professionals from seeking help when struggling with these problems.

The first video, entitled “Fear Not: Speaking Out to end Stigma,” features a diverse group of lawyers, a judge and two law students who openly talk about the challenges with behavioral health issues, including depression, anxiety, alcoholism and drug addiction, their recovery and the vital importance of asking for help.

The video is posted online at https://www.montanabar.org/page/LAP.

COURT FROM PAGE 12

The Simplified Procedure calls for the court to set the case for trial within six months following issuance of the scheduling order “or as soon as the court’s schedule allows.” It also spells out requirements for Initial Disclosures, Lay Witness Statements, Expert Witness Reports, Discovery, Discovery Disputes, and Pretrial Motions.

Among other changes to the Uniform Rules, one rule – the former Rule 6 - Briefs – was incorporated into a reorganization of Rule 2 – Motions. Also, stylistic and grammatical changes were made throughout.

Judge Fehr appointed to court’s Sentence Review Division

The Honorable Jessica Fehr of Billings has been appointed to a three-year term on the court’s Sentence Review Division by Chief Justice Mike McGrath.

Judge Fehr, a 13th Judicial District Court judge, replaces the Honorable Brenda Gilbert of Livingston, whose three-year term ended on Dec. 31.

Paper checks are notoriously unreliable. They get lost in the mail, they get tossed in the laundry, and they carry a lot of sensitive information around with them wherever they go.

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DO YOU KNOW ALL THAT YOUR FASTCASE BENEFIT INCLUDES?

The Fastcase legal research benefit that comes free to all Active Attorney and Paralegal Section members includes Montana and federal courts, statutes, regulations, constitutions an court rules — and a whole lot more. Not sure what else is included? With permission aware searching you can quickly identify all the libraries available to you in @fastcase. Just select the Outline tab, at the top of the toolbar in Fastcase 7 to see the libraries available with your member benefit.

DOCUMENT HISTORY TAB

Did you forget the name of an important case you viewed a week earlier? Quickly locate your document history in Fastcase 7 with the addition of date filters. Check out the document date filters by clicking “History and Favorites” from the toolbar, then select the calendar icon in the “Document History” tab.

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In addition to tutorials, guides and regularly scheduled webinars, Fastcase offers live support Monday-Friday, and email support is always available.

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7-part guardianship webinar series announced

The State Bar of Montana has nine webinar CLE programs planned for February, March and April: a seven-part Guardianship series sponsored by Aging Services, along with programs sponsored by the Montana Lawyers Assistance Program (LAP) and the bar’s Business, Estates, Trusts, Tax and Real Property (BETTR) Section.

The LAP webinar will be presented on Thursday, Feb. 27, at noon by Terry Harrell, executive director of the Indiana Judges and Lawyers Assistance Program. Details are pending.

The BETTR webinar will be at noon on Wednesday, March 18.

The Guardianship series is scheduled for noon on the following dates: Tuesday, March 3; Tuesday, March 10; Tuesday, March 17; Tuesday, March 24; Tuesday, March 31; Tuesday, April 7; and Tuesday, April 14.

More details will be announced when available.

Recorded CLE covers 2019 estate planning legislation

An overview of important estate planning legislation from the 2019 Montana Legislature is the latest addition to the State Bar of Montana’s recorded CLE catalog. Presenters Ed Eck and Dirk Williams will explain important revisions to the state’s intestacy, elective share, and exempt property statutes. Senate Bill 225 also changed important probate procedural provisions. Further, courts may now correct mistakes in a will and other governing instruments if necessary to implement the testator’s intention. The bill included the adoption of the Uniform Disclaimer of Property Interests Act and the Uniform Real Property Transfer on Death Act.

The program, approved for 1.0 CLE credit, is available at montana.inreachce.com/.

UPCOMING CLE CALENDAR

The following CLE seminars have been confirmed by the CLE Institute and State Bar Sections. Register for upcoming CLE in the calendar at www.montanabar.org.

<table>
<thead>
<tr>
<th>EVENT</th>
<th>DATE</th>
<th>LOCATION</th>
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<tr>
<td>Annual Real Estate CLE</td>
<td>Feb. 14</td>
<td>Fairmont</td>
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<tr>
<td>Annual St. Paddy’s Day CLE</td>
<td>March 13</td>
<td>Fairmont</td>
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<td>Government CLE</td>
<td>April 10</td>
<td>Helena</td>
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<td>Environmental Law Update CLE</td>
<td>April 24</td>
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<tr>
<td>Bench Bar CLE</td>
<td>May 1</td>
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<td>Law &amp; Technology Summit</td>
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<td>BETTR Section CLE</td>
<td>Aug. 7</td>
<td>Billings</td>
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<tr>
<td>Annual Bankruptcy CLE</td>
<td>Aug. 13-14</td>
<td>Bozeman</td>
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<tr>
<td>Annual Meeting</td>
<td>Sept. 9-12</td>
<td>Missoula</td>
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The following attorneys are recognized for Excellence in the field of Alternative Dispute Resolution

Tracy Axelberg Helmville
Dee Carestia Wise River
Jay Hunston Whitefish
Michael Lilly Bozeman
Dennis Lind Missoula
Hank Raucci Helena
Guy Rogers Billings
Jock Schulte Missoula
Buzz Tarlow Bozeman
Michael Viscomi Whitefish
William Wagner Missoula
Doug Wold Polson
Gary Zadick Great Falls

Check your preferred available dates or schedule appointments online, directly with Academy Members - for free.

www.MontanaMediators.org is funded by our members

* The National Academy of Distinguished Neutrals is an invitation-only professional association of over 1000 litigator-rated mediators & arbitrators throughout the US and a proud partner of the AAJ & DRI. For more info, please visit www.NADN.org/about
Trustees approve new Animal Law Section of bar

The State Bar of Montana Board of Trustees approved a new Animal Law Section at its December meeting. In presenting their proposal for forming the section, proponents told the board that in addition to being a distinct field of law – with at least 26 other bars across the country — including the American Bar Association — recognizing animal law sections or committees. In addition, they said, animal law cuts across virtually every substantive area of law, including tort, contract, property, family, taxation, trust and estates, insurance, criminal, administrative, international, and environmental.

Organizers also stressed that the section’s focus is animal law, not animal rights. They said the section will welcome, and strive to benefit, all those whose professions involve animals – including animal advocates, those who don’t consider themselves animal advocates, and those who oppose animal advocates or represent those who oppose them.

Organizers say the new section will give Montana practitioners a forum where they can find relevant information, read the latest news stories, and connect with one another regarding legal issues pertaining to animals. They plan to do so in many ways, including holding an annual continuing legal education seminar; publishing a newsletter, blog, or social media posts highlighting animal law issues; and submitting articles to the Montana Lawyer and other publications.

Officers and members-at-large for the first year are:

- Stacey Gordon Sterling, chair; Zack Strong, chair-elect; Bill Rideg, secretary-treasurer; Korin Ziegler, member-at-large; and another member-at-large not yet determined.

Section dues were set at $20 per year.

New Lawyers Section Student Membership approved

The Board of Trustees also approved a new Student Membership to the New Lawyers’ Section, which is open to an enrolled students at accredited law schools.

Law Day 2020 marks 100th anniversary of the 19th Amendment

The Law Day 2020 theme is “Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100,” the American Bar Association has announced. In 2019-2020, the U.S. is commemorating the centennial of the constitutional amendment that guaranteed the right of citizens to vote would not be denied or abridged by the United States or any state on account of sex. American women fought for, and won, the vote through their voice and action.

ABA President Judy Perry Martinez notes that the 19th Amendment marked the largest expansion of democracy in the history of our country, saying the centennial offers an unparalleled opportunity to commemorate a milestone of democracy and to explore its relevance to the issues of equal rights today.

If you or your organization would like information on hosting Law Day events, please contact Montana Lawyer editor Joe Menden at editor@montanabar.org.

In addition, the ABA Standing Committee on the Law Library of Congress has launched a 19th Amendment traveling exhibit, “100 Years After the 19th Amendment: Their Legacy, and Our Future.” The six-banner free-standing exhibit features historic photos and artifacts and details the story of the battle for ratification and outlines the challenges that remain. The exhibit was recently awarded a 2019 GDUSA American Graphic Design Award. For information on the exhibit and how to purchase the banners, please contact Anne P. Brown at anne.brown@americanbar.org.
neglected children who normally have no voice in the system. Damon did not represent children in order to become rich, nor did he do this for any kind of notoriety. He did this work because he cared about others and cared about the future of his community. I always knew the children of our community were in the best hands with Damon in their corner. He also spent most of his legal career working towards the benefit of the profession as a whole, including his time on the State Bar Board of Trustees and as delegate to the ABA. He encouraged me to do the same, as he encouraged many others.

Damon battled pancreatic cancer for three and a half years. And he did not just battle, he kicked its butt for about three years longer than this horrible disease expected of him. He fought hard, and he fought while relying on his great wit, one-liners that were second to none, and a sense of courage that I have never had the pleasure of witnessing before. All the while, he continued to represent children and their best interests. Damon went through a lot in these last few years, but he never complained. Although he was in cancer treatments often, he remained steadfast in his courage, humor, and faith. Damon’s sense of humor was arguably one of his best qualities. He had the sharpest wit of anyone I know. There was never a day when I did not smile and laugh when I was in his presence.

Besides my parents, Damon has had the greatest, most profound impact on my career and my life. I treasure the time I had with him and all I learned from him. Damon focused on living life and not living to work. Earlier this year, I remember panicking out loud to him because I had too many things to do and not enough time to do them (as I am certain sounds familiar to all of you). Damon told me, “Juli, you can only do what you can do today. The rest will wait for tomorrow.” For those of you who did not know Damon, I hope you have someone in your life who has taught you as much as he taught me and you take the time to think about your mentor when you read this. For those of you who had the pleasure of knowing Damon, I am certain you have wonderful memories of him that have shaped your lives and will make you smile when you remember him. The void he leaves will never be filled but we can try to carry on the positive impacts he had on his family, community, and the tens of thousands of children he helped. As attorneys, we need mentors and fellow attorneys to guide us and keep us grounded, no matter how long we have practiced. If you do not have a mentor, please actively seek out your own Damon. And I hope all of you become a Damon for someone else along the way. We would do well to learn from Damon how to be honest, selfless, and brave — as attorneys and in life — and to pass those lessons on to others.

PRESIDENT
FROM PAGE 5

neglected children who normally have no voice in the system. Damon did not represent children in order to become rich, nor did he do this for any kind of notoriety. He did this work because he cared about others and cared about the future of his community. I always knew the children of our community were in the best hands with Damon in their corner. He also spent most of his legal career working towards the benefit of the profession as a whole, including his time on the State Bar Board of Trustees and as delegate to the ABA. He encouraged me to do the same, as he encouraged many others.

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‘HE WAS A TRUE TREASURE’

COUNTERCLOCKWISE FROM TOP LEFT: Damon Gannett holds the plaque he received after being honored with the 2015 William J. Jameson Award; Damon shares a moment with his son and fellow Billings lawyer Tucker before receiving the Jameson Award; Damon and his wife, Carol smile after Damon received the 2016 Yellowstone Area Bar Association Lifetime Achievement Award; Damon and Carol pose with grandson Jude during the ABA’s 2018 Annual Meeting in Chicago. (Photos provided)
Friends remember Gannett as an example for the legal profession

By Joe Menden

For many colleagues around the state, Damon Gannett was known for the decades he spent in service to the betterment of the legal profession. He was known by many others as a tireless advocate for the welfare of children.

But for those who knew him best, Gannett will be remembered best for his quick wit, for his kind heart, and for his caring for everyone he met.

Gannett, a longtime Billings lawyer and the 2015 winner of the State Bar’s William J. Jameson Award, the highest honor the bar bestows, died on Oct. 2, 2019, at age 72 after a 3 1/2-year battle with pancreatic cancer.

State Bar of Montana Executive Director John Mudd said Gannett represented the best of what a lawyer can be.

“I’m not sure I’ve met a more decent, kind or committed person,” Mudd said. “He was the embodiment of the ideal Montana lawyer and epitomized what this organization is about. I will miss his always sunny disposition and his gentle and wise counsel.”

Mudd noted that Damon and his beloved wife, Carol, celebrated their 50th wedding anniversary in August, a month in which he also had the pleasure of watching his close friend Bob Carlson preside as ABA president at that organization’s Annual Meeting in San Francisco.

* * *

CARLSON, A PARTNER in the Butte firm Corette, Black, Carlson & Mickelson, came to know Gannett when they both were on the State Bar’s Board of Trustees in the late 1980s, and eventually both became bar presidents, Gannett in 1990-1991 and Carlson in 1993-1994. They became close friends as they served together for years in the ABA House of Delegates.

“He was a true treasure,” Carlson said. “He was a great friend and adviser for over 30 years. There are not enough positive adjectives to describe how special he was and the impact he had on so many. He was smart, unassuming, kind, nice, wise, thoughtful, charming, funny, caring and insightful.”

Carlson noted that Gannett was well respected beyond Montana, having served as president of the Western States Bar Association and as a delegate to the ABA’s House of Delegates for nearly 20 years, and he had a direct impact on leading the profession forward.

“When he spoke, people listened,” Carlson said. “He was not only insightful – he had a way of cutting through to the heart of the matter in a direct but gentle way to push people to a solution.”

* * *

Fourth Judicial District Judge Shane Vannatta got to know Gannett well when Vannatta became the State Bar’s delegate to the ABA House of Delegates in 2013 and Gannett was the statewide delegate. He said Damon went out of his way to get him up to speed on being a delegate and that he and Carol went out of their way to make him and his husband, Jon Freeland, feel welcome.

“Damon had this uncanny ability to place you at ease – at ease not only with the situation, but with yourself,” he said. “Damon could easily assess the environment and you, and make one of his wry, insightful, deprecating remarks that would make you relax and enjoy yourself. He readily gave reassurance and inspired confidence.”

Judge Vannatta suspects Gannett likely gained those qualities through his work with children in dependent neglect cases – not to mention having six children of his own and raising his grandson Jude.

“Damon will be missed for more than his keen intellect or his unwavering support of children and families,” he said. “He was more than a father, a husband, or a dear friend. He was one of the people who made life beautiful by simply living it and sharing with those around him. Damon’s leaving created a gaping hole in the lives of his friends and family. That hole will not soon be filled. We miss him terribly.”

* * *

CURRENT STATE BAR President Juli Pierce knew Gannett, a longtime Yellowstone County guardian ad litem, before she went to law school, meeting him when she was a social worker for Child Protective Services. Pierce considered Gannett her greatest mentor – she thought of him as a father figure and he treated her like his own daughter.

Gannett always took care of others, Pierce said, whether it was his family, his clients. He also always made time for her when she needed advice, a calming voice through all stages of her career. You can only do what you can do today, he would say. The rest will be there tomorrow.

“He was the best kind of person, and the best kind of lawyer,” Pierce said.

* * *

According to Carlson, Gannett never stopped being a helper to those around him despite being in great pain as his cancer progressed. Until the end, he continued to worry about Carol and be there for Jude, to help his clients and protect the children he represented, and to fulfill his responsibilities to the ABA and the State Bar.

Less than a month before he died, in fact, Gannett was at the State Bar’s Annual Meeting to give an ABA Delegate’s report to the Board of Trustees.

“He was an example for all of us,” Carlson said. “He made us all better. His loss has left a big hole in our hearts. We treasure all the memories. We will never forget him.”

He made us all better.
His loss has left a big hole in our hearts.
We treasure all the memories.

Bob Carlson

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CALMING THE WATERS

Using a mediator with subject matter expertise can help in achieving the speedy resolution both sides often desire in water rights disputes

By Sarah Bond

Many Montana lawyers will, at some point in their professional lives, have a client needing advice about a water law matter. The client might be in a water distribution dispute with other water users on the same river; wondering why they received a notice from the Department of Natural Resources and Conservation (DNRC) about possibly owning a water right on their land; in receipt of an objection to their water rights landing them in a Water Court adjudication case about a water right filed back in 1981 in the statewide adjudication; or wondering what to do with the statements of claim of water right they just discovered in their recently deceased parent’s files.

If your client is in a dispute involving water or ditch rights, you should be aware you could save your client money and time by trying mediation first. Mediation has a long history in family law matters, but it can also be useful in resolving water disputes, and it merits your consideration. The mediation subcommittee of the Water Law Section of the State Bar of Montana has identified several mediators skilled in mediation, water issues, and the specialized state infrastructure and procedures for resolving water disputes.

In the more generic mediation world, it remains a topic of debate whether it is important for a mediator to possess expertise in the subject matter of the mediation. In water disputes, however, the nature of the issue requires some understanding of hydrology and the specialized practice of water law. It is recommended that your mediator be experienced in water issues, water rights, and the mediation process itself. In water law, the facts are inextricably intertwined with the law. If your mediator or co-mediator has no knowledge of hydrology, and the unique adjudication processes in the Montana Water Court, or where the Water Court’s jurisdiction ends and the District Court’s or DNRC’s jurisdiction begins, you may well craft a “settlement” not workable on the ground or acceptable to the appropriate court (depending on who has jurisdiction to decide the particular issues being mediated). The relevant court will review any settlement for compliance with law. Thus, any agreement that runs afoul of water law would be rejected by the court and you are then back to square one.

In any kind of water dispute – for example water distribution controversies arising under Title 85, Chapter 5, MCA; adjudication cases in the water court under Title 85, Chapter 2 Part 2; adjudicative contested cases before the DNRC; or access or ditch easement disputes – you can ask the decision maker to appoint a neutral mediator to attempt to bring the parties to a settlement without the need for lengthy litigation. Alternatively, if the parties have agreed on a private mediator, you can so inform the court and move the court for a stay pending mediation.

Mediation is a voluntary, non-binding process in which a trained neutral is chosen to conduct a confidential mediation with a goal of bringing the parties to a negotiated settlement of their dispute. The process is confidential, and
the cost is generally shared by all parties. Mediators are legally bound to protect the confidentiality of everything shared with them unless the parties ask the mediator to share something specifically with the other parties. By statute, mediators cannot be called to testify in a court proceeding. Assuming you are representing a client who is before a court or administrative adjudicative decision maker, any settlement agreement finally reached and fully executed will have to be sent to the court for approval for the case to be resolved. The agreement, to be enforceable, obviously at that point becomes a pleading and public, but the negotiation discussions and drafts leading up to it remain confidential.

After the dispute is referred to the mediator – and if it is a private mediator, the mediator’s contract is agreed to – the mediator conducts an informal but structured confidential proceeding with the parties and their representatives, if any. The process is not governed by the rules of evidence that constrain what you can present to a judge, generally require a lawyer to present and argue, and drive up the cost of litigation. And, in a mediation process, unlike in court, the parties ultimately retain decision-making authority. That is, you either come to agreement or not. Sometimes it fails, and a further court proceeding is required. But it often saves the parties from having to endure the time and expense of years of litigation and allows the parties to craft a solution that may take into consideration factors that are important to the parties, but which a court would not consider or decide. If the dispute has not yet gone to court, the parties generally enter into a settlement agreement incorporating their agreement and providing specific enforcement or termination procedures and avoid court altogether. If the parties are already in court, the court will review the settlement for compliance with Montana law, and may approve or disapprove for specific reasons. Litigation is expensive and time consuming. If the water dispute involves irrigation, the clients usually want it to be resolved within an irrigation season or at least before the next season so their farming plans are not disrupted. Mediation can provide a quicker and lower-cost process to resolve the dispute in a timely manner.

Also, in water disputes the parties often must continue to cooperate with each other to comply with the terms of a decision and use the shared resource over time and through generations. Therefore, a negotiated settlement in which both parties voluntarily (if begrudgingly) draft and accept the terms may be more closely tailored to serve the long-term interests of the parties. Water users often represent themselves in Water Court, and having the dispute mediated can avoid many of the frustrations that can arise from cases in which some or all of the parties are unrepresented.

There are several private water lawyers with expertise in mediation and other forms of alternative dispute resolution who can serve as a mediator in any kind of water controversy that otherwise would require years of litigation to resolve. This article is simply to inform lawyers of the availability of mediators with experience in both mediation practice and water law, and that they can always ask a judge or suggest to clients to try mediation before litigation in a water dispute. Meditation can provide significant benefits to you and your clients as well as relieve congestion in district courts and the Water Court dockets when private mediators are used.

For further information, please contact the author, the chair of the Water Law Section of the Montana State Bar, or Benjamin Sudduth (benjamin@sudduthlaw.com), chair of the Section’s Meditation Subcommittee.

Sarah Bond is a sole practitioner from Helena and a member of the Water Law Section’s Mediation Subcommittee. This article solely reflects the author’s opinions and does not represent the opinions or positions of any committee or organization of which the author is a member.

If your mediator or co-mediator has no knowledge of hydrology and the unique adjudication processes in the Montana Water Court, or where the Water Court’s jurisdiction ends and the District Court’s or DNRC’s jurisdiction begins, you may well craft a “settlement” not workable on the ground or acceptable to the appropriate court.
New ODC chief says job is a great fit

By Joe Menden

Helena lawyer Pam Bucy took over in November as chief disciplinary counsel at the Office of Disciplinary Counsel. It’s a job she sees as a great opportunity to return to work as a public servant and one that her career experience makes her a perfect fit to fill.

Bucy came to ODC from Helena’s Taylor Luther Group, where she was a principal attorney, but she has spent the bulk of her 20-plus-year legal career in public service. She spent her first 10 years in practice as a prosecutor, including as executive assistant attorney general from 2001-2007. In the second major phase of her career she was chief legal counsel and then commissioner of the Montana Department of Labor.

She said she enjoys public service, particularly the broad perspective afforded her in her work at both the AG’s office and the Department of Labor.

“I’ve spent a lot of my career ensuring the legal system is as good as it can be,” said Bucy, a 1998 graduate of the University of Montana School of Law. “I don’t believe it’s perfect. I certainly believe it’s the best one that I know of in the world. I’m very committed to being a part of making it better all the time. I think this job affords me the opportunity to do that.”

Bucy feels that both her prosecuting experience and her time at the Department of Labor have uniquely prepared her for the ODC job. She noted that in her eight years at the DOL, she oversaw the state’s 42 professional and occupational licensing boards. She also was a part of setting up the department’s system for overseeing those boards — something that was made necessary because of a growing trend at the time.
of antitrust claims targeting professional and occupational licensing boards made up primarily of market participants deciding complaints against other market participants.

The DOL’s system, she said, was purposefully set up to be very similar to Montana’s lawyer disciplinary structure, and she worked closely with then-Chief Disciplinary Counsel Shaun Thompson to learn what went into setting it up. The DOL addressed the antitrust problem, she said, by mirroring the dynamic between the ODC and the Supreme Court’s Commission on Practice, setting up screening panels that are different from adjudicatory panels, and making the governor — a non-market participant — the final arbiter, much like the court is the final arbiter on lawyer discipline complaints.

“I think I understand self-regulating industries and the legal issues associated with them,” she said.

One part of her experience at DOL that she thinks will be especially helpful at ODC is that it allowed her to see the extremes of complaints that come in to the various licensing boards, ranging from very minor and possibly frivolous to significant concerns about scope of practice and competency issues. She plans to institute what she calls an intake-diversion program, similar to deferred prosecution in the criminal justice system, to deal with clear but minor rule violations. For instance, she said, one of the primary complaints ODC receives is failure to diligently communicate with clients. If a lawyer acknowledges their communication could have been better and they put a new system in place to address the deficiency, ODC might hold off on disciplining and audit the lawyer’s communications for a period of time. If the lawyer is consistently following internal processes and no more complaints are filed, the complaint could be dismissed.

That scenario is already in the range of options available to ODC, but Bucy said formalizing policies on when to use various remedies is an important part of making the regulatory process fair, consistent and efficient.

While handling complaints against lawyers and evaluating, investigating and prosecuting them when appropriate are ODC’s primary functions, Bucy also wants ODC to have a role in helping lawyers avoid disciplinary complaints by making sure new lawyers can access resources to steer clear of the common pitfalls that lead to trouble. She hopes to work with the State Bar in directing people to some of those resources, be it CLE courses or business courses at local colleges.

“Just disciplining someone for not being a very effective businessperson and then not giving them any kind of resources or tools to improve doesn’t seem very effective. Just disciplining someone for not being a very effective businessperson and then not giving them any kind of resources or tools to improve, that doesn’t seem very effective to me in bettering the legal system and profession,” she said. “I think there are resources out there, and we need to figure out what they are. If there are gaps, we need to fill them.”

Joe Menden is editor of the Montana Lawyer. You can reach him at jmenden@montanabar.org or by calling 406-447-2200.

PAM BUCY

Position: Chief Disciplinary Counsel
Home: Helena
Law Degree: University of Montana School of Law, 1998
Undergraduate Degree: Rocky Mountain College, 1991
This issue marks the last time I’m writing this article. There were a bunch of cliché ways to begin this particular article in recognition of that fact — quoting “Sound of Music” songs, Bilbo Baggins speeches, or the dictionary definition for “goodbye.” The truth is, I think one more 1- or 2-spaces-after-a-period arguments among my colleagues at Browning Kaleczyc Berry & Hoven may be the iceberg that sinks the entire institution. I’d like to keep my job, so the one year mark for this column’s run seemed a natural conclusion.

As I wrote these articles, I also noticed some consistent themes in the legal writing books I’ve read, and it seems a worthwhile exercise to synthesize them. The first theme that recurred through nearly all of these books is that drafting and editing do not happen at random. Rather, these tasks must occur deliberately at all levels of the document: the whole document, paragraph, sentence, and individual word levels. There are different editing tasks specific to each of those. At the whole document level, structure and organization of the argument must be viewed from 10,000 feet. Does the logic make sense? How does the page look and is there enough white space? At the paragraph level, it becomes vital to link individual paragraphs with a common word or idea to string readers along. In addition, do the paragraphs form a syllogism? At the sentence level, our favorite rules of grammar come into play, and at the word level, pick up “Point Made” for some zingers.

Second, think of your reader. This applies in many ways. For example, it’s important to consider who your audience is. Are you writing to a judge or to a client who has never been involved in the legal arena? “Thinking” of your audience also means to be considerate. Everyone is busy — between work, caring for kids, and trying to keep up on whatever show Meryl Streep has been in lately, we all have so little time. Written material should get to the point and be respectful of readers’ time and mental focus.

Third, and maybe most importantly, most of the books I’ve read in some form send a reminder that though our jobs and representations of clients are important and can be all-consuming at times, we shouldn’t see each written product as the be-all and end-all. My favorite quotation is still from Stephen King, reminding writers not to put their desks in the middle of their office but in the corner. Life does not revolve around writing, it is just one component. Again, I must stress that this does not negate any of our duties to clients. But it does mean we should start sentences with conjunctions because rules can be boring. We can relax when facing writer’s block and get something on a page without being too critical. We can use a little creativity when writing and try new structures and words. And I should give myself a break when I continue to use the word “notably” ad nauseum.

Thanks for sharing some of your time with me. I’d love to hear what has been beneficial. Go forth and write many sentences.

Abbie Cziok is an associate at Browning Kaleczyc Berry & Hoven’s Helena office. She enjoys rock climbing and one space after a period. She is the winner of the 2019 Frank I. Haswell Award for outstanding contribution to the Montana Lawyer.
Fellows sought for Rural Incubator Project

The Rural Incubator Project for Lawyers (RIPL) is now accepting applications on a rolling basis for a new round of fellows.

RIPL is a 24-month program designed to train and support attorneys as they develop and launch new solo and small firm law practices.

Two three-day Boot Camps for new fellows are tentatively scheduled for April 6-8 and October 2020 in Helena. Visit www.mtlsa.org/rural-incubator-project-for-lawyers/ or email ripl@mtlsa.org for more information.

RIPL has successfully trained four new lawyers in its pilot round, providing intensive training, education, mentoring, and practice building tools. These nascent practices have already made a real difference for low- and moderate-income clients: since March of 2019, RIPL’s Fellows have attended over 20 credits of CLE training, provided 200 hours of modest means assistance, and have taken on 49 pro bono clients. Overall, RIPL has helped 175 clients and their family members in the last eight months. These clients live in 23 counties, including 17 counties outside the state’s six biggest urban areas. Fellows have addressed legal issues touching on basic life needs such as family law, housing, consumer, tax, wills and probate, and employment issues. This success shows that RIPL can make a big difference to providing equal justice to low- and moderate-income clients throughout Montana but there is still much more to do.

Applications will continue to be accepted after the next round of fellows is selected.

If you are unable to commit to the RIPL fellowship but are interested in assisting with one or more modest means cases, please contact Ann Goldes-Sheahan at the State Bar of Montana at agoldes@montananabar.org or 406-447-2201.

Meet the 2019 RIPL fellows

Christopher Fisher and Jessica M. Wiles make up the 2019 class of Rural Incubator Project for Lawyers Fellows.

Christopher Fisher
Fisher is an attorney licensed to practice in both Montana and Wyoming. Fisher was raised in Helena, and after a brief stint as an aircraft mechanic, he studied economics at Montana State University and later law at the University of Oregon.

Passionate about helping families, he returned to Montana to begin his legal practice. Very quickly, he became acutely aware of the many financial and regional limitations families face when seeking legal assistance in Montana.

Now, partnering with Montana Legal Services Association through RIPL, he is leveraging available technology and the RIPL Fellowship to help families that may otherwise be unable to find legal assistance. Fisher’s legal practice focuses on finding and implementing practical legal solutions for everyday Montana families. When he isn’t preoccupied with the law, he spends time with his family and friends enjoying frisbee, kickball, hockey, and snowboarding. You can reach him at chris@mtfamilies.com.

Jessica Wiles
Wiles graduated from Lewis and Clark Law School in Portland, Ore., in 2010 with a certificate in Environmental and Natural Resources Law. She began her legal career as an associate attorney at Hobbs, Straus, Dean, and Walker, LLP, in Portland, where she advised tribes and tribal organizations on a variety of legal matters including tribal housing and tribal self-governance contracting and compacting.

Wiles next worked as an Attorney-Advisor for the Department of Interior, Office of the Solicitor, in Billings. At the Solicitor’s Office, she advised the U.S. Bureau of Land Management (BLM) and other client agencies on topics including grazing, oil and gas, mineral title and trespass, torts, administrative law, and water law. She also represented BLM in litigation before relevant administrative boards.

Upon moving to Helena, she worked as a Special Assistant Attorney General for the Montana Department of Natural Resources and Conservation (DNRC) providing legal advice and representation to the DNRC Trust Land Management Division.

In 2019, she established her own solo practice with a focus on natural resources, Indian law, estate planning and probate, and Indian wills. Wiles is proud to be a 2019 Montana Legal Services Association RIPL fellow and is excited to work with MLSA to expand access to justice for modest means Montanans throughout the state by providing full representation, limited scope, phone advice, and pro bono legal services in a wide variety of practice areas. She proudly hails from Lander, Wyo., and when not in the office, spends her time with her incredible husband, their two children, Jasper, 4, and Eliza, 1 1/2, and their red heeler, Ginger.
When sharing office space, make sure you have your ducks in a row

Someone recently shared a comment on a blog that talked about how malpractice insurance companies and those who write our rules of professional conduct are behind the times. According to the blogger, those of us who run in the ethics or insurance circles just don’t understand how lawyers practice in today’s world. Let’s just say that I respectfully disagree, and the following explains one of the many reasons why.

Years ago, I visited a small law firm that was part of an office share arrangement located in Chicago’s Loop. Of course, I understood that the cost of maintaining an office in the Loop would be prohibitively expensive for the typical solo or small firm so this was no surprise. What did take me off guard was the reception area. When I walked in, the first thing I saw was a large reception desk staffed by six to eight receptionists. I quickly realized that far more than two or three distinct firms were operating out of this common space, which made me think that this was going to be a longer day than I had planned. Why?

Well, while I do appreciate the benefits that can come with office share arrangements, there are ethical, malpractice, and insurance coverage concerns that can easily arise in the context of an office share situation. Due to the amount of client traffic in that reception area I suspected little thought had been given to any of those concerns by anyone in this group.

To set the stage, let’s talk about my reaction to walking into that space. From the outset, I viewed the arrangement as misleading and thus a possible ethics violation in and of itself because there were no clear signs informing the public that the space housed a number of independent firms. Making matters worse, anyone entering simply approached the first available receptionist. The result was that the common reception area suggested that all the attorneys in that space practiced together as one firm when in fact they did not, and that’s a problem. For example, should one of the solo attorneys practicing there ever be sued for malpractice, other occupants may also be named in that suit given the public presentation of the group as a firm. Now here is where it gets interesting. Malpractice policies generally exclude coverage for any and all claims that arise out of or in connection with any act, error or omission committed by an attorney with whom an insured shares common office space and who is not an insured under the insured’s policy. So if your independent office suite mate gets sued for malpractice and you are named in that suit, had no involvement with, or perhaps even awareness of, the client who filed suit, don’t be surprised if your insurance carrier says “good luck with that” after you put your own carrier on notice. The following tips will help you avoid this coverage problem and others like it:

- **Focus on clear indicia of separation.** Signage should emphasize the existence of separate practices or firms and not simply be a list of attorney names. Establish and maintain separate phone numbers, letterhead, fax numbers, offices, business cards, file storage areas, support staff, and computer systems. Directory listings and other advertising should not contradict the indicia of separation. Thus running an ad referring to the group with something along the lines of “The Southern Illinois Law Center” might not be in your best interests. Try to look at your space through a client’s eyes. If a first-time client might view or experience the arrangement as a firm, you're inviting trouble. Finally, include a statement in every firm’s engagement letter and fee agreement that explains there is no partnership relationship with the other

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**RISK MANAGEMENT**

*ALPS Risk Manager Mark Bassingthwaighte, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology.*

MORE NEWS, PAGE 29
Charles K. Hail

Charles K. Hail, 71, of Helena, began his new adventure alone Nov. 13. A celebration of life was held in Helena.

Charlie was born in Celina, Ohio, to Jean (Ferris) Hail and William Hail. A graduate of Miami University in, Oxford, Ohio, he earned his Juris Doctor from the University of Montana School of Law.

Hail

Charlie had several careers, but the most fulfilling was as an attorney. He worked for the Montana State Department of Labor and Industry and spent 21 years with the VA Montana at Fort Harrison. He gave so much of himself to Pro Bono work for Montana Legal Services Association all during his working years and into retirement. Many veterans, and folks needing a family law attorney are better off today because of Charlie.

Helping children was his passion. He served two terms on the Helena School Board and was appointed chairman. He was a big brother for Big Brothers and Sisters. He was a member of the Board of Directors for the Kay McKenna Youth Foundation for the last 15 years, serving as president, vice president and secretary.

Memorial donations in his name can be made to the Kay McKenna Youth Foundation, P.O. Box 1260, Helena, MT 59624; or to CASA.

Condolences may be shared with the family at www.croxfordfuneralhome.com.

Memorial submissions

The Montana Lawyer will publish memorials of State Bar of Montana members at no charge.

Please email submissions to jmenden@montanabar.org using the subject line “Memorial.” Memorial submissions are subject to editing for length and content.

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attorneys or firms who also occupy the space.

- Prioritize maintaining client confidences! This isn’t optional. There should be no talking in the halls, no common fax machine, and file cabinets (or office doors) should be locked when attorneys are away from their offices. Don’t leave client material in public places such as shared conference rooms. Close doors when visiting with clients or talking on the phone. Computers should be password protected. If there is a common staff person, this individual should not be involved in things like opening mail, taking detailed messages, and receiving faxes, because a common staff person should never be privy to sensitive client information as the attorney-client privilege could easily be lost as a result.

- Don’t minimize conflict-of-interest issues. If the office sharing arrangement calls for a common employee or the indicia of separation are weak, representation of adverse parties by separate practitioners in the space is ill advised and, in a number of jurisdictions, would be ethically prohibited. Regardless, if adverse parties will be represented by separate attorneys in the space, always obtain client consent in writing at the outset.

- Don’t mislead the public. The use of common advertising to include terms such as “of counsel,” “an association of solo practitioners,” or “affiliated with” can be a significant misstep if the actual relationship does not support the use of these terms. For example, of counsel means more than being available for an occasional consultation or question. Of counsel is defined as having a close and continuing relationship which involves frequent and continuing contact. If this isn’t going to be the case, don’t use the term.

- Put the office-sharing agreement in writing. Issues worth considering include, what equipment will be shared and who will be responsible for its maintenance and repair? If there will be shared staff, who will hire and fire? How will work be prioritized for shared staff, how will their salaries be paid, and who will evaluate them? Plan for the inevitable attorney arrivals and departures. Who will decide who comes into the space and under what conditions? Will departing attorneys be responsible for finding someone to take their space? Detail all financial responsibilities and the consequences of a failure to meet those responsibilities. Most importantly, require that all office sharing attorneys maintain professional liability insurance in order to remain in the space each year, because the lack of insurance is one of the reasons why every attorney in the shared space gets named in malpractice suits.

In contrast to the Chicago situation mentioned at the beginning of this piece, I have also visited office-share situations where I have found all the above ideas fully implemented. It really is possible to avail oneself of the benefits of an office-sharing relationship, yet minimize the risks normally associated with these types of arrangements. The key is in striving to identify and avoid conflicts, in implementing strong policies and procedures that preserve client confidences, and most importantly in doing all that you can to maintain professional independence as viewed and experienced by any and all clients. That said, always remember that in spite of what you might say to a client, if you and your officemates conduct yourselves in a way that would lead a reasonable person to believe you are a firm, ethical and/or liability professional liability insurance in order to maintain professional independence and/or liability protection. If there is a common staff person, this individual should not be privy to sensitive client information as the attorney-client privilege could easily be lost as a result.

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Now, about the comment left on the blog: The problem really isn’t us insurance or ethics types being stuck in the 1950s. The problem is that we lawyers need to realize that some of our peers will bring a malpractice action against all attorneys practicing in an office-share setting – and at times that’s exactly what should be done. Because to those of you practicing in this setting, understand that you don’t get it both ways. You really do need to have your ducks in a row.
ATTORNEYS

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ASSOCIATE ATTORNEY. Boone Karlberg P.C. is seeking an ambitious associate to join our firm. Position involves representing the firm’s clients in family law and related transactional matters. Candidates should possess knowledge of Montana law and be admitted to practice in Montana. Experience is preferred, but not required. Qualified candidates must have outstanding analytical and writing skills and a strong work ethic. Please send a resume, cover letter, references, writing sample, and law school transcripts to boonekarlberg.com.

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