

DE DIE IN DIEM

THE NEWSLETTER OF THE WESTERN MONTANA BAR ASSOCIATION

FEBRUARY 2014

President's Message by Tal Goldin:

*What lawyers can learn from frogs.**

Have you heard the old tale about the frog soup? Legend has it (I haven't Googled it), that if you place a frog in cold water and slowly warm the pot, the frog will cook and not jump out. But, if you drop a frog in a boiling pot it will, out of reflex, leap out of the pot and about the kitchen. We might say that the frog in the warming pot is thinking: "it's not that much warmer than it used to be. . . ." While the frog dropped in the boiling water immediately reacts to an emergent problem (probably followed by a stream of frog expletives about how hot that was).

In systems analysis, this systemic flaw is sometimes called the boiled frog syndrome or "drift to low performance." Changes to systems are commonly made when the actual state differs from the goal. However, in a drifting system, the change is often so gradual that an additional variable is introduced, the perceived state. Like the frog slowly boiling, participants in a drifting system do not perceive that the gradually shifting system is changing and, therefore, no correction occurs. Drift to low performance is one cause of increasingly poor outcomes in a system. It results from setting goals by past performance (i.e. adjusting future goals based on past shortcomings). Remember, the

(deceased) frog thought "it's not that much hotter" until it was too hot.

There are at least two solutions to boiled frog syndrome. First, make goals absolute. Second, set future goals based on the best actual performance, rather than the worst.



We, as lawyers, have a lot to learn from poor Kermit. First, we shouldn't anthropomorphize our food; it makes eating less enjoyable. Second, boiled frog syndrome is prevalent throughout legal systems. Goals on how litigants should be treated are set by the negative outcomes of the past. Acceptable attorney behavior is keyed to the least common denominator, not the best amongst us. Documents are prepared to meet minimum standards not put out exceptional product. Unsustainable fee structures remain in heavy use. All of this results in the acceptance of lower standards

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throughout the system and a system that increasingly fails to meet the needs of its participants.

I do not need to reiterate all that is written about the changing economics of law and the trend that our clients are seeking other professionals and models to meet the needs attorneys once met. In this changing economy, it is incumbent upon us lawyers to avoid the drift to low performance. I see this as an individual challenge to set high goals, not by past underper-

formance, but by the best actual performances.

As I look at my colleagues, I see plenty of examples of the best lawyers can achieve. Taking the time to mentor a younger attorney, once common practice, is one way to drift towards high performance. If we challenge ourselves to do just this one thing, would the system drift upward? I think it would. Let's help each other raise the bar.

**adapted from Donella H. Meadows, Thinking in Systems (Chelsea Green Pub. 2008)*

EVENTS & ANNOUNCEMENTS

REMINDER -- SAVE THE DATE!

The WMBA's Annual Professionalism CLE titled ***Upholding the Profession: preserving the reputation of attorneys, the law and the practice*** is scheduled for Friday, March 14th, from noon to 5 in the Florence building.

Speakers include Hon. Dana Christensen, Hon. Ed McLean, Hon. Haynes, Hon. Deschamps, Bob Phillips, Tim Strauch, Susan Mayer (litigation abstract), and ALPS.

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



Notice from the WMBA:
If you attended the Thursday, Nov. 21, 2013 presentation by Standing Master Brenda Desmond on the Fourth Judicial District Treatment Courts, you are eligible for 1 CLE credit.

EVENTS & ANNOUNCEMENTS

Join the WMBA on Thursday, February 20, 2014, for a presentation by Kathleen Magone on *Disabilities and Public Benefits: When Should a Special Needs Trust Be Considered?*

All of us know someone with a disability - and have clients in the same position. When should we advise them - and their family members - to consider a special needs trust as part of their estate planning? If a person with a disability currently receives state and federal benefits related to that disability and inherits money, receives a settlement, or gets a job, how will it affect those benefits?

A special needs trust (SNT) allows a beneficiary who is disabled to enjoy the use of assets held in the SNT for his benefit while also receiving essential government benefits. Kathleen will discuss special/supplemental needs trusts, how to establish them, who should consider using them, and the public benefits available. Learn more about eligibility for means-tested programs, how to select a trustee, a trustee's duties, the potential roles of family members, tax issues, and more.

This Presentation has been approved for 1 CLE credit.

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.

Kathleen Magone has been a vice president in Wealth Management with U.S. Bank's Private Client Group since 2008. Prior to joining U.S. Bank, Kathleen was Chief Legal Counsel for the Montana Office of Public Instruction, an assistant professor at the University of Montana School of Law and Gonzaga School of Law, and an attorney in Great Falls with Church, Harris, Johnson and Williams, P.C., where she worked with clients in the areas of estate planning and probate, real estate transactions, general business transactions, personal injury and defense litigation, employment law, and administrative law. She has lectured locally and nationally and published on many topics for over 20 years. A Montana native, Kathleen graduated from U.M. School of Law with high honors in 1989 and from Montana State University cum laude in 1978, and is a member of the State Bar of Montana, the Western Montana Bar Association, and the Western Montana Estate Planning Council. She trains volunteers for CASA, is a board member for the Missoula Writing Collaborative, has sung in the Missoula Symphony Chorale, and is a graduate of Leadership Missoula.

EVENTS & ANNOUNCEMENTS

The Western Montana Bar Pro Bono Program is recruiting volunteers for our monthly Family Law Legal Advice Clinic!

At the Clinic, low-income clients have the opportunity to meet with an attorney for 30 minutes of private consultation. Attorneys help draft documents and give legal advice for the client's family law issue. The Clinic is held on the third Wednesday of each month from 5p.m.-7p.m. at the law offices of Boone Karlberg, 201 West Main St, Third floor.

Our next Clinic is Wednesday, February 19th from 5-7p.m.

The WMBA Pro Bono Program has been sponsoring Clinics since last spring. Since September, our awesome volunteers have advised 54 low income clients! In January, we held our first ever overflow Clinic to accommodate the high demand for assistance. For many participants, this advice clinic is their only chance to speak with an attorney about their court case.

We work closely with the Missoula Self Help Center to provide pro se forms for participants. Clients are screened for income eligibility through Montana Legal Services. Participating attorneys are covered by MLSA's malpractice insurance while advising clients and, of course, are credited for their pro bono time.

Don't know much about family law? Don't worry! There will be experienced family law attorneys on hand to answer your questions. Are you a new lawyer? Talk to us about shadowing a family law attorney to get an idea of what questions and issues clients present. Can't make the Clinic but still want to help? Contact MLSA about other pro bono opportunities.

If you are interested in volunteering at an upcoming clinic, please contact, Larken Yackulic, WMBA Pro Bono Coordinator at 406-240-3548. We have clinics scheduled for the following dates: February 19th, March 19th, April 16th, and May 21st. Please don't hesitate to contact Larken with any questions or concerns.

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.

EVENTS & ANNOUNCEMENTS

Free Conference Being Offered by Health Care Law Section

The Montana Bar's Health Care Law Section is pleased to present a one-hour session at St. Patrick Hospital's Broadway Building Conference Center located at 500 West Broadway in Missoula at **7:30 a.m. Friday, Feb. 28**. The Friday Medical Conference session is open to both attorneys and health care professionals, and will focus on the Montana Medical Legal Panel rules, history, the new update and ethical questions, including conflict of interest concerns. The free session is *pending approval of 1 CLE credit, to include .5 Ethics credit*. Kelton Olney, MMLP counsel with Luxan & Murfitt in Helena, will moderate the session with presenters Steve Harman of Steve Harman Law in Billings, and Peter J. Stokstad of Garlington, Lohn & Robinson in Missoula. The session will also be available by webinar for those attorneys who so notify Anna Buckner via e-mail no later than Wednesday, February 26th at anna.buckner@mso.umt.edu.

Space is limited. If you wish to attend this session in person, please **REGISTER with the State Bar no later than Friday, February 14th**.

This is the first State Bar CLE that will be offered to both attorneys and health care providers for continuing education credits. It will be recorded and offered on the State Bar website for a nominal fee. For more information, please contact Rick Beck at William.Beck2@providence.org or 406/329-2628.

THE NEW LAWYERS SECTION'S TOOLKIT CLE: ESSENTIAL SKILLS FOR MODERN PRACTICE

WHEN: APRIL 11, 2014, 11:30 A.M. – 4:30 P.M. (IMMEDIATELY FOLLOWING MONTANA SUPREME COURT ORAL ARGUMENTS HELD AT U OF M)

WHERE: UNIVERSITY OF MONTANA SCHOOL OF LAW

LUNCH PROVIDED?: YES

CLE CREDITS PENDING: 4.0, INCLUDING .5 ETHICS

COST: ADVANCE ONLINE REGISTRATION ON STATE BAR WEBSITE, \$25; REGISTRATION/PAYMENT AT THE DOOR, \$35.00; LAW CLERKS: FREE

NEW LAWYERS SECTION'S SOCIAL

WHEN: IMMEDIATELY FOLLOWING THE CLE, 4:30 P.M. – 6:30 P.M.

WHERE: 520 S. 5TH ST. E., MISSOULA, MT (APPROXIMATELY 2 BLOCKS FROM THE LAW SCHOOL)

FOOD PROVIDED?: YES

SPACE LIMITED. RSVP WITH ONLINE REGISTRATION FOR CLE, OR TO NLSRSVP@YAHOO.COM