

DE DIE IN DIEM

THE NEWSLETTER OF THE WESTERN MONTANA BAR ASSOCIATION

JANUARY 2014

Vice President's Message by David Steele:

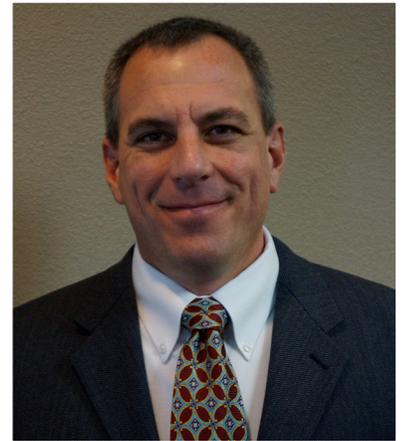
How to Ski in the Trees

I recently enjoyed one of the most epic powder days. If you ski, you know that the deepest, freshest untracked powder is often found sheltered within the trees. Of course, tree skiing has its inherent problems. For example, each time your skis glide up and out of the deep snow, and that spectacularly crisp face-shot dissipates, you are greeted by the sight of what are essentially giant Louisville Sluggers waiting to smack you into oblivion. You can't ignore them; they're too formidable. However, excessive dwelling on this problem can be distracting. But you already know the secret: Instead of focusing on the trees, you focus on the friendly spaces between the trees, and are then usually successful in "sticking your line."

You may be asking, "Why are we talking about skiing, and what does this have to do with the law?" Well, maybe nothing. But skiing is fun, and I think it's always worth talking about activities that are fun.

On the other hand, maybe tree skiing has everything to do with ... everything. As we start this new year, I plan to focus on the friendly, positive spaces between those mean ol' trees. And I think one approach to solving legal problems may be best described by reflecting upon how we ski in the trees.

Lawyers recognize this job generally revolves around solving problems, or avoiding them in the first place. The problems are often resolved through litigation, or they're avoided by thorough and well-planned transactional work. Either way, the problems are there and they can't be ignored.



When skiing trees, excessive focus on the trees will virtually guarantee ... well ... Whammo. Dwelling excessively on legal problems in lieu of solutions may have the same result. Skiers often poach the freshest powder by focusing on the lines between the trees. And lawyers resolve and avoid problems by focusing on solutions. In both cases, one shouldn't ignore the problem, but excessively dwelling on the problem will probably result in a negative impact. Consider reflecting on whether this is a healthy way

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to practice law, or to live life. I can say it's not a healthy way to ski in the trees. In any event, both activities are fun, and worth talking about.

And they might have more in common than you thought. Happy skiing, and Happy New Year.

EVENTS & ANNOUNCEMENTS

Join the WMBA on Thursday, January 16, 2014, for the first luncheon of the new year. Robert W. Minto, Jr., Esq., CEO of ALPS, will give a presentation on evaluating risk.

Please RSVP to westernmtbar@gmail.com or Reception at 721-9700

WMBA luncheons are the Third Thursday of each month at 12:00 noon in the Florence Building. \$15 for WMBA members; \$20 for non-members.

UPCOMING CLE PROGRAMS SPONSORED BY THE STATE BAR OF MONTANA

JANUARY, 2014

17-19 - ANNUAL CLE & SKI - BIG SKY
SPONSORED BY THE CLE INSTITUTE. APPROVED FOR 10.00 CLE CREDITS, INCLUDING 3.00 ETHICS CREDITS.

FEBRUARY

14 - ANNUAL REAL ESTATE CLE - FAIRMONT HOT SPRINGS
VISIT WEBSITE FOR INFO.

MARCH

7 - PARALEGAL SECTION CLE - HELENA
21 - ANNUAL ST. PATRICK'S CLE - FAIRMONT HOT SPRINGS

APRIL

4 - GENERAL PRACTICE - GREAT FALLS
11 - BENCH-BAR CONFERENCE - MISSOULA
25 - CONSUMER LAW - KALISPELL

MAY

2 - OIL & GAS AND WATER LAW UPDATE - BILLINGS
9 - EMPLOYMENT LAW - HELENA

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EVENTS & ANNOUNCEMENTS

Message from Shirley Faust, Clerk of Court:

I wanted to bring to your attention HB 330 from the 2013 legislative session which adds the following language under §40-4-121, §40-4-201, §40-4-202, §40-4-203, and §40-4-204, MCA regarding confidentiality of QDROs :

“The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party’s counsel of record.”

This bill was effective October 1, 2013. Because the duty to seal a QDRO lies with the court, attorneys and/or parties do not need to file a motion requesting the document be filed under seal. After the judge in jurisdiction has signed the QDRO, the clerk of court office staff will automatically file it under seal.

Thanks and have a great weekend!

Shirley E. Faust

Clerk of District Court

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From the beginning, ALPS connected with the Main Street lawyer during a real time of need. For partner and longtime policyholder, Eldon Shields, that connection has remained strong over the past 25 years. Since 1988, ALPS has continued to fulfill its promise to its policyholders and the legal community as a whole.

Hear more from ALPS policyholder Eldon Shields at 25.alpsnet.com



EVENTS & ANNOUNCEMENTS

SAVE THE DATE!
THE WMBA'S ANNUAL PROFESSIONALISM CLE IS FRIDAY, MARCH 14TH, FROM NOON TO 5 IN THE FLORENCE BUILDING. LOOK FOR DETAILS IN THE NEXT NEWSLETTER, AND RESERVE YOUR SPOT TODAY.



Hey Montana,

DO YOU KNOW A CHAMPION OF JUSTICE?

Tell us about his or her good works!

The Montana Justice Foundation is Celebrating Its 35th Anniversary in 2014 by Honoring 35 Champions of Justice.

Over the past 35 years, the MJF has been privileged to lead and support critical efforts in the fight for equal justice. We would not have been able to do so without the significant contributions of individuals from all sectors of the community, including lawyers, bankers, elected officials, medical providers, teachers, and others.

The MJF is seeking nominations for our 35 honorees. Please tell us about the individual who has most inspired you through their contributions to equal justice in Montana by submitting your nominee today.

The deadline for nominations is January 31, 2014 so don't delay!

SUBMIT YOUR NOMINEE NOW! >

Visit www.mtjustice.org to Download the Nomination Form



ANNOUNCEMENTS, QUESTIONS, ADVERTISING INQUIRIES:

De Die In Diem is published monthly by the Western Montana Bar Association. It is designed and edited by WMBA secretary, Hannah Stone, in conjunction with the WMBA board. For announcements, questions and advertising inquiries contact Hannah Stone at hstone@bigskylawyers.com. The WMBA is not responsible for the content of any announcement or advertisement. The WMBA does not support or oppose any candidate for public office or public official. For advertisements and announcements please provide at least one week advanced notice. Thank you.

Message from Melissa Hartigan, Staff Attorney for the U.S. District Court:

To all Constituents of the District of Montana:

The Local Rules Committee of the United States District Court for the District of Montana is now accepting public comment on proposed amendments to the Local Rules of Procedure. The deadline for comment is **Friday, January 24, 2014**, at 5:00 p.m. Mountain time.

Please take a few moments to review the proposed rules and send any comments you may have via reply email to LocalRules@mtd.uscourts.gov.

Here is a brief summary of the principal proposed amendments:

1. Under revised L.R. 56.1(a) and (b), a party moving for summary judgment must deliver to the non-moving party the Statement of Undisputed Facts in a word-processing format. The non-moving party's Statement of Disputed Facts must respond verbatim to the moving party's Statement of Undisputed Facts with pinpoint citations to the record, as shown in new Form A. The non-moving party may also add its own facts showing genuine issues for trial, but only after it has responded as required to the moving party's Statement.

2. Amended L.R. 5.1 and 26.4 clarify that documents subject to a protective order, if filed in the Court's record in connection with a motion, may not be filed under seal unless the appropriate legal standards for sealing are met.

3. Revised L.R. 16.2(b)(1) requires the preliminary pretrial statement to include identify witnesses having discoverable information and to describe the substance of any applicable in-

surance agreement. These matters are currently disclosed between the parties, but the amended Local Rule would require the parties to advise the Court of the information as well. In addition, the Plaintiff must file separately file a Statement of Stipulated Facts, L.R. 16.2(b)(3), at the same time the discovery plan and pretrial statement are filed.

4. Amended L.R. 7.2(a) encourages use of a short descriptive term, rather than exhibit letters or number, for exhibits filed in the Court's record.

5. The time period to consent to magistrate judge jurisdiction is shortened from 30 days to 14 days. L.R. 73.1(d).

6. L.R. 16.5 clarifies that parties must file a notice with the Court when a case is settled.

7. A briefing schedule is set for social security cases, in the manner of an appellate case, so that summary judgment motions need not be filed. L.R.78.2.

8. L.R. CR 17.2(b) provides that a party may not issue a subpoena duces tecum specifying the courthouse as the place of production.

9. L.R. 3.1(b) requires parties litigating patent, trademark, or copyright cases to complete and submit new forms, as required by statute.

This link will take you to the correct page on the Courts website: <http://www.mtd.uscourts.gov/rulesorders.html> Click on "Proposed Amendments to the District of Montana's Local Rules."

If adopted by the Judges of the District Court after the public comment period closes, amendments to the Local Rules will go into effect on Friday, January 31, 2014. This date may change. Please watch the website.

Please Note: Amendments to Federal Rules. Federal Rules were amended effective December 1, 2013. Of particular interest, Fed. R. Civ. P. 37 and 45 now provide that a subpoena or subpoena duces tecum must be issued by the court in the district where the action is pending, not in the district where the subpoena is served. Motions for sanctions may be filed in either district and, if filed where the subpoena is served, may be transferred to the district where the action is pending. Fed. R. App. P. 28 and 28.1 altered standard briefing requirements. Also amended were Fed. R. Crim. P.11 and 16; Fed. R. Evid. 803; and Fed. R. Bankr. P. 1007(b)(7), 4004(c)(1), 5009(b), 9006(d), 9013, and 9014. To see the new Federal Rules, please go to <http://www.uscourts.gov/RulesAndPolicies/rules/current-rules.aspx>.

Unfortunately, no markup version appears to be available. To see what changes were made, you will need to compare an old version side by side with the new one.

Thank you very much for your time and attention. If you have any questions, please feel free to e-mail me at Melissa_Hartigan@mtd.uscourts.gov or give me a call at (406) 829-7138.

Melissa Hartigan
Staff Attorney
U.S. District Court
District of Montana
(406) 829-7138

The Local Rules Committee consists of: Judge Jeremiah C. Lynch (Chair), Judge Keith Strong, John L. Amsden, Roberta L. Anner-Hughes, John C. Heenan, Andrew J. Nelson, Natasha Prinzing Jones, Timothy J. Racicot, Brendon J. Rohan, Fred Simpson, Randy J. Tanner, and Gary M. Zadick. Tyler Gilman, Melissa Hartigan, Terry Healow, and Nancy O'Brien serve ex officio for the Court.