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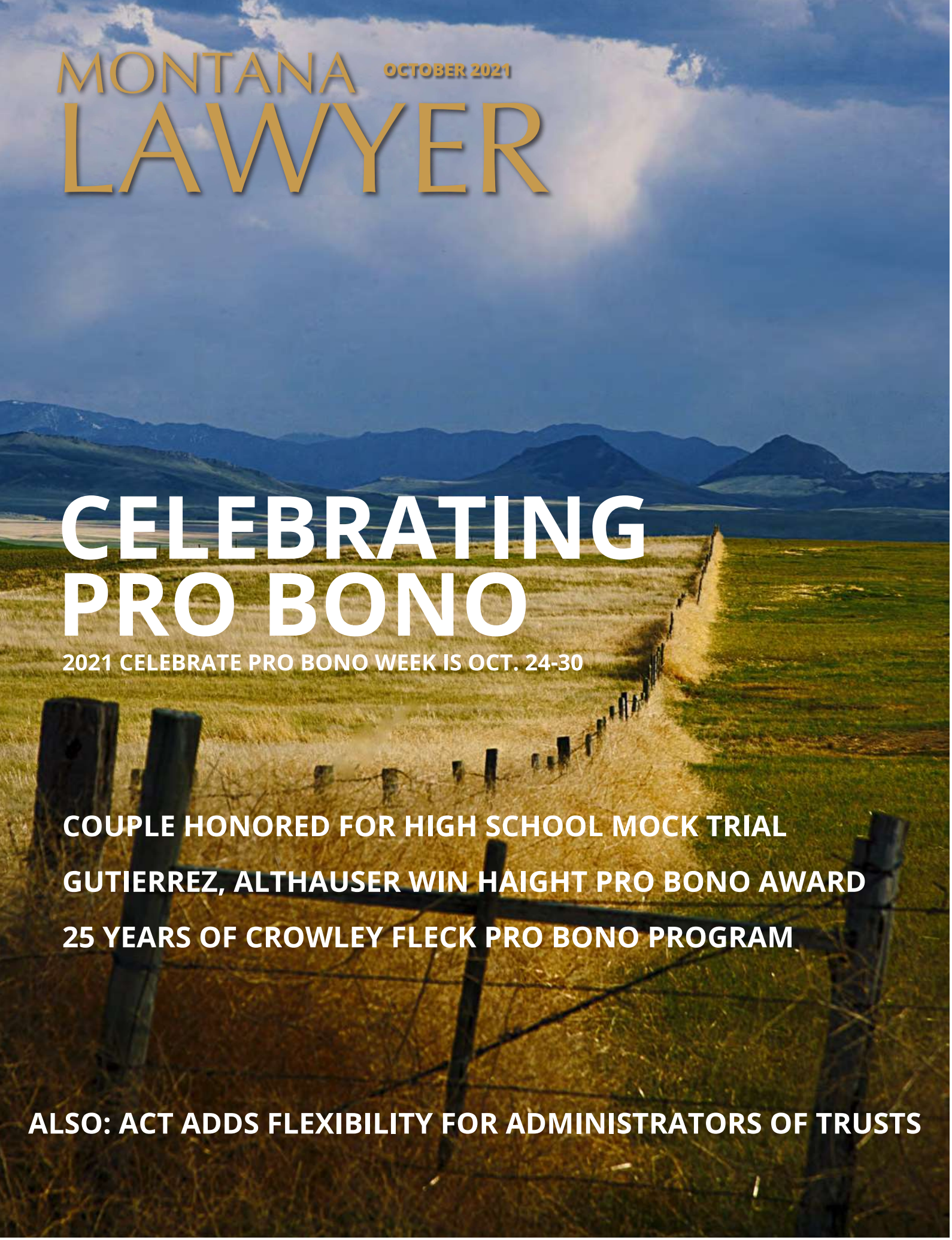
OCTOBER 2021



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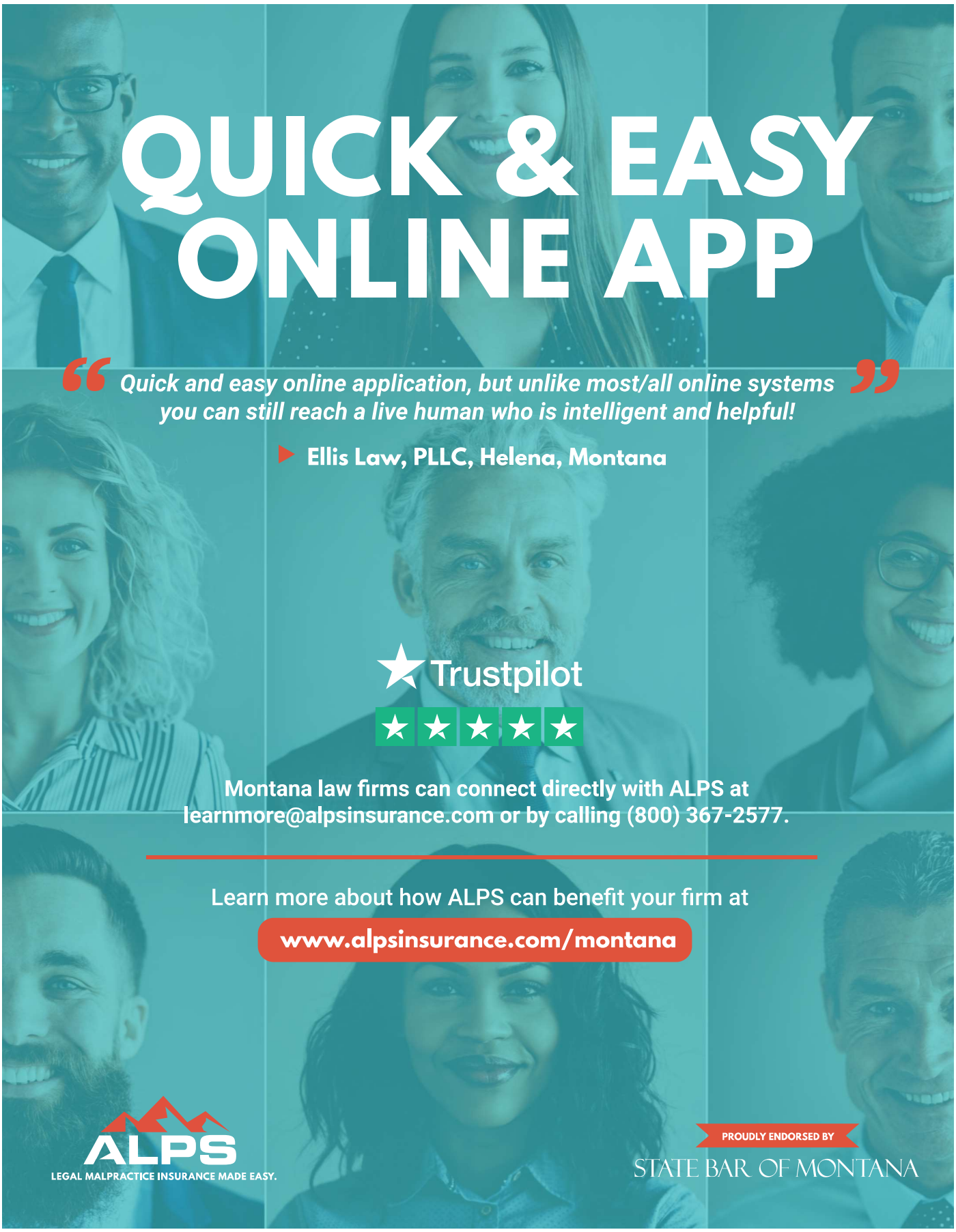

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MONTANA LAWYER

OCTOBER

2021

VOL. 47 ISS. 1

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ON THE COVER

October brings cooler weather and a new color palette to Montana. But it also marks Celebrate Pro Bono Week. This month we highlight many ways Montana lawyers have made a difference. **Page 10-20**

FEATURE ARTICLES

STATE BAR AWARDS

Profiles of the winners of the 2021 George L. Bousliman Professionalism Award and Neil Haight Pro Bono Award.

CELEBRATING PRO BONO

For 25 years, Crowley Fleck has made a priority of providing legal services to those who can't afford representation with its firmwide pro bono program.

MONTANA ENACTS UNIFORM DIRECTED TRUST ACT

Legislation approved in 2021 legislative session gives expanded flexibility over administration of trusts. **Page 22**

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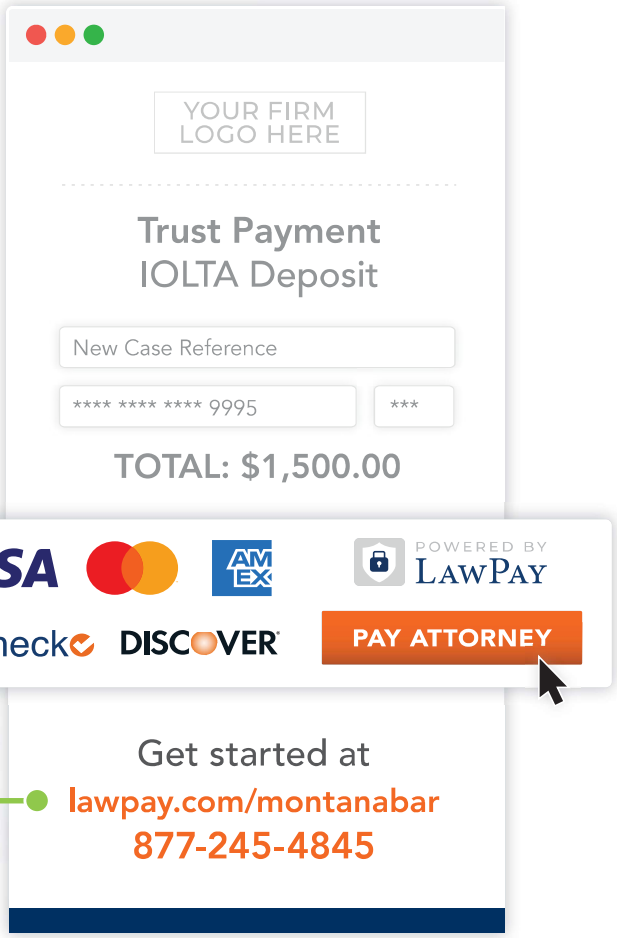

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It's past time to refocus attention on civility

What do I say? The question currently in the way of my first President's Message. There are some easy topics, some softballs so to speak. The Board of Trustees recently adopted a new strategic plan. It is a good plan. The State Bar is in a strong financial position, and we have great people at the State Bar Office. Our Annual Meeting, our first hybrid online/in person annual meeting was a great success. As soon as we iron out some kinks, we may have found the formula for getting more people involved in the business of the Bar. COVID persists (the second or third wave, I have lost track) and presents new challenges. Maybe the biggest challenge is fatigue. It is amazing (maybe sad is a better word) that public health can divide us like it has. Or tensions within the branches of government have been reduced to a simmer… hopefully. Although it has created a good bit of work of us lawyers. But I am taking a different path. A path that required research, a dive into the archives. I went back and read the President's Messages from 2009.

Now I didn't pick that time by chance, I picked it because at the time Cindy Smith was the President of the State Bar. She is my mom and the best attorney I know. We are the first, and hopefully not the last, mother and son to be Bar presidents. Of course, this is where I would go for some inspiration.

I am sure at the time I read my mom's messages when she wrote them, but I didn't remember. And while I should not be surprised that we struggle with some of the same issues today, as we did a decade ago, I am left to wonder what, if any, improvements have been made. We still struggle with access to justice, we still struggle with getting new attorneys involved with the State Bar (although our Board is much younger), and we still struggle with our role of service to the profession. We still struggle with diversity and equality. Montana, like some other states, has not adopted the model rule of professional conduct 8.4(g). It is worth a read. And sadly, we still struggle with our civility, a subject of two previous articles by the much smarter and wiser Smith.

Before anyone thinks I am throwing stones in a glass house, I have had my "Led Tasso" moments. Moments I have always regretted. However, not everyone regrets their moments or realizes they are happening. The lack of self-awareness is troubling and the license to say whatever we want is hurting civility. Acting with civility is not saying everything in the moment. It is not endorsing everything our clients think or want us to say. It is not saying everything we are thinking or feeling on paper or from the podium, from the table, from the stand, from the Capitol, from the bench, simply to support our narrative. We can disagree. Disagreement alone is not incivility. Respect, compassion and taking time to listen is the key to civility.

We must do better. It is a critical time in our profession and society. Maybe we need to return to the "if you don't have anything nice to say, don't say anything at all" or maybe it would be enough to simply ask "what would Betsy Brandborg do?" Because we all know that when push comes to shove, Betsy would tell us to take the high road. Perhaps change is slow and little victories get lost in the noise of life or the vocal minority. Either way I believe we can and should do better. We are lucky to practice in Montana where most people are kind and respectful. Practitioners from other areas of the country might even say we take it for granted. We have an obligation to promote it and a duty to protect it. It is more critical today than it was in 2009. Smart people 10 years ago would have told you so. I believe we can be better, maybe it is enough to believe in BELIEVE.

BRIAN SMITH

Brian Smith is a longtime Montana criminal defense attorney who currently is the Division Administrator of the Office of the State Public Defender

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Seminar Schedule

8:30 - 10:30 am	**Why Law Firms Should Care About Retention and Advancement of Women and Millennial Lawyers** Susan Blakely, Esq. - *LegalPerspectives LLC*
10:45 - 11:45 am	**What's Happening in Lawyer Regulation (1 ethics credit)** Pamela D. Bucy, Esq. - *Chief Discipline Counsel, Office of Disciplinary Counsel for the State of Montana* Kelly J. C. Gallinger, Esq. - *Brown Law Firm*
12 noon -1:30 pm	**MDTL Annual Membership Meeting & Elections** *Lunch on your own if not attending*
1:30-2:30 pm	**Montana 2021 Legislative Update** Gregory F. Dorrington, Esq. - *Crowley Fleck*
2:30—3:30	**New Technologies in Vehicles and Vehicle Accident Reconstruction** Stephen Panoff, P.E. - Mechanical Engineer - *S-E-A Limited* Paul R. Haffeman, Esq. - *Davis, Hatley, Haffeman & Tighe, P.C.*
3:45—4:45 pm	**Phantom Damages and Cold Beer (Impact of Legislative Efforts to Limit Phantom Damages)** ***Beer/Wine hosted by Alexander Blewett III School of Law** Bradley J. Luck, Esq. - *Garlington, Lohn & Robinson* Ian McIntosh, Esq. - *Crowley Fleck*

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CAREER MOVES

Christensen & Prezeau welcomes Segrest as senior attorney

Christensen & Prezeau is pleased to announce that Stuart Segrest has joined the firm as a senior attorney.

Segrest is a State Bar of Montana Trustee and was recently selected chair of the board. He is the current Chair of the Judicial Relations Commission. Prior to joining the firm, Segrest worked for the Montana Attorney General's Office, where his career spanned the terms of four different Attorneys General. He most recently served as Chief of the Civil Services Bureau.

Segrest

He graduated with honors from the University of Montana School of Law and earned his Bachelor of Arts degree at Sewanee (University of the South). His primary practice area is civil litigation defense. He can be reached at stuart@cplawmt.com, (406) 442-3690. The firm also offers legal services relating to employment, construction and design, real property and land use, and health care law.

Turner joins as a principal at Hendrickson Law Firm

Hendrickson Law Firm, P.C., is pleased to announcement that Jeff A. Turner has joined the firm as a principal.

Turner earned his J.D. from the University of Montana in 1998, and his B.S., with high honors, in business administration, with an emphasis on marketing from the University of Montana in 1995, where he was also named the Outstanding Senior in Marketing. He was admitted to the Montana bar in 1998 and the U.S. District Court, District of Montana in 2000.

Turner

After graduation from law school, Turner worked as a law clerk for the Honorable Susan P. Watters of the 13th Judicial District Court. He was named to the Billings Gazette Forty under Forty for 2011. Before joining Hendrickson Law Firm, he was a partner in the law firm of Towe, Ball, Mackey, Sommerfeld, and Turner, P.L.L.P, for 13 years. His community service includes being a member of the Breakfast Exchange Club, which raises money to combat child abuse and to assist veterans.

Turner's practice areas include general civil litigation, accident and personal injury, business litigation, family law, divorce, parenting plans, grandparent and third-party parenting and visitation rights, child support, adoption, real estate and property law, construction law, commercial law, wills and probate of estates.

Cromwell Law welcomes Moppert to firm

Cromwell Law is excited to welcome Evan Moppert to its legal team in Bozeman.

Moppert attended the University of Montana's Alexander Blewett III School of Law and graduated in 2010. In law school, he was a member of the Competitive Trial Team, the Environmental Law Group, and was an elected representative to the law school's honor code committee.

Moppert

He has extensive practice experience in a variety of capacities: as the deputy county attorney for Beaverhead County, as a criminal defense attorney in solo private practice, and as a real estate and business transactional attorney for a

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At Cromwell Law, Moppert will focus on complex real estate and business transactions, estate planning, and probate. Evan is known for creating a strong relationship with each client and providing a breadth of legal knowledge in a variety of practice areas. He will also assist student clients for ASMSU Legal Services as part of Cromwell Law's partnership with Montana State University.

Cromwell Law was founded on the premise that every Montanan deserves affordable, dedicated, and high-quality advocacy when navigating the legal system. The firm developed a unique system of affordable legal care by offering both traditional representation options as well as tailored Limited Scope Representation. The firm serves clients across Montana in business law, civil litigation, estate planning, real estate law, collaborative family law, mediation, and immigration law.

You can reach Moppert at evan@cromwellpllc.com or 406-570-7652.

Steve Harman Law Welcomes a new member to our team: Ralph Matthews, M.D., J.D., MBA

Dr. Ralph Matthews joins medical negligence and personal injury attorney Steve Harman and registered nurse Elizabeth Potter. Ralph is a doctor with specialty training in Anatomic and Clinical Pathology and a recent graduate of the Franklin Pierce School of Law and Peter T. Paul College of Business and Economics at the University of New Hampshire. He focused on health law and medical negligence litigation at Franklin Pierce and has been assisting attorneys who represent injured patients for many years. Ralph obtained his medical doctorate from the University of Texas and holds an active medical license in Montana. He will be helping with complex medical malpractice and personal injury cases while preparing to take the Montana bar exam.

Ralph is acutely interested in the business of healthcare. He is passionate about representing patients who have been harmed by deficiencies in our systems of care. Preventable medical errors are a leading cause of morbidity and mortality in our communities, accounting for an estimated 100,000 deaths annually in U.S. hospitals alone. Ralph hopes to initiate changes in the delivery of care through the process of representing injured patients.

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HONORS

Carlson to receive ABA Difference Makers Award

Montana's Bob Carlson is the winner of a 2021 Difference Makers Award from the American Bar Association's Solo, Small Firm and General Practice Division (GPSolo).

Making a Difference through Service to the Profession. The award honors an attorney who made a significant contribution to the legal profession through service to the profession (i.e. frequent activities in bar associations, committees and services).

Carlson

Carlson is a past president of the State Bar of Montana and the American Bar Association. He won the State Bar of Montana's 2016 William J. Jameson Award, the highest award given by the bar. He is a partner at Corette, Black, Carlson & Mickelson in Butte.

He was nominated by Dean Paul Kirgis of the Universisty of Montana's Blewett School of Law, and letters of support were submitted by the Honorable Leslie Halligan of Montana's Fourth Judicial District and Missoula lawyers Robert Phillips and Matthew Thiel.

Also winning 2021 GPSolo Difference Makers Awards are: Aurora Astriaco, Chicago: Difference Maker Award; Haley Moss, Coral Gables, Florida: Making a Difference by Breaking Bariers; Alan Olson, Des Moines, Iowa: Making a Difference by Breaking Barriers.

A ceremony will be held virtually via Zoom on Thursday, Oct. 21, at noon Mountain time and will be open to the public. A link to the ceremony is in the calendar at www.montanabar.org.

GUIDELINES FOR SUBMITTING NEWS ITEMS TO MEMBER NEWS SECTION

The Montana Lawyer welcomes news about Montana legalprofessionals including new jobs, honors, and publications.

Send member submissions to editor@montanabar.org. Photos should be at least 200 ppi by two inches wide for head and shoulders shots.

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Board's new 2-year strategic plan focuses on education, rule of law, bar efficiencies

The State Bar of Montana's Board of Trustees approved its new two-year strategic plan at its September meeting in Missoula.

The plan, which the board developed at its long-range planning meeting in June, consists of two main goals:

The first goal is to expand the bar's role in aiding the public in understanding the rule of law as a crucial underpinning of a free society, the role of the Constitution and the importance of a fair and independent judiciary.

The trustees identified several ways to achieve this goal, including expansion of youth-oriented initiatives, such as the Montana High School Mock Trial program the bar has supported the past two years. Others include coalition building, media outreach and legislative education and outreach.

The second goal is to enact a comprehensive plan to streamline or enhance efficiencies within core bar functions. These include improving the member experience; regulatory efficiencies; and office space efficiencies.

Trustees approve new Dispute Resolution Section

A new Dispute Resolution Section of the bar was approved at the Board of Trustees September meeting.

The section is co-chaired by Alain Burrese and Patrick Quinn, both of Missoula. The two were co-chairs of the former Dispute Resolution Committee.

According to the section's bylaws, also approved at September's board meeting, the section plans to participate in activities including:

- organizing and sponsoring continuing legal education programs;
- submitting articles for the Montana Lawyer and other publications;
- publishing a periodic newsletter, blog or social media posts highighting dispute resolution issues; and
- creating dispute resolution educational materials for Montana citizens.

Any member of the bar in good standing may become a voting member of the section upon payment of annual dues, which are $10 per year.

There are now 21 State Bar of Montana sections.

Board of Trustees selects Blackford as new Area G trustee, Segrest as chair of the board

Sherine Blackford was selected to fill Alanah Griffith's open Area G trustee position on the board at the meeting.

The position opened when Griffith, who had been chair of the board, was elected to her new role as State Bar Secretary-Treasurer.

Blackford is a partner and owner of Blackford Carls P.C. in Bozeman. She has served as a trustee for the Gallatin County Bar Association for the last two years. She is also a past chair of the bar's Family Law Section.

The board interviewed candidates at the September meeting before voting to select Blackford.

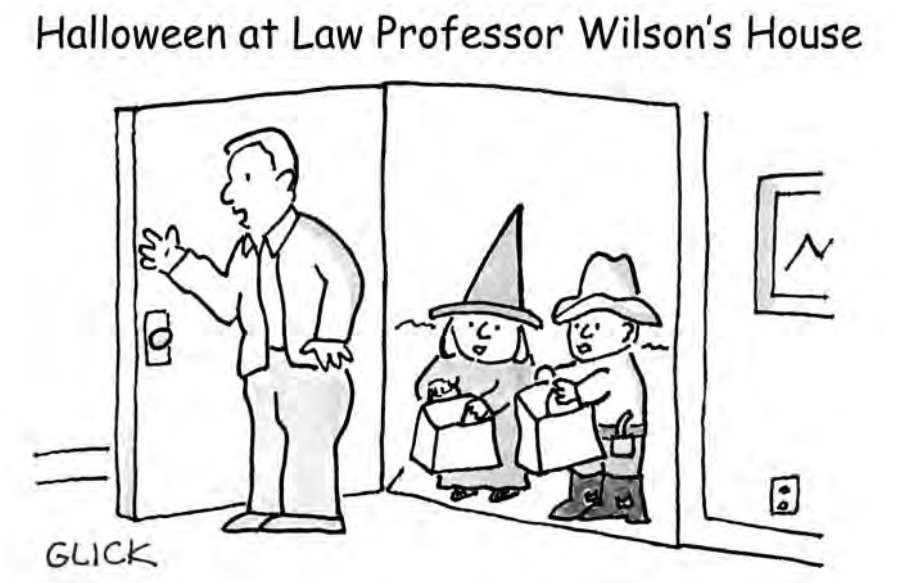
Area G covers Gallatin, Park and Sweetgrass counties.

The board also selected Area F Trustee Stuart Segrest to replace Griffith as its chair.

Segrest has served on the board since 2014. He is a senior attorney at Christensen Prezeau in Helena, which he recently joined after a career at the Montana Attorney General's Office that spanned the terms of four attorneys general.

JEST IS FOR ALL

BY ARNIE GLICK



"Honey, there are some young trespassers here who want us to compensate them with candy in consideration for their promise to refrain from performing intentional torts to our property."

David and Kayleigh Morine are shown remotely accepting the George L. Bousliman Professionalism Award during the State Bar of Montana's Annual Meeting in September.

David and Kayleigh Morine honored for tireless work on mock trial program

When David and Kayleigh Morine learned several years ago about the need for attorney coaches to guide a mock trial team that a high school student from Helena wanted to launch, they didn't hesitate.

David and Kayleigh jumped in with both feet to help build a highly competitive program at the school from scratch. But since there were no other high school mock trial teams for their students to compete against — and with the students hungry to qualify for the national mock trial competition — David and Kayleigh didn't stop there. The two worked tirelessly to recruit other lawyers from around the state to serve as attorney-coaches at schools in their areas, traveling the state to promote their passion project. They worked to build a foundation for other prospective coaches to follow and served as a clearinghouse for information for anyone who wanted to get involved.

Their years of dedication and work culminated with the launch of Montana's first ever high school mock trial competition, with schools from all corners of the state coming to Helena in 2020 for the first annual Montana High School Mock Trial Competition.

For their efforts, David and Kayleigh were honored with the 2021 George L. Bousliman Professionalism Award from the State Bar of Montana, which they accepted on Sept. 9 at the bar's Awards Banquet at the Annual Meeting in Missoula.

David Morine said he was honored to receive the award, but he was quick to point out that many other people besides he and Kayleigh were instrumental in getting the competition off the ground. Among those he singled out were bar Executive Director John Mudd for throwing the bar's support behind

COMING NEXT ISSUE

Look for stories on other State Bar Award winners, including William J. Jameson Award winner Mark Parker, in the November issue of the Montana Lawyer.

> I can't tell you how much I took away from this experience as a coach. And I owe that to David and Kayleigh.
>
> Alanah Griffith, volunteer coach of Lone Peak High School's mock trial team

the program and his own countless hours dedicated to its success, and past presidents Juli Pierce and Kate McGrath Ellis and Sam Alpert, the bar's director of Information Technology, for helping the 2021 virtual mock trial competition run smoothly.

"Thank you to many people for making this a reality," David said.

Kayleigh added that the program owes a huge debt of gratitude for its success to Montana's entire legal community as a whole.

"The program would not be successful if it wasn't for the support of those in the legal community who have given countless hours to judge, who coached teams, and also who provided financial support for the teams," she said.

Alanah Griffith, an attorney from Big Sky and the current State Bar secretary-treasurer, said she knows firsthand from being one of the volunteer coaches of the Lone Peak High School mock trial team the past two years how crucial David and Kayleigh have been to the success of the program.

"Without them, our coaches and students would have been lost," Griffith said. "Every time I needed something, they were there. Every time my students needed something, they were there. And when we showed up for the competition, everything was ready for us. I look forward to watching this program grow. I can attest to the impact that David and Kayleigh have had on our schools and on the introduction of the topic of the rule of law to some of our most important people – our children."

Griffith also put out a call for more attorneys to approach the administators and boards of their local schools about organizing a local team and volunteer as coaches. She said that any work she put in as a coach was outweighed by what she gained because of her involvement with the team.

"I can't tell you how much I took away from this experience as a coach. And I owe that to David and Kayleigh," Griffith said.

This year, David and Kayleigh, who recently welcomed their first child to their family left Helena for new jobs to be closer to David's parents in Minnesota.

Even though they no longer live in Montana, though, the two remain invested in the success of Montana's mock trial program.

"We're always looking for more attorneys to get involved, whether it's coaching or judging, so if this is something you're interested in, we definitely invite and appreciate any support you might be able to provide," Kayleigh said.

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Althauser, Gutierrez honored for work helping Montanans in need

Meri Althauser of Missoula and David Gutierrez of Butte were named the winners of the 2021 Neil Haight Pro Bono Award from the State Bar of Montana.

The two accepted their honors at the Awards Banquet at the bar's Annual Meeting in Missoula Sept. 9.

Meri Althauser

Judge Leslie Halligan and Judge Jason Marks of the Fourth Judicial District nominated Althauser for the Pro Bono Award.

According to Judge Halligan, Althauser was nominated for her work on a variety of very contentious family law cases.

"Meri doesn't just accept the appointments," Judge Halligan said. "She works tirelessly to figure out better ways to help people who are in conflict to resolve their conflicts, to work in the best interest of their children."

Halligan added that Althauser has helped families through these difficult times both through some educational programs she has developed and her own personal touches she brings to the process.

In introducing Althauser, Judge Halligan also noted her work through her side project focused on eliminating chronic stress in the legal profession — and that she exhibits many of the same practices she espouses in that work and in her regular column in the Montana Lawyer (see page 25).

"She's had some doozies of cases, and she manages well, Judge Halligan said. "She's always so cheery about things that she kind of brings us a little more energy. Meri's always very good about practicing what she preaches.

Althauser said said she was honored to hear that her work is making life easier for the judges she practices before. But she said that doing pro bono work is really its own reward.

"It's absolutely a shot in the arm," she said. "It's a reminder of why we came to law school in the first place. I guarantee if you take on a pro bono case you're going to spend a large portion of that time with someone in gratitude. They're going to be thankful for everything you've done even if it was just life advice. You're going to be reminded of why you're engaging in this whole insane rat race to begin with. It really is quite easy to take a pro bono case so I would encourage everyone to do so."

David Gutierrez

In 2016, after transitioning to an in-house counsel position, Gutierrez was feeling a little stir crazy from a lack of client interaction. He reached out to Montana Legal Services Association Pro Bono Coordinator Angie Wagenhals, who told him about MLSA's phone call pro bono program.

Gutierrez thought that taking an hour at a time to answer legal questions from people in need sounded like a great way to balance his desire to give back with his busy schedule at Town Pump's corporate offices.

"What a fantastic way to help a lot of people in a short amount of time," he said. "If you don't have the time to engross yourself in a full (pro bono) case, there are people out there who need an hour of your time. And they're going to leave that hour with such a sense of relief that I can do this. There's a solution to my problem or at least I'm on a path to a solution. It's rewarding, and I've appreciated every opportunity.

Wagenhals said that over the last five years, Gutierrez has become one of MLSA's most in-demand volunteers, consistently taking calls on a weekly basis. Since 2016, he has provided legal help to over 160 of MLSA's pro bono clients.

But Wagenhals said Gutierrez's service didn't stop there. He also has volunteered to help train MLSA staff on employment law matters, making them more effective at representing people in need.

In introducing Gutierrez, Wagenhals shared a quote about how easy it is to look away from people in need — be it out of a feeling of helplessness over one's ability to make a difference in the face of such a large problem, blaming the people in need for the situation they are in, or denying that there is a problem at all.

"Legal Services is so grateful that David has not looked away," Wagenhals said. "He addresses each client he speaks to with empathy and compassion.."

> "It's a reminder of why we came to law school in the first place. I guarantee if you take on a pro bono case you're going to spend a large portion of that time with someone in gratitude."
>
> Meri Althauser, one of two winners of the 2021 Neil Haight Pro Bono Award

Meri Althauser, above, and David Gutierrez accepted the 2021 Neil Haight Pro Bono Awards during the State Bar of Montana's Annual Awards Banquet in September in Missoula. Althauser was nominated for the award by judges fromt the Fourth Judicial District, and Gutierrez was nominated by Angie Wagenhals., Montana Legal Services Asssociation' pro bono coordinator.

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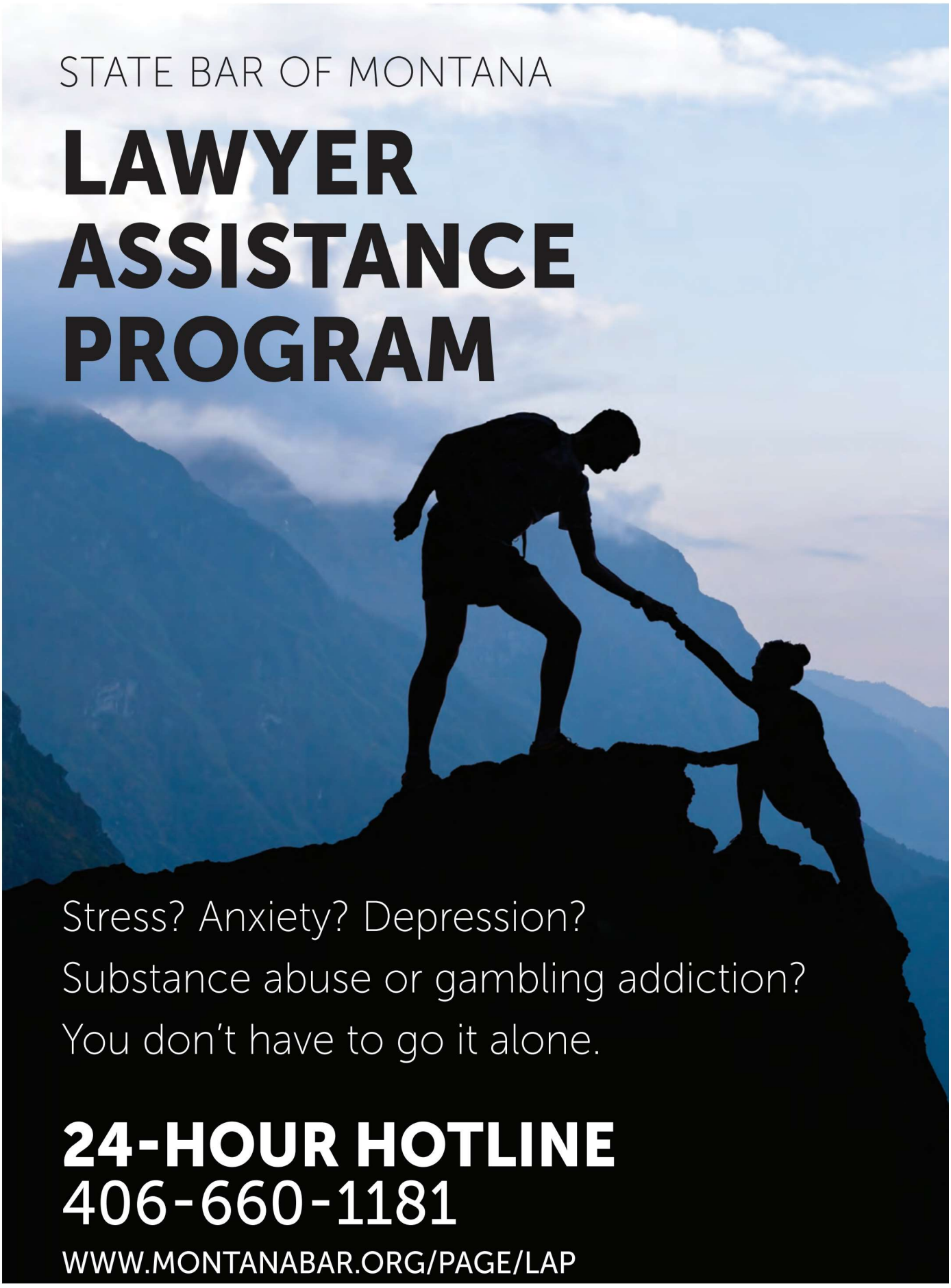
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A 'big fish' with a big heart

By Tom Howard

Twenty-five years ago, Gary Connelley had built a reputation as a staunch advocate for farm workers, victims of elder abuse and other low-income clients through his work as an attorney for Montana Legal Services Association.

But when a friend called him to see if he was interested in coming to talk with the partners at Montana's largest law firm about a pro bono project, he wasn't sure what to think.

"I thought it was a prank call at first," Connelley recalled.

Connelley learned that partners from the firm, now known as Crowley Fleck PLLP, had been discussing a plan to offer a pro bono law program to better serve clients who can't afford legal representation. The idea behind hiring a full-time pro bono attorney was to explore how the firm could fulfill its professional responsibilities and ethical obligations, Connelley said.

While that initial meeting in the spring of 1996 was by no means a job interview, the partners started picking Connelley's brain for ideas on what a pro bono program might look like. One discussion led to another, Connelley was offered a position, and the program officially launched on Oct. 1, 1996.

Although lawyers have long been offering free legal help to low-income clients, the program that the firm began was unique within the Rocky Mountain West. At the time the firm was the proverbial big fish in a small pond with about 50 attorneys working from offices in Billings and Helena.

"They were by far the smallest firm undertaking anything like this. I investigated fairly closely to see what our chances were of being successful in something that was really unique. I

Photos by Casey Page

Crowley Fleck marks 25 years of firmwide pro bono program that is still unique to the Rocky Mountain West

Gary Connelley, right, director of Crowley Fleck's pro bono program, discusses a case with partner Bill Lamdin in the firm's Billings office. Crowley Fleck's program is still unique in the Rocky Mountain West 25 years after Connelley joined the firm to launch it in 1996.

Morgan Dake, right, talks with Billings associate Montana Funk. Dake became the the firm's second full-time pro bono attorney when the program expanded in 2019.

> We don't run a clinic where our pro bono clients get less than our best. When we take a client, it's with full representation across the firm. We know these clients are as important as any other clients we have.
>
> Morgan Dake, senior counsel in Crowley Fleck's pro bono program

think the next closest firm in size to ours that was doing this was a firm in Kansas City that had about 125 lawyers," he said.

Connelley doesn't remember the first case he worked on, but he'll never forget his first day working at the firm. He was used to wearing a tie to work, but it was a bit of an adjustment getting used to the firm's more formal dress code. On his first day of orientation, he looked out a fifth-floor office window only to see that his car was being ticketed for an expired parking meter. He hoped it wasn't an omen for how things would go in his new venture.

Before long Connelley began noticing advantages of working for a larger firm. At MLSA, attorneys often had to share law books. At Crowley, Connelley not only had his own set of books, he also came to enjoy a vibrant work atmosphere and the opportunity to work among so many talented attorneys.

"I tell people that I don't work in private practice, but I get a pretty good view of it from my office," said Connelley, whose title is senior pro bono counsel.

The pro bono program was established as a three-year pilot program. Connelley provided regular updates to managers and was gratified that the firm provided whatever expertise and resources he needed.

In some parts of the country, a silk-stocking law firm might take on pro bono work as a way to burnish its image. That's not the case at Crowley Fleck, which has tailored the program to meet specific needs in the communities it serves.

"Our goal from the beginning of the program is not to cherry-pick cases, not to pick impact cases to take to the Supreme Court," Connelley said. "Our goal has always been to create a level playing field, to give our clients the opportunity to be successful."

Over the past quarter century, Crowley Fleck has more than tripled in size, with about 180 attorneys now working in 11 offices in Montana, North Dakota and Wyoming. During that time, the firm has provided tens of thousands of hours of pro bono work to hundreds of clients. As the firm has grown, so has its commitment to pro bono representation.

The program expanded in 2019 when Morgan Dake joined as an additional full-time pro bono attorney. She will head up the program as Connelley prepares for retirement next year. The firm recently hired an additional pro bono attorney who was to start in early October and is expected to play a key role in expanding the firm's pro bono presence in Wyoming and North Dakota.

"Through the expansion of the pro bono program, the firm has not only solidified the vision and goals for the first 25 years of the Crowley Fleck pro bono program, but has also ensured that the firm's commitment to pro bono legal services will continue for years to come," said Benjamin T. Cory, managing partner. "The firm recently celebrated its 125th year and it is fitting that we are following that anniversary with the 25th anniversary of our pro bono program, as the pro bono program has become an essential component of the firm and our culture."

Cory was inspired to go to law school by his grandmother. After raising four children as a single mother, his grandmother put herself through law school and went on to represent pro bono clients from her own home. When Cory was 10 years old, his grandmother received a pro bono award from the State of California, and he was in the courtroom when she received the award. He keeps a photograph of his grandmother from that day next to his desk as a reminder that providing access to justice is an essential aspect of the practice of law.

"From my grandmother, I know that above all else, community service is part of the privilege of practicing law," Cory said. "That commitment to service is part of what drew me to Crowley Fleck in the first place. I have been told that Cale Crowley always taught young attorneys that every client deserves our very best efforts regardless of the size of the case or the subject matter. That commitment to quality is integral to the culture of Crowley Fleck and our pro bono program is an essential part of who we are as a firm."

In 2020 alone, at least 159 attorneys, paralegals and interns worked on 260 cases, 103 of which were opened in 2020. Across the firm, 75% of Crowley Fleck's attorneys contributed time.

"We very much have this culture that our clients are our clients," Dake said. "We don't run a clinic where our pro bono clients get less than our best. When we take a client, it's with full representation across the firm. We know these clients are as important as any other clients we have."

Staff members at Crowley Fleck have shown a similar commitment to pro bono clients. Last year pro bono program legal assistant Liisa Johnson and others screened more than 400 requests for pro bono assistance. Likewise, paralegals devote many hours to tasks like discovery and depositions, Dake said.

For the past 10 years, Crowley Fleck has sponsored the summer Dalthorp clerkship in which a law school student works with pro bono clients, attends court and manages cases. According to Pamela Garman, the firm's second Dalthorp clerk and now a partner at the firm, "The clerkship gives the firm the opportunity to mentor and assist aspiring public interest lawyers by introducing an intern each year to pro bono work and representation of indigent clients over the course of a summer."

Over the years, Connelley has mentored many lawyers, both inside and outside the firm, on how to handle pro bono cases. Last year alone, Crowley Fleck's attorneys provided 8,760 hours of pro bono service despite the challenges of working amidst the COVID-19 pandemic.

As the pandemic has unfolded, the courts have been stressed by an increase in evictions, domestic violence and other financial difficulties that have hit the poor hardest, said Patty Fain, pro bono coordinator for the Montana Supreme Court.

"Our clients have so many more pressures on them because of COVID. It gets to the point where there's just some exhaustion from it," Connelley said. "Many people are losing housing, and some of those pressures lead to more domestic violence, and it's becoming more difficult for people to leave that kind of a situation."

Alissa L. Chambers, a partner in Crowley Fleck's Helena office, first met Connelley at a new-associate training session 10 years ago. As part of his introduction, he handed out copies of "The Curmudgeon's Guide to Practicing the Law," a collection of essays providing advice on how to survive in a law firm.

A few months later, she replied to an email from Connelley and her career took a turn.

"I was a brand-new associate when I got an email from Gary. It was a compelling matter involving child rights. I emailed back and said I'm a commercial transactions lawyer and scared of public speaking, but I have time. He said, 'All you need is a heart. Come on down to Billings and we'll work with you.'

"So, right off the bat I had that experience and that gave me the courage I needed to branch out from my practice group and provide some local help in Helena. But it was really Gary's mentoring and recruitment that made me comfortable to do that," Chambers said.

Chambers continues her work in commercial transactions but became the program's pro bono Co-Practice Group Leader in 2018. She dedicates a portion of her hours to the pro bono program.

Referrals come from a variety of sources. Early on, many cases came from MLSA. The program also relies on connections with a variety of nonprofit organizations.

"We work with Tumbleweed (a program that helps runaway teens), and Habitat for Humanity and a number other community groups," Connelley said. Also, many referrals come directly from district court judges.

Fain said Crowley Fleck's program still is unique in the region and has played a crucial role in the effort to provide legal services to people with limited financial resources. The program is especially important in rural states like Montana, North Dakota and Wyoming, where many communities lack access to the legal system, Fain said.

"Some communities along the Hi-Line have a poverty rate of 22%," she said. "The needs are exponentially greater when you have so many people living at or below the poverty line."

The system for providing legal access to the poor is under continued stress in part because of budget cuts for Legal Services Corporation. According to the Center for American Progress, congressional appropriations for the Legal Services Corporation declined from $770 million annually during the 1980s to $385 million in 2016, yet the need for legal services continues to grow. Learning to do more with less has been par for the course.

"There always has been and there will continue to be a funding shortage," Fain said.

She said Connelley has also been instrumental in efforts to establish other programs to provide legal services to the indigent, including the Montana Supreme Court's Court Help Program.

"In all of the years I've been involved in the access to justice arena, I've never seen anyone with more ability to promote good support for pro bono work, and the concept of how it trickles

Last year alone, Crowley Fleck's attorneys provided 8,760 hours of pro bono service despite the challenges of working amidst the COVID-19 pandemic.

From left, Crowley Fleck's Gary Connelley, Morgan Dake, Bill Lamdin, Michael Klepperich, Montana Funk, Justin Harkins, Holly Suek, Madeline Clarke are shown in the firm's Billings office.

down," Fain said. "You're not helping just one person. It impacts the entire community when you get people back on their feet."

Pro bono cases that come to Crowley Fleck often involve domestic violence, child custody, parental rights and substance abuse. But one of the more unusual cases to come through the doors occurred some 20 years ago when two Billings nonprofits underwent a corporate merger.

"I was part of a group that was part of the first local chapter of the National Committee for the Prevention of Elder Abuse," Connelley said. An official at United Way observed that the organization provided some of the same services and had been applying for the same money as another local nonprofit, Senior Helping Hands.

"So they came to us, and there were people here at the firm who knew how to do corporate mergers," Connelley said. "They were two nonprofits, but they were structured differently. But that was a little complicated in terms of getting the votes from the boards of the different nonprofits." The newly merged nonprofit eventually became Big Sky Senior Services.

"Gary has always been kind, caring and very understanding," said Denise Armstrong, who recently retired as executive director of Big Sky Senior Services. "He's very astute at knowing the law and what can and can't be done. Gary has had a heart for serving the underserved from the beginning, and we're fortunate to have him in the community."

"Many of Gary's clients sing his praises not for what he said, but how he makes them feel," Fain said. "You can argue the law and make a point. But when somebody walks away and feels better about themselves, better about their ability, that's life changing."

That legacy is deeply ingrained in the firm's pro bono culture. From the moment clients walk in the door they are treated with dignity, respect, and hopefully, a touch of heart-lifting good humor.

Tom Howard was a reporter and editor at The Billings Gazette for 33 years. He covered a variety of topics, including business and local government

> "Many of Gary's clients sing his praises not for what he said, but how he makes them feel."
>
> Patty Fain, Montana Supreme Court's statewide pro bono coordinator

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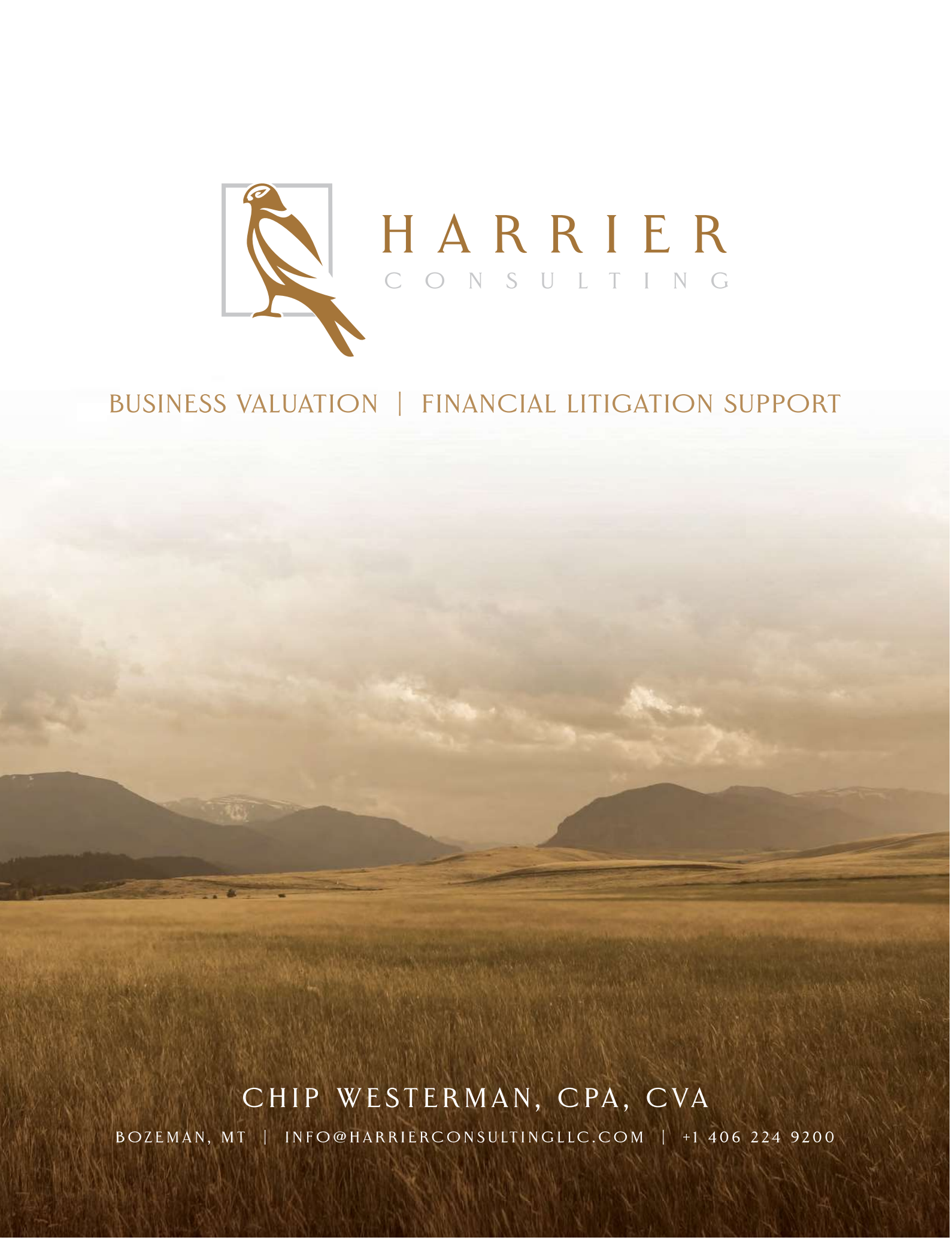

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Uniform Directed Trust Act gives increased flexibility over administration of trusts

By E. Edwin Eck

Montana's adoption of the Uniform Directed Trust Act ("the Act") provides settlors new choices when they consider trust administration and prospective trustees.[1] Settlors now have express statutory authority to divide aspects of trust administration among more than one person or entity. Just as importantly, fiduciary duties are allocated as well. The Act was to become effective Oct. 1, 2021. On that date, it will apply to trusts, whenever created, that have a principal place of administration in Montana.[2]

Under the Act, a "trust director" is a person who meets two requirements. First, a "trust director" is granted a power to direct the trustee in a specified aspect of trust administration. Second, a "trust director" is not designated as a trustee.[3] Mont. Code Ann. § 72-40-102(9). A person who meets these two requirements is a "trust director," whether or not the trust instrument refers to the person as such. For example, a "trust director" may be referred to as a "trust advisor," a "special trustee," an "administrative trustee," or a "trust protector."[4]

Potential Trust Director Powers

The Act gives settlors increased flexibility. A settlor may permit a trust director to exercise **any power over** the investment, management, or distribution of trust property, or **any** other **matter of trust administration**.[5]

Example One. Your estate planning client is the mother of three children. She owns a portfolio of stocks and bonds that merit management by a professional trustee. She names a corporate trustee of her testamentary trust because of its investment experience and its knowledge of the rules of trust administration. Additionally, she names her sister as "trust director" with authority to direct the trustee regarding distributions to her children. Your client thus gets the best of both worlds, i.e., her family will benefit from the corporate trustee's investment experience and knowledge of trust administration and her sister's familiarity with the client's children, their health, personal relationships, and special needs.

Example Two. A settlor selects a corporate trustee because of its experience managing marketable securities. Also, the settlor appoints a trust director to direct the management of the family's farm. Again, the settlor and her beneficiaries are getting the best of both worlds, i.e., they benefit from the corporate trustee's expertise managing marketable securities and from the trust director's farm management experience. Not only will this division of administrative authority serve the trust beneficiaries well, the division may be welcomed by many corporate trustees who often prefer not to manage farms, ranches, or other closely-held businesses. Furthermore, the beneficiaries may benefit from a reduction in fiduciary fees since the corporate trustee has no responsibility for the family farm. However, the reduction in corporate trustee fees could be offset, at least in part, by trust director's fees.

Example Three. Another settlor wishes to create a testamentary trust to benefit his family. Although he has accumulated some investment assets, the total value of those assets is less than that required by most corporate trustees. Consequently, the settlor names a family member as trustee. Although the family member is familiar with the settlor's goals and family, he lacks investment experience. Thus, the settlor names his stock broker to direct the trust's investments.

As illustrated by these examples, settlors have many choices when naming trustees and trust directors. The Uniform Law Commission's comments include a non-exclusive list of powers a trust director may hold, including the powers to:[6]

- direct investments, including a power to:
  - acquire, dispose of, exchange, or retain an investment,
  - make or take loans,
  - vote proxies for securities held in trust,
  - adopt a particular valuation of trust property or determine the frequency or methodology of valuation,
  - adjust between principal and income or convert to a unitrust,
  - manage a business held in the trust, or
  - select a custodian for trust assets;
- modify, reform, terminate, or decant a trust;
- direct a trustee's or another director's delegation of the trustee's, or other director's, powers;
- change the principal place of administration, situs, or governing law of the trust;
- ascertain the happening of an event that affects the administration of the trust;
- determine the capacity of a trustee, settlor, director, or beneficiary of the trust;
- determine the compensation to be paid to a trustee or trust director;
- prosecute, defend, or join an action, claim, or judicial proceeding relating to the trust;

1 S.B. 239, the Uniform Directed Trust Act, was cosponsored by Sen. Mary McNally and Rep. Katie Zolnikov.

2 Mont. Code Ann. § 72-40-103,

3 A "power of direction" is broadly defined. *See* Mont. Code Ann. § 72-40-102(5). That definition might include some matters collateral to directed trusts. Thus, the Act expressly excludes nonfiduciary powers of appointment, a power to appoint or remove a trustee or trust director, a settlor's powers over a revocable trust, a beneficiary's power over a trust to the extent its exercise could affect the beneficiary's beneficial interest, and other powers held in a nonfiduciary capacity to achieve the settlor's tax objectives. Mont. Code Ann. § 72-40-105.

4 The Act defines "a directed trustee" and a "directed trust." A trustee subject to the power of a trust director is a "directed trustee" and the trust is a "directed trust." Mont. Code Ann. § 72-40-102(2)&(3).

5 Mont. Code Ann. § 72-40-102(5).

6 See Comment under section 6, Uniform Directed Trust Act, p. 14. https://www.uniformlaws.org/view-document/final-act-with-comments-24?CommunityKey=ca4d8a5a-55d7-4c43-b494-5f8858885dd8&tab=librarydocuments.

- grant permission before a trustee or another director may exercise a power of the trustee or other director; or
- release a trustee or another trust director from liability for an action proposed or previously taken by the trustee or other director.

In addition to the powers granted under the terms of a trust, a trust director may exercise further powers appropriate to the exercise or nonexercise of those powers.[7] For example, a director could incur reasonable costs; make a report or account to a beneficiary; prosecute or defend an action, claim, or judicial proceeding relating to the trust; or employ a professional for advice or assistance.

Duties of Trust Directors, Trustees

The Act imposes primary fiduciary responsibility for a trust director's actions on the director. Generally, a trust director has the same fiduciary duties as a trustee would have in a like position and under similar circumstances.[8] For example, if the director has authority to direct trust investments, the director would be required to act prudently in the sole interest of the beneficiaries.

A settlor can vary a director's duties or liabilities in the trust instrument to the same extent the terms of a trust can vary the duties or liabilities of a trustee in a like position under similar circumstances.[9] Thus, a settlor can waive all of the director's otherwise applicable duties other than the duty "to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries."[10]

The Act requires the trustee to take reasonable action to comply with the trust director's exercise or nonexercise of a power of direction. By complying with a trust director's exercise (or nonexercise) of a power of direction, a directed trustee is liable only for the trustee's own "willful misconduct."[11] A trustee may petition the court for direction if the trustee has reasonable doubt about its duty.[12]

Duty to Provide Information to the Trust Director and to the Trustee

Trustees and trust directors are obliged to provide information to each other to the extent the information is reasonably related to their powers.[13]

Example. The trust instrument names an individual with authority to direct the trustee when to make distributions to the beneficiaries and the amounts of those distributions. The trust instrument further provides that the trustee is responsible for all other matters of trust administration, including the investment of trust assets. The trust director intends to direct a distribution to cover a beneficiary's upcoming college tuition payment. The trust director would be obliged to inform the trustee of the upcoming tuition payment so that the trustee would have sufficient time to adjust trust investments in order to satisfy the cash needs for the tuition payment.

The Uniform Law Commission's comments under section 10 of the Uniform Directed Trust Act include examples of other matters that would require disclosure.[14]

No duty of Trustee or Trust Director to Monitor, Inform, or Advise Each Other

The Act provides that a trustee does not have a duty to monitor a trust director or inform or give advice to a settlor, a beneficiary, or the trust director concerning an instance in which the trustee might have acted differently than the trust director. Similarly, a trust director has no such duty when the trust director might have acted differently than the trustee. Furthermore, if either the trustee or the trust director informs or advises a beneficiary or other party concerning an instance in which the trustee or trust director would have acted differently, the trustee or trust director does not assume that duty to monitor, inform, or advise in the future.[15]

A settlor can overcome this default rule with an express provision in the trust instrument. Such a provision might read:

The trustee shall monitor the trust director and inform the settlor, if living, or the qualified beneficiaries if the settlor is deceased, of instances in which the trustee would have acted differently than the trust director.

However, the imposition of this monitoring duty on the trustee might discourage a qualified party from accepting a trustee appointment.

Drafting Considerations. When drafting a directed trust, the settlor's attorney should consider provisions that:

- Indicate the precise scope of the trust director's authority;
- Name the trust director and successor trust directors, or a means to designate successor trust directors;
- Indicate what constitutes acceptance of the office of trust director;
- Require bond or not;
- Provide for the trust director's compensation;
- Permit the trust director to resign; and
- Permit the settlor or other party to remove the trust director.

If the settlor does not include such provisions in the trust instrument, the Act imposes a number of default rules. Many of the default rules of the Montana Uniform Trust Code applicable to trustees are applied to trust directors. The Act cites Mont. Code Ann. § 72-38-701

UNIFORM TRUST ACTS

The 2021 Montana Legislature adopted the Uniform Trust Decanting Act and the Uniform Directed Trust Act. This article looks at the Uniform Directed Trust Act. See the August/September edition of the Montana Lawyer for an article detailing the Uniform Trust Decanting Act was published.

7 Mont. Code Ann. § 72-40-110(2)(a).

8 Mont. Code Ann. § 72-40-112. In some situations, a settlor might desire to name the settlor's doctor, or some other licensed health care professional, as a trust director to determine the capacity of a trustee, settlor, director, or beneficiary of the trust. Mont. Code Ann. § 72-40-112(2) reflects the concern that such a health care professional might refuse to accept such a trust directorship if such service would expose the professional to the fiduciary duties under the Act. Thus, this subsection provides that such a director has no duty or liability under the Act. However, the director would remain subject to any rules and regulations otherwise applicable to the health care professional, such as the rules of medical ethics.

9 Mont. Code Ann. § 72-40-112(1)(b).

10 Mont. Code Ann. § 72- 38-105(2)(b).

11 Mont. Code Ann. § 72-40-113(1)&(2).

12 Mont. Code Ann. § 72-40-113(4).

13 Mont. Code Ann. § 72-40-114.

14 *See* comment under Section 10, Uniform Directed Trust Act, p. 27.

15 Mont. Code Ann. § 72-40-115.

for acceptance by a trust director, Mont. Code Ann. § 72-38-702 for bonding a trust director, Mont. Code Ann. § 72-38-708 for trust director compensation, Mont. Code Ann. § 72-38-705 for a trust director's resignation, Mont. Code Ann. § 72-38-706 for removing a trust director, and Mont. Code Ann. § 72-38-704 for appointment of a successor trust director.[16]

Application of Act to Co-Trustees of a Trust without Trust Directors

The Act is not limited to directed trustees. It can affect co-trustees in "traditional" trusts. Under traditional trust law, co-trustees are required to participate in all decisions, with limited exceptions. Furthermore, the Montana Uniform Trust Code requires each co-trustee to exercise reasonable care:

- To prevent a co-trustee from committing a serious breach of trust and
- To compel a co-trustee to redress a serious breach of trust.[17]

The Act permits a settlor to opt-out of traditional law by including trust terms relieving a co-trustee from duty and liability with respect to another co-trustee's exercise or nonexercise of a power to the same extent that a directed trustee is relieved from duty and liability under the Act.[18] Thus, a settlor has autonomy to choose the more permissive rules of a directed trusteeship or the traditional regime for a co-trusteeship. Comments under the Act include:

There seems little reason to prohibit a settlor from applying the fiduciary rules of this act to a co-trusteeship given that the settlor could choose the more permissive rules of a directed trusteeship by labeling one of the co-trustees as a trust director and another as a directed trustee. The rationale for permitting the terms of a trust to reduce the duty of a co-trustee that is subject to direction by another trustee is the same as the rationale for permitting the terms of a trust to reduce the duty of a directed trustee.[19]

The default rule reflects traditional trust law. If the settlor does not want this default rule to apply, the trust instrument could include the following:

Co-trustees are relieved from duties and liabilities with respect to another co-trustee's exercise or nonexercise of a power to the same extent that a directed trustee is relieved from duty and liability under the Uniform Directed Trust Act.

Conclusion

Directed trusts are increasingly more common. As discussed in this article, these trusts offer settlors many choices to name trust directors and to allocate various powers and duties of trust administration between a trust director and a trustee. Although directed trusts have been used in Montana without any significant statutory authority or guidance, Montana's adoption of the Uniform Directed Trust Act will provide that needed authority and guidance. In addition to the Act itself, estate planning attorneys can consult the Uniform Law Commissioner's comments under the Act and case law from the 15 states that currently have adopted the Act.[20]

Ed Eck is a Uniform Law Commissioner. He is Professor Emeritus of the Alexander Blewett III School of Law of the University of Montana. For 15 years, he taught courses on wills, trusts, charitable tax planning, and related tax courses. Subsequent to his retirement from the University, Eck served as Chief of the Office of Consumer Protection of the Montana Department of Justice. That Office oversees nonprofit corporations and charitable trusts. Eck currently practices law focusing on charitable matters and is Of Counsel with Church, Harris, Johnson, & Williams, P.C.

16 Mont. Code Ann. § 72-40-120.
17 Mont. Code Ann. § 72-38-703.
18 Mont. Code Ann. § 72-40-116.
19 See comment under Section 12, Uniform Directed Trust Act, p. 31.
20 As of August 18, 2021, fifteen states have adopted the Act and the Act has been introduced in the legislatures of three additional states.

Beware: Contagion alert!

It's time we learned. There's a contagion out there more transmissible than the coronavvirus. It affects you immediately on contact. It spreads to everyone in a theater, guaranteed. It spreads from you to opposing counsel or your client to you, even through email. You can bring it home and give it to your family.

What is it?

VIBES. Mood. Bad energy. Emotion. Stress response. And it's catching.

In a study by the UCL Division of Psychological and Language Sciences, researchers found that audience members' heartbeats synchronized when attending a movie or theater performance. Simply watching the same thing together put strangers in the same physiological state. Even more neuroscience supports the idea that emotions are contagious, through mirror neurons. Mirror neurons autonomically cause you to mimic body language of a peer, then begin to experience the same emotion of the peer, then to adopt that emotion as if it were your own experience. So, you 1) witness your friend not enjoying their meal; you 2) without thinking, adopt a similar slumped over disappointed body posture; you 3) start to also feel disappointed; and the kicker, you then 4) adopt that disappointment as if it were also your experience, even if your meal was fine.

The degree of contagion is directly proportional to the amplitude of the emotion. A while ago I ran a mediation with a couple who were simultaneously productive and snappy. Every little thing was met with a curt "3:00 is FINE." After 4 hours of productive grumpiness, all was signed and resolved. Rather than a sigh of relief or a sense of accomplishment that I had helped these usually nice people, I felt grumpy and curt. Ugh, so glad THAT is over. Another time, at the most emotionally charged settlement conference I have ever run, a therapist in my building came to check on me to see if I was OK the next day. She had seen one of the participants standing in the hallway just looking at her phone, but the emotional charge coming off her was enough to turn the whole office into a stressed-out mess. Without saying or doing really anything, it was like she had a Ghostbusters pack of stressed out vibes that she cocked and sprayed, filling every nook and cranny of the entire building with stress goop. And there again, even though we reached resolution, all was signed, filed, and resolved, I was in a daze for a good 24 hours until I realized I needed to wash the stress goop out of my eyes and off my walls.

So, what's the vaccine?

1) Knowing is 90% of the battle. Remind yourself that the OTHER person feels the way they do, but you don't have to feel that way. Don't mirror. Don't rewrite your feelings to include theirs. The contagious stress is not real. Keep calm, use a calm voice (master your late night radio DJ voice), stay productive, and if necessary, remind yourself of the way you actually feel: today I'm being helpful and doing my job! I don't engage in conflict because it's more productive! Allow the conflict goop to take a near miss and fly right out the window.

2) Don't globalize. It is easy to feel the physiological response you'll get from someone else's stress (do you feel your heart speed up? Skin get hot or crawl? Start sweating?) and amplify the fake stress with your own doomsday thinking. "What have I gotten myself into?" "Am I trapped into this line of work by student debt?" or "Am I going to need to fight fire with fire forever?" Stop all of that. That's not what this is.

3) Surprise! This tip will be the solution to every "Practicing Well" problem set: flush out the vibes as soon as possible with exercise, meditation, breaks, positive connection, or whatever else helps you feel the stress leaving the body.

4) And lastly, please: Don't be the one spraying the goop.

MERI ALTHAUSER

Meri Althauser is an attorney of 10 years practicing family law and mediation in Missoula. Her practice focuses on collaboration and solution-finding for her clients and their families. She also offers consulting services in workplace wellness, with a certification as a Workplace Wellness Specialist through the National Wellness Institute and as a Resilience and Thriving Facilitator through Organizational Wellness and Learning Systems.

CHRONIC STRESS PILOT PROJECT

Meri Althauser is developing a pilot project aimed at curing the legal profession in Montana of chronic stress and is seeking input from Montana attorneys. Please contact her at meri@forwardlegal406.com or 406-325-7100 to participate in an interview or focus group, or to hold a workshop on resiliency for your law firm.

good vibes only

Vigilance is necessary in the face of vast array of cybersecurity threats

Mark Bassingthwaighte

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1,200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School

I will admit that, at times and with topics such as cyber security, I can come across as overbearing to some and as a fearmonger to others. Speaking honestly, however, I never try to come across that way. Cybersecurity is simply a topic I am passionate about. Whenever I speak or write on this topic, my purpose is to try and do all that I can to help others avoid becoming yet another victim of a cybercrime.

I share this because I really do get it. Thinking about my own efforts to keep our home network secure and our personal information private, well, all I can say is it seems like an effort in futility. There really are days where I just want to say the heck with it and stop even trying. I don't know if it's a blessing or a curse; but when those days hit, and for whatever reason, I get angry. You see, I take it personally. The fact that all sorts of bad actors out there want to steal my identity, my money, my passwords, and the list goes on really ticks me off. The reality is I'm not good with that and this is where my motivation to fight back in whatever way I can comes from. It's what keeps me going. Hopefully keeping all this in mind will allow you to hear my message.

In recent years, I have come to realize the true value of mandatory ongoing security awareness training in every business regardless of size, even solo practices. Truth be told, my wife and I often talk about cyber security. I will share breach stories, explain how specific types of malware work, and show her various real-world examples of phishing emails and smishing texts. And while it's one of the ways she is able to enter my work world, as a victim of a cybercrime herself, she's also well aware of the true purpose behind and value of these conversations. So, you see, even in my personal life, I walk the talk because this is one of the ways I learn as well.

Now, to the topic of this post, the purpose of which is to explain one of the many reasons why I believe that a failure to provide mandatory ongoing security awareness training to every lawyer and staff who works at a firm is a huge misstep. I'm going to ask you to trust me when I say that we humans are the weak link when it comes to cyber security and it's all about the art of social engineering. One of my favorite cyber security lines is "Amateurs hack systems, professionals hack humans" because it speaks to the truth. And since humans can't be patched and upgraded the way computers can, all we can do is educate them. Unfortunately, such efforts are often perfunctory, short lived or never even make it off the "to do" list.

Here's the problem with not following through on training. If it hasn't already happened, at some point, someone, maybe even you, will be tricked into doing something that will allow malware to be installed on your firm's network. It might be clicking on a malicious link, opening an infected attachment, or logging on to a spoofed website, just for starters. Very sophisticated social engineering attacks have been and will remain for the foreseeable future the preferred attack vector because they are so darn effective at getting people to lower their shields when it comes to the actions they take while online.

The interesting question for me is this. What risks do we all face if our own online actions come up short? Allow me to share a few, and I truly mean a few, examples of common types of malware attackers are trying to trick you into installing on your network and/or any device that touches your network.

Malicious Bots – A bot is a software application that is typically used to perform simple repetitive

tasks much faster than any human ever could. Malicious bots give an attacker control of your computer, often for the purpose of incorporating your computer into a botnet, which is a much larger network of computers infected with bots. Botnets are often used to launch massive attacks on other computers networks or to send out vast amounts of spam email. Malicious bots can also be updated remotely, giving the attacker the ability to change the bot's functionality at any time.

Ransomware - a type of malware that uses encryption to permanently block access to the victim's data and/or enables the hacker to steal and then threaten to publish the victim's data unless a ransom is paid.

Wiperware - a malicious program whose sole purpose is to destroy all computer files by wiping (think digital erase) the hard drive of every computer it infects. Wipers typically have three targets: files, the boot section of the operating system, and backups. In short, these programs are highly destructive.

Keylogger - a program that records every keystroke made by a computer user and then sends that information to the attacker. Its purpose is to allow the attacker to obtain as much confidential information as possible, to include passwords.

Remote Access Trojan (RAT) - a program attackers use to take complete control of a victim's computer for the purpose of performing any number of malicious activities, to include potentially activating a webcam without turning on the active camera light. RATs can reside on systems for extended periods of time before being detected and can be extremely difficult to successfully remove. They operate in a stealth mode and are quite difficult for antivirus software programs to identify.

Banking Trojan - Disguised as a legitimate application so that victim's will willingly download and install it to their computers or mobile devices, a banking trojan is actually a malicious program that seeks to capture information that will allow the attacker to gain access a victim's banking and investment accounts.

Perhaps now you have a sense of why I get angry and want to do all I can to fight back. More importantly, however, I hope you can begin to understand why I believe that failing to provide mandatory ongoing security awareness training to everyone who works at a firm, regardless of firm size, is a huge misstep. It's because being hit with any of the above malware examples will prove to be more than a minor inconvenience. For some, such an attack may sound the death knell for the firm. With so much at stake, why risk it? If security awareness training isn't currently in play, it's time to make it a high priority item; because the pros are out to hack your human assets and, like it or not, education is the only way to counter that.

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Workshops offered by Meri Althauser, J.D., Worksite Wellness Specialist, and Resilience & Thriving facilitator. www.forwardlegal406.com

LAWYER ASSISTANCE PROGRAM ONLINE SUPPORT GROUPS

The following Lawyer Assistance Program support groups are currently being offered via Zoom:

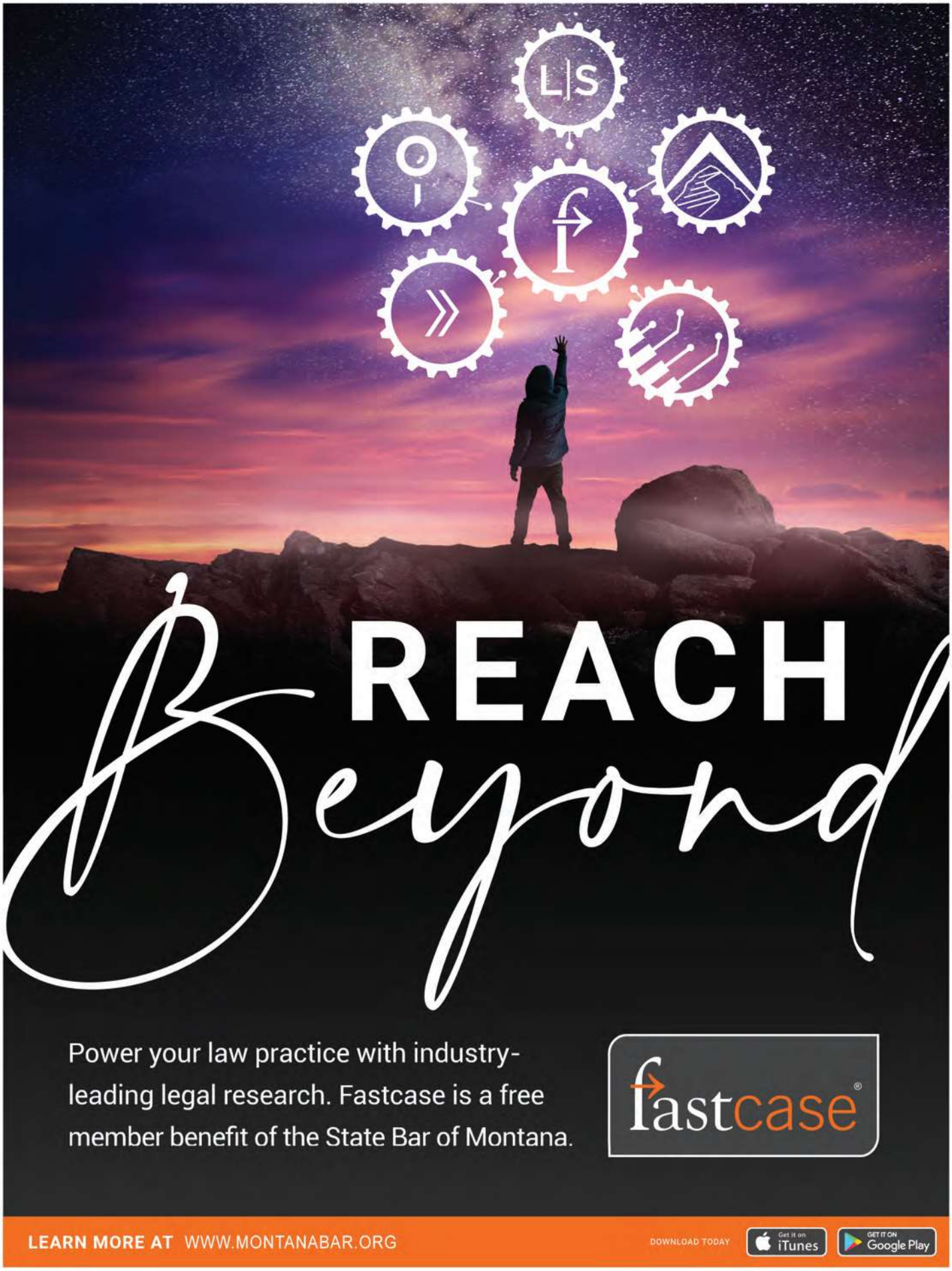
Every Tuesday Beginning at Noon

Support Group focusing on Substance Abuse and Recovery

Every Wednesday Beginning at Noon

Support Group focusing on Mental Health and Well Being Issues

Contact Mike Larson at mlarson@montanabar.org for information on joining.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Date: Thursday, Oct. 7

Time: 11 a.m. Mountain

The Docket Sheet: A Docket Research Primer for the Modern Attorney Featuring Docket Alarm

Date: Thursday, Oct. 14

Time: 11 a.m. Mountain

Introduction to Legal Research on Fastcase

Date: Thursday, Oct. 21

Time: 11 a.m. Mountain

Introduction to Boolean on Fastcase

Date: Thursday, October 28

Time: 11 a.m. Mountain

Introduction to Legal Research on Fastcase

Date: Thursday, Nov. 4

Time: 11 a.m. Mountain

The Docket Sheet: A Docket Research Primer for the Modern Attorney Featuring Docket Alarm

Date: Thursday, Nov. 11

Time: 11 a.m. Mountain

*CLASSIFIEDS Contact | To post a job on our online Career Center, visit **jobs.montanabar.org. Use code SBMT100** to receive State Bar member member price of $129 for Basic Job Listing (Montana Lawyer classified ad up to 75 words included in price). See back cover for more information on the online job board. Classified ads not related to the Career Center are $60 for up to 75 words. Email **editor@montanabar.org** for classified inquiries.*

ATTORNEY POSITIONS

IN HOUSE ATTORNEY: The Montana Land Reliance (MLR) seeks a full-time, in-house attorney to support the organization's stewardship and conservation easement project activities. Key areas of responsibility include coordinating with MLR's Stewardship Director on conservation easement interpretation, compliance, amendment, correction, defense, and enforcement matters, and coordinating with MLR's staff on new conservation easement drafting and project due diligence. The successful candidate will be a proficient attorney who thrives in a fast-paced, goal-oriented environment. Email a cover letter and resume in PDF format to Will Trimbath at will@mtlandreliance.org with the subject heading "MLR Attorney Application: [Your Last Name].

ASSOCIATE TRANSACTIONAL ATTORNEY: Kasting, Kauffman and Mersen, a well-established Bozeman law firm, is seeking an individual to join its practice full-time as an associate focusing on transactional work. The ideal candidate will have experience with real estate and commercial transactions; business formation; and estate planning and estate/trust administration; with strong communication and analytic abilities. Applicant must be licensed to practice in the State of Montana within six months of employment. Kasting, Kauffman and Mersen is an equal opportunity employer and values a diverse team. Ideal applicant should have 2 or more years' experience. Salary DOE; 401(k) Contribution; Disability insurance; Health insurance; Paid time off; Paid Holidays.

CITY ATTORNEY: The City of Great Falls seeks applicants for City Attorney. The position is the chief legal representative for City government and has managerial responsibility for providing comprehensive legal services to the municipality. The City Attorney reports directly to the city manager. Responsibilities extend to providing contracted legal services to other public organizations, e.g., Great Falls Housing Authority, Great Falls City Library. See https://www.governmentjobs.com/careers/greatfallsmt for more information and to apply.

DEPUTY COUNTY ATTORNEY: Lincoln County is seeking a full-time deputy county attorney. Duties include: Criminal prosecution in justice and district courts; Render advice and opinions to county commissioners and other heads of departments of Lincoln County under the direction and supervision of the county attorney; File petitions for involuntary commitment of mentally ill individuals, attend hearings, and draft all related motions, orders, and findings; Represent the State of Montana in Youth Court and child abuse/neglect proceedings; Perform other related duties as required. To apply, email mboris@libby.org.

DEPUTY COUNTY ATTORNEY: Primarily assigned to criminal prosecution duties and to providing legal services to County governmental agencies. Familiarity and experience with prosecution of both felony, misdemeanor, juvenile crimes and dependent neglect cases is desired. See full description at Flathead.mt.gov under the Human Resource Department. Must apply through the website.

SENIOR OR DEPUTY COUNTY ATTORNEY: Yellowstone County Attorney's Office is seeking a Senior Deputy ($68,054.83 to 102,082.24 DOQ) or a Deputy County Attorney (**County Attorney bargaining unit currently under collective bargaining negotiations. Starting salary is anticipated to increase. Currently- $64,000) + longevity and benefits. Duties include routine to complex criminal prosecution. Senior Deputies may act as lead counsel on major felony prosecutions. Related duties as required. E-mail countyattorney@yellowstonecountymt.gov

CITY ATTORNEY/CHIEF DEPUTY COUNTY ATTORNEY: Seeking experienced attorney for combined position as Lewistown City Attorney/Chief Deputy Fergus County Attorney. As City Attorney, is chief legal counsel for the City of Lewistown and prosecutes criminal misdemeanor and municipal code violations in City Court. As Chief Deputy County Attorney, is responsible for prosecuting civil and criminal cases in Fergus County Justice and District Courts. Full listing and application information available at http://cityoflewistown.com/services/employment

COUNTY ATTORNEY: Hill County is taking applications for a vacancy in the office of the Hill County Attorney located in Havre, Montana. The appointee will complete the current term which ends in 2022. The Hill County Attorney is responsible for the prosecution of all felony crimes occurring in Hill County, and all misdemeanor crimes occurring outside the Havre city limits within Hill County. The County Attorney is responsible for defending or prosecuting all civil claims for or against Hill County. The County Attorney is responsible for advising county officials and the public on legal matters of concern to the county or the various county departments. To apply, email alleyk@hillcounty.us

AGRICULTURAL WORKER AND HOUSING STAFF ATTORNEY: Montana Legal Services Association seeks a Staff Attorney to provide poverty law services to clients who are agricultural workers and housing law services to low-income clients. Poverty law services for agricultural workers will include, but not be limited to, wage claims, immigration, legal issues related to domestic violence, housing and public benefits. Travel throughout Montana is required. The Attorney is responsible for building an outreach campaign, as well as providing advice and representation to eligible clients in Montana. To apply, visit: https://montanalegalservices.bamboohr.com/jobs/view.php?id=25

FORECLOSURE PREVENTION: Northwest Justice Project seeks applications from qualified attorneys for the position of Assistant Managing Attorney for its statewide Foreclosure Prevention Unit (FPU). The FPU is being created as a statewide team of attorneys, paralegals and legal assistants advocating for the rights of homeowners and engaging in local, state and national homeowner and consumer protection advocacy. Apply at https://nwjustice.org/employment-opportunities.

FORECLOSURE PREVENTION: Northwest Justice Project seeks applications from qualified attorneys to act as Managing Attorney for the Foreclosure Prevention Unit (FPU). The FPU will be a new unit at NJP. The Managing Attorney of the FPU is responsible for supervision of a statewide team of attorneys, paralegals and legal assistants advocating for the rights of homeowners and engaging in local, state and national homeowner and consumer protection advocacy. Apply at https://nwjustice.org/employment-opportunities

LITIGATION ATTORNEY: Gordon Rees Scully Mansukhani LLP ("GRSM"), a national law firm with offices in all 50 states, has an immediate opening for an Associate to work in our growing Missoula, Montana office. The ideal candidate will have two to five years of general defense litigation experience, and experience in commercial, professional liability, and/or employment litigation is preferred. The candidate must be licensed to practice law in Montana. For consideration, please email resume and cover letter to nhuey@grsm.com, with "Missoula Associate" in the subject line.

ATTORNEY FOR DV SURVIVORS we're looking for a staff attorney to serve clients at the Community Support Center in Dillon and Safe Space in Butte. This position provides legal services to survivors of domestic violence, sexual assault, dating violence, stalking, and harassment. the pay range we're offering is $55,000 and up, depending on experience. this position can be based in Butte or Dillon.

CITY ATTORNEY/CHIEF DEPUTY COUNTY Attorney: Seeking experienced attorney for combined position as Lewistown City Attorney/Chief Deputy Fergus County Attorney. As City Attorney, is chief legal counsel for the City of Lewistown and prosecutes criminal misdemeanor and municipal code violations in City Court. As Chief Deputy County Attorney, is responsible for prosecuting civil and criminal cases in Fergus County Justice and District Courts. Full listing and application information available at http://cityoflewistown.com/services/employment

PARALEGALS/LEGAL ASSISTANTS

PARALEGAL/LEGAL SECRETARY: Parker, Heitz & Cosgrove, PLLC, a Billings, MT law firm, seeks a full-time legal secretary and/or paralegal with strong communication, organizational and word processing skills. Prior secretarial/legal experience preferred, but not required. Send cover letter and resume to P.O. Box 7212, Billings, MT 59103-7212.

LEGAL ASSISTANT: FairClaim Law Firm in Great Falls is looking for a full time Legal Assistant to join its well established workers' compensation and personal injury practice. FairClaim Attorneys have an excellent reputation, with over 80 years of combined experience achieving outstanding results for our clients. Join our hard-working team and find a great work-life balance, excellent benefits, competitive salary, and bonus opportunities, all while discovering Great Falls and the surrounding areas on the scenic Missouri River. Apply by email at tturner@fairclaimlaw.com

PARALEGAL: Montana State University is seeking a candidate to provide Paralegal and administrative support to a two-attorney legal office that manages the legal affairs of MSU-Bozeman, including extension and agricultural experiment stations as well as the affiliated campuses in Billings, Great Falls and Havre. You can read the full job listing and apply online at https://jobs.montana.edu/postings/25996. For questions, please contact kellie.peterson@montana.edu.

PARALEGAL/LEGAL SECRETARY: Christensen & Prezeau, PLLP, in Helena is seeking to hire a legal assistant/paralegal to assist with litigation support, case preparation, legal document production, scheduling, file management, and general administrative support. The individual must be proactive, able to multi-task, and comfortable working as part of a team. Christensen & Prezeau offers a competitive salary with an excellent benefits package, including health insurance and a profit-sharing plan. Please submit cover letter, resume, and references to amy@cplawmt.com

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