

APPLICATION FOR

**DISTRICT COURT JUDGESHIP
Eighth Judicial District**

A. PERSONAL INFORMATION

1. Full Name: **Joseph M. Sullivan**
a. What name do you commonly go by? **Joe**
2. Birthdate: [REDACTED] Are you a U.S. citizen? **Yes**
3. Home Address: [REDACTED]
Phone: [REDACTED]
4. Office Address: **Mailing: P.O. Box 1766, Great Falls, MT 59401
Physical: 309 1st Avenue North, Great Falls, MT 59401**
Phone: **(406) 761-4583**
5. Length of residence in Montana: **29 years**
6. List your place of residence for the last five years:
- | <u>Dates</u> | <u>City</u> | <u>State</u> |
|---------------------------|--------------------|--------------|
| May 1987 - Present | Great Falls | MT |

B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended, beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Lake Washington High School	Kirkland, WA	June 1977	H.S. Diploma with Honors

Gonzaga University	Spokane, WA	May 1981	B.S., Mathematics Cum Laude in Honors
Gonzaga University School of Law	Spokane, WA	May 1985	J.D. (Order of the Barrister)

8. List any scholarships, awards, honors and citations that you have received:

Lake Washington High School: Honors graduate

Gonzaga University:

- a. Undergraduate studies funded by scholarships and grants for more then three-fourths of tuition
- b. Member of the honors program – requiring substantial additional class load in areas of history, literature, philosophy, and theology
- c. Recipient of the Carl J. Lindberg Loyalty Award presented to one senior each year for exceptional loyalty and service to the University

Gonzaga University School of Law: Order of the Barrister for outstanding achievement as a member of the school’s national moot court team

- 2012** Fellows of the American Bar Foundation in recognition of outstanding dedication to the welfare of the community, the traditions of the profession, and the advancement of the objectives of the American Bar Association
- 2012** State Bar of Montana Distinguished Service Award in recognition and appreciation for outstanding leadership and service and for unselfish dedication to the legal profession as President of the State Bar 2010-2011, as officer of the State Bar 2007-2012, as Trustee of the State Bar 1994-2012, and as chair and member of several State Bar committees
- 2014** United Way of Cascade County in recognition of service as Division Chair and Assistant Campaign Chair of United Way Annual Campaigns 2011 through 2014
- 2014** National Conference of Bar Presidents award in recognition of outstanding service to the National Conference of Bar Presidents Executive Council 2011-2014

9. Were you a member of the Law Review? If so, provide the title and citation of any article that was published and the subject area of the article.

No

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
State Courts:	
State Courts and Supreme Court of Oregon	09/30/1985
State Courts and Supreme Court of Washington	06/24/1986
State Courts and Supreme Court of Montana	09/01/1987
Federal District Courts:	
U.S. District Court for the District of Oregon	08/25/1986
U.S. District Court for the District of Montana	10/01/1987
U.S. District Court for the District of Eastern Washington	01/10/1992
Federal Court of Appeals:	
U.S. Court of Appeals for the Ninth Circuit	07/13/1990

11. Indicate your present employment. (List professional partners or associates, if any).

I am currently self-employed as a solo practitioner under the assumed business name of Sullivan Law.

12. State the name, dates and addresses of all law firms with which you have been associated in practice, governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
O'Donnell, Ramis, Elliot, and Crew, Attorneys at Law, Portland, OR 1701 NE Hoyt Street Portland, OR 97232	Associate	1985-1987

Emmons and Coder, Attorneys at Law, Associate 1987-1992
Great Falls, MT
410 Central Ave, Suite 608
Great Falls, MT 59401

Emmons and Sullivan, Attorneys at Law, Partner 1992-2003
Great Falls, MT
410 Central Ave, Suite 608
Great Falls, MT 59401

Deschenes and Sullivan, Attorneys at Law, Partner 2003-2013
Great Falls, MT
309 First Avenue N.
Great Falls, MT 59403

Sullivan Law, Great Falls, MT Sole Practitioner 2013-Present
309 First Avenue N.
Great Falls, MT 59403

13. If you have not been employed continuously since completion of your formal education, describe what you were doing.

Not Applicable

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

My present law practice consists of the following:

Insurance Defense Law;	15%
Insurance Coverage Litigation;	10%
Personal Injury Law;	25%
Probate Law;	10%
Employment Law;	5%
Landlord Tenant Law;	5%
Construction Law;	10%
Contract Law;	10%
Family Law (pro bono basis);	2%
Mediation;	8%
General Civil Trials Practice; and	Part of Above
Civil Appellate Practice	Part of Above

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

As with many attorneys, the areas of law in which I practice have been refined or narrowed over the years. As an example, I had exposure to criminal law matters early on in my career, but as time went on my areas of civil practice dominated and participation in criminal law, bankruptcy law, tax law, and several other areas became minimal or nonexistent.

Dating back to law school I worked as a legal research assistant for an associate professor of law, Craig C. Belles, who specialized in Torts, Products Liability, Constitutional Law, and Forensic Evidence. A substantial amount of my work dealt with constitutional search and seizure issues as well as other matters dealing with criminal law related to constitutional matters.

Further, I served an externship as a law clerk for Smithmoore P. Myers, United States Magistrate for the Eastern District of Washington. As part of this experience I was involved with criminal matters at a federal district court level including arraignments and the issuance of warrants.

As an associate at the law firm of O'Donnell, Ramis, Elliot, and Crew, I acted as the city prosecutor for the City of Tigard, Oregon. The O'Donnell firm had contracted to provide all city attorney services for the City of Tigard, Oregon.

As a new associate in the law firm of Emmons and Coder in Great Falls, Montana, I took on federal criminal matters assigned by the Honorable Judge Paul G. Hatfield, United States District Court Judge for the District of Montana.

While I am not working on any cases currently dealing with these areas, I have worked in the area of commercial transactions, real estate transactions, and litigation in both of those areas. I have also had the opportunity to do work in trademark and copyright.

A sampling of the District Court cases I have handled or in which I was involved include:

1. *Pamela Dee Volk v. Valerie Goeser, et al.*, Montana Eighth Judicial District Court, Cascade County, Cause No. DDV-13-340 (Estate/Life Insurance Dispute)
2. *Carl Crow and Leah Crow v. Kent Zollars, Valerie Morger, Debra Peterson, and Fort Benton Realty, LLP*, Montana Twelfth Judicial District, Chouteau County, Cause No. DV-11-030 (Real Estate Agent Negligence, represented purchasers)
3. *Richard F. Ellestad and Dennie Ellestad v Thomas J. Balek and Linda A. Balek, and DOES A through Z*, Montana Tenth Judicial District Court, Fergus County, Cause Number DV-2011-59 (Personal Injury)
4. *Scott Palmer v. Kay Neil and Leo Baer*, Montana Eighth Judicial District Court, Cascade County, Cause No. DV-14-346 (Defamation Defense)

5. *Katelin Conway and Nolan Conway v. Geo. R. Pierce Inc., Commodore Homes of Indiana, The Commodore Corporation*, Montana Ninth Judicial District Court, Glacier County, Cause No. DV-14-49 (Construction and Manufacturing Defect Case Defense)
6. *Jay Nash v. Kerkes Capital, Inc., Sue Kerkes and Blue Moon Enterprises*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-13-798 (Business/Partnership Dispute Defense)
7. *Patrick Volkmar v Makenna Hotel Investments, LLC, d/b/a Crowne Plaza Billings, and DOES 1 through 10*, Cause No. DV-13-0108 (Personal Injury)
8. *Tammie Klinker v. C Hanging L Ranch, LLP, and John Does 1 through 5*, Ninth Judicial District Court, Teton County, Cause No. DV-13-033 (Personal Injury Defense)
9. *Vanette Nagamori and Farmers Union Mutual Ins. Co., v Dan M. Jacobs, et al.*, Twelfth Judicial District Court, Chouteau County, Cause No. DV-13-26 (Negligent Construction)
10. *Glenn Van De Sype and Shantelle Van De Sype v. Allen Keech, G & L Transit, and Does A through Z*, Montana Eighth Judicial District Court, Cascade County Cause No. CDV-12-0987 (Personal Injury)
11. *Gabriel Pearson v. Bernice McPhillips and James Raulston*, Montana Eighth Judicial District Court, Cascade County, Cause No. DDV-12-0927 (Fire Damage Claim Defense)
12. *J & C Moodie Properties, LLC v. Deck, et al.*, Montana Eighth Judicial District Court, Cascade County, Case No. BDV-12-0751 (Construction Defect Claim Defense)
13. *Curt A. Paulson v. Randy Schumann; and Marvin Fluth d/b/a Fluth Enterprises*, Montana Eighth Judicial District Court, Cascade County, Cause No. CDV-12-0494 (Foreclosure)
14. *Patrick and Toni Montalban v Hideaway Enterprises LLC*, Ninth District Judicial Court, Cause No. DV-12-03 (Property Damage Dispute Defense)
15. *Kristine Kromarek-Leghorn v. Anna Johns, d/b/a Holiday West Apartments*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-11-0644 (Personal Injury Defense)
16. *Nina Dear v. Hearing Aid Institute, Inc., and Does 1 through 10*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-11-0642 (Personal Injury)

17. *Kimberly LaCoste v. Dawn Marie Handa and the State of Montana*, Eighth Judicial District Court, Cascade County, Cause No. DDV-11-0583 (Personal Injury)
18. *Kimberly LaCoste v. Raven Volkomener and DOES A through Z*, Eighth Judicial District Court, Cascade County, Cause No. ADV-11-0360 (Personal Injury)
19. *Gerald L. Collins v Estate of Carol Ann Collins, et al.*, Montana Eighth Judicial District Court, Cascade County, Montana, Cause Number CDV-09-827 (Foreclosure)
20. *Jerri Rollins v. Heritage Inn, Inc., and Does 1 through 10*, Montana Eighth Judicial District Court, Cascade County, Cause No. DDV-09-240 (Personal Injury)
21. *Baan Kester v. Jana P. Olson, and Does 1 through 10*, Montana Sixteenth Judicial District Court, Garfield County, Cause No. DV-17-2009-104 (Property Dispute)
22. *Jon Hjartarson v. Marleen Hjartarson, Evelyn Hjartarson, and Iceland Farms, a Partnership*, Montana Ninth Judicial District Court, Toole County, Cause No. DV-09-057 (Family Farm Corporation/Minority Shareholder Action)
23. *Mildred C. Cook v. Toole County Hospital and Nursing Home, et al.*, Montana Ninth Judicial District Court, Toole County, Cause No. DV-07-055 (Personal Injury)
24. *Jerri L. Rollins v. State Farm Mutual Automobile Insurance Company, Michael J. McGiboney Insurance Agency, and Michael J. McGiboney, and Does A through Z*, Montana Eighth Judicial District Court, Cascade County, Cause No. DDV 06-407 (Insurance Coverage and Bad Faith Claim)
25. *Hjartarson v. Toole County Hospital and Nursing Home, et al.*, Montana Ninth Judicial District Court, Toole County, Cause No. DV-06-107 (Personal Injury)
26. *Yatsko v. Ventura Foods, LLC*, Montana Eighth Judicial District Court, Cascade County, Case No. CDV-05-701 (Personal Injury/Wrongful Death/Products Liability Defense)
27. *Hightower v. Toole County Hospital and Nursing Home, et al.*, Montana Ninth Judicial District Court, Toole County, Cause No. DV-05-107 (Contract Dispute)
28. *Kemp v. Tacia*, Montana Twelfth Judicial District Court, Chouteau County, Cause No. DV-05-22 (Fraudulent Real Estate Transaction Defense)
29. *Milan Pavlovick v. James Kemp*, Montana Twelfth Judicial District, Chouteau County, Cause No. DV-03-42 (Fraudulent Real Estate Transaction Defense)
30. *Sanders v. Hertz*, Montana Eighth Judicial District Court, Cascade County, Cause No. CDV-02-366. (Easement Dispute)

31. *Wolf v. Phoenix Management, Inc.*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-02-441. (Employment Dispute)
32. *Circle S. Ranch, Inc. v. Kleinfelter*, Montana Ninth Judicial District Court, Pondera County, Cause No. DV-01-38. (Construction Defect Defense)
33. *Kronebusch v. Spinder*, Montana Ninth Judicial District Court, Pondera County, Cause No. DV-01-26. (Personal Injury)
34. *Huntsinger v. Staples*, Montana Twelfth Judicial District Court, Hill County, Cause No. DV-00-090. (Personal Injury Defense)
35. *Holzheimer v. Field*, Montana Eighth Judicial District Court, Cascade County, Cause No. CDV-00-222. (Personal Injury)
36. *Saniford v. Hill County Electric Cooperative, Inc.*, Montana Twelfth Judicial District Court, Hill County, Cause No. DV-99-05. (Personal Injury Defense)
37. *Schildgen v. Brown*, Montana Eighth Judicial District Court, Cascade County, Cause No. CDV-99-516. (Personal Injury)
38. *Meier v. Bleken*, Montana Eighth Judicial District Court, Cascade County, Cause No. BDV-99-641 (Personal Injury Defense)
39. *Neiffer v. Van Smith*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-99-1054. (Contract Dispute Defense)
40. *Ault v. Van E. Smith*, Montana Twelfth Judicial District Court, Chouteau County, Cause No. DV-98-21 (Contract Dispute Defense)
41. *Weatherguard Corp v. Material Projects, Inc.*, U.S. District Court for District of Montana, CV-98-26-GF-RFC. (Construction Dispute)
42. *McCormick v. Snider*, Montana Twelfth Judicial District Court, Hill County, Cause No. DV21-1998-21. (Personal Injury Defense)
43. *Hauge v. Johnson*, Montana Ninth Judicial District Court, Teton County, Cause No. DV-98-33. (Personal Injury Defense)
44. *Semanza v. Farmers Union Mutual Insurance Company*, Montana Eighth Judicial District Court, Cascade County, Cause No. CDV-96-533. (Insurance Bad Faith)
45. *Clark v. Fallis*, Montana Eighth Judicial District Court, Cascade County, Cause No. BDV-96-944. (Personal Injury/Wrongful Death Defense)

46. *Swanson v. Stanfield*, Montana Tenth Judicial District Court, Judith Basin County, Cause No. DV-96-1025 (Personal Injury)
47. *Kleinhans v. White*, Montana Eighth Judicial District Court, Cascade County, Cause No. CDV-96-1445 (Personal Injury)
48. *Hultin v. Montana Power Company*, Montana Twelfth Judicial District Court, Choteau County, Cause No. DV-95-87. (Personal Injury Defense)
49. *Rowe v. Schott*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-94-1029 (Personal Injury Defense)
50. *The Boy v. Fuglevand*, Montana Twelfth Judicial District, Hill County, Cause No. DV-93-018. (Personal Injury Defense)
51. *Ogden v. Montana Power Company*, Montana Eighth Judicial District, Cascade County, Cause No. ADV-92-905 (Property Damage Defense)
52. *Latley v. Halsen*, Montana Eighth Judicial District, Cascade County, Cause No. CDV-92-677 (Personal Injury Defense)
53. *Rasmussen v. Tryon*, Thirteenth Judicial District, Stillwater County, Cause No. DV-90-86. (Personal Injury/Wrongful Death Defense)

16. If you specialize in any field of law, what is your specialty?

I have never attempted to specialize in any particular area of law. My heaviest concentration has been in the area of insurance defense work.

17. Do you regularly appear in court?

Yes. My civil litigation work and the motion practice involved places me in the courtroom on a regular basis. Additionally, work in the area of probate and family law requires appearances.

What percentage of your appearance in the last five years was in:

Federal court	5%
State or local courts of record	85%
Administrative bodies	10%
Other	

18. During the last five years, what percentage of your practice has been trial practice?

Greater than 75% of the work in my practice is performed in anticipation of trial (discovery, motion practice, witness preparation, and trial preparation). A much smaller

percentage of my work involves actual trials due to successful use of motion practice resulting in cases being dismissed as well as due to settlement of the cases.

19. How frequently have you appeared in court?

At least twice a per month on average.

20. How frequently have you appeared at administrative hearings?

In the last three years I have appeared in eight administrative hearings.

21. What percentage of your practice involving litigation has been:

Civil	100%
Criminal	0%
Other	0%

22. Have you appeared before the Montana Supreme Court within the last five years? If so, state the number and types of matters handled. Include the case caption, case citation (if any), and names addresses and phone numbers of all opposing counsel for the five most recent cases.

Gabriel Pearson v. Bernice McPhillips and James Raulston, 2016 MT 257 (October 11, 2016). This matter arose from a fire in Toole County in which I represented the landowner on whose property the fire started. I obtained a summary judgment on behalf of the landowner in defense of claims in excess of \$6 million. The summary judgment was upheld on appeal. Opposing counsel was Kirk D. Evenson, MARRA, EVENSON & BELL, P.C; 2 Railroad Square, Suite C, Great Falls, MT 59403, (406) 268-1000.

In the Matter of The Estate Justene Harmon, 360 Mont. 150, 253 P.3d 821 (2011). This matter arose from a will contest in which I represented the Personal Representative and obtained a summary judgment in his favor including a \$50,000 judgment against the contesting party. The summary judgment was upheld on appeal. Opposing counsel was Steven T. Potts; Steven T. Potts, PLLC; 625 Central Avenue West, Suite 200 Great Falls, MT 59404, (406) 452-0065.

A sampling of cases I have handled or in which I was involved which ended up before the Montana Supreme Court include:

1. *Gabriel Pearson v. Bernice McPhillips and James Raulston*, 2016 MT 257 (October 11, 2016) (Litigation Defense).
2. *In the Matter of the Estate of Cecelia Justene Harmon, Deceased*, 360 Mont. 150, 253 P.3d 821, 2011 MT 84 (2011) (Will Contest).
3. *Farmers Union Mutual Insurance Company v. Rumph*, 339 Mont. 251, 170 P.3d 934 (2007) (Insurance; Coverage/Bad Faith).

4. *Weinert v. City of Great Falls*, 322 Mont 38, 97 P.3d 1079 (2004) (Personal Injury).
5. *Farmers Union Mutual Insurance Co. v. Staples*, 321 Mont. 99, 90 P.3d 381 (2004) (Personal Injury Defense).
6. *Harland v. Anderson Ranch Co.*, 2004 MT 132, 92 P.3d 1160 (2004) (Easement Dispute).
7. *Nelson v. Farmers Union Mutual Insurance Co.*, 315 Mont. 268, 68 P.3d 689 (2003) (Insurance; Bad Faith Defense).
8. *In The matter of the Estate of Arthur Clifford Johnson*, Montana Supreme Court, Supreme Court No. 00-779 (Personal Injury Defense/Dismissed).
9. *Craig v. Schell*, 1999 MT 40, 975 P.2d 820 (1999) (Personal Injury Defense).
10. *Moody v. Northland Royalty Co.*, 286 Mont. 89, 951 P.2d 18 (1997) (Wrongful Discharge Defense).
11. *Knutson v. Barbour*, 266 Mont. 170, 879 P.2d 696 (1994) (Personal Injury Defense).
12. *Dew v. Dower*, 269 Mont. 286, 888 P.2d 421 (1994) (Contract Dispute Defense).
13. *J.L. v. Kienenberger*, 257 Mont. 113, 848 P.2d 472 (1993) (Insurance Coverage Defense).
14. *Dew v. Dower*, 258 Mont 114, 852 P.2d 549 (1993) (Contract Dispute Defense).
15. *U.S. Fidelity and Guarantee Co. v. Camp*, 253 Mont. 64, 831 P.2d 586 (1992) (Property Damage; Subrogation).
16. *Simchuk v. Angel Island Community Association*, 253 Mont. 221, 833 P.2d 158 (1992) (Personal Injury Defense).
17. *Thayer v. Hicks*, 243 Mont 138, 793 P.2d 784 (1990) (Accountant Malpractice Defense).
18. *Vender v. Stone*, 245 Mont. 428, 802 P.2d 606 (1990) (Personal Injury Defense).
19. *Dew v. Dower*, 237 Mont. 476, 774 P.2d 989 (1989) (Contract Dispute Defense).
20. *State ex rel. U.S. Fidelity and Guarantee Co. v. Montana Second Judicial District Court*, 240 Mont. 5, 783 P.2d 911 (1989) (Property Damage; Subrogation).
21. *Massman v. City of Helena*, 237 Mont. 234, 773 P.2d 1206 (1989) (Property Damage Defense).
22. *Rollins v. Blair*, 235 Mont. 343, 767 P.2d 328 (1989) (Personal Injury).

Additionally, a sample of Federal Appellate cases I have handled include:

1. *Carl Weissman & Sons, Inc., v. United States Federal & Guarantee*, 977 F.2d 587, 1992 WL 289532, Unpublished (9th Cir. 1992) (Insurance; Bad Faith Defense).
2. *Maag v. Wissler*, 944 F.2d 654 (9th Cir. 1991) (U.S.C. §1983 Claim Defense).

23. State the number of jury trials that you have tried to conclusion in the last ten years.

In September of this year I tried a jury trial to its conclusion in *Carl Crow and Leah Crow v. Kent Zollars, Valerie Morger, Debra Peterson, and Fort Benton Realty, LLP*, Montana Twelfth Judicial District, Chouteau County, Cause No. DV-11-030. This was a seven day trial involving the negligence of two realtors and their real estate firm in the sale of a home in Fort Benton, Montana. The unanimous jury verdict in favor of the buyers was obtained and the jury awarded the maximum award allowed by the Court.

Prior to the above trial, the last case I tried to a conclusion before a jury was *Kronebusch v. Spinder*, Montana Ninth Judicial District Court, Pondera County, Cause No. DV-01-26. Due to the fact my litigation caseload is heavily weighted towards insurance defense work; the fact that in many cases I have successfully obtained summary judgment or was able to refine the issues in the case to a point where the matter could reasonably be settled; and the fact that such a high percentage of cases while they might almost reach the point of trial often settle (as high as 95%); there has not been the need to actually try many of the cases I have handled in the intervening 10 years. Civil litigation trials, while necessary to resolve some issues, are often seen as the course of the last resort as opposed to primary focus when litigating a matter.

24. State the number of non-jury trials that you have tried in the last ten years.

In the last 10 years I needed to try one non-jury trial; *Jon Hjartarson v. Marleen Hjartarson, Evelyn Hjartarson, and Iceland Farms, a Partnership*, Montana Ninth Judicial District Court, Toole County, Cause No. DV-09-057. As noted with regard to the jury trials referenced above, the need to try cases in a civil setting is becoming much more the exception as opposed to the rule.

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, provide the same information regarding opposing counsel and the nature of the matter.

1. *Pamela Dee Volk v. Valerie Goeser, et al.*, Montana Eighth Judicial District Court, Cascade County, Cause No. DDV-13-340

Opposing Counsel: Jason Holden
FAURE HOLDEN ATTORNEY AT LAW, P.C.
1314 Central Ave.

Great Falls, MT 59403

Phone: (406) 452-6507

Presiding Judge: Hon. Elizabeth A. Best (406) 771-3950

Date of Settlement: Active

2. *Carl Crow and Leah Crow v. Kent Zollars, Valerie Morger, Debra Peterson, and Fort Benton Realty, LLP*, Montana Twelfth Judicial District, Chouteau County, Cause No. DV-11-030

Opposing Counsel: Mark L. Stermitz and Jeffrey Kuchel

305 South 4th Street East, Suite 100

P.O. Box 7099

Missoula, MT 59807-7099

Phone: (406) 523-3625

Opposing Counsel: Gregg Smith

SMITH OBLANDER, PC

104 2nd Street S., Suite 400

Great Falls, MT 59405

Phone: (406) 523-3625

Presiding Judge: Hon. Jon A. Oldenberg (406) 535-8028

Date of Settlement: Jury Verdict for Plaintiffs

3. *Richard F. Ellestad and Dennie Ellestad v Thomas J. Balek and Linda A. Balek, and DOES A through Z*, Montana Tenth Judicial District Court, Fergus County, Cause Number DV-2011-59

Opposing Counsel: Paul R. Haffeman

Davis, Hatley, Haffeman & Tighe, P.C.

101 River Drive

Great Falls, MT 59403

Phone: (406) 523-3625

Presiding Judge: Hon. Jon A. Oldenberg (406) 535-8028

Date of Settlement: Active

4. *Scott Palmer v. Kay Neil and Leo Baer*, Montana Eighth Judicial District Court, Cascade County, Cause No. DV-14-346 (Defamation Defense)

Opposing Counsel: Maxwell G. Battle, Jr., Esq.

BATTLE & EDENFIELD, PLLC

P.O. Box 1677

Kalispell, MT 59903

Phone: (406) 890-0851

Presiding Judge: Hon. Dirk M. Sandefur (406) 771-6566

Date of Settlement: Active

5. *Katelin Conway and Nolan Conway v. Geo. R. Pierce Inc., Commodore Homes of Indiana, The Commodore Corporation*, Montana Ninth Judicial District Court, Glacier County, Cause No. DV-14-49 (Construction and Manufacturing Defect Case)

Opposing Counsel: Maxwell G. Battle, Jr., Esq.
BATTLE & EDENFIELD, PLLC
P.O. Box 1677
Kalispell, MT 59903
Phone: (406) 890-0851

Presiding Judge: Hon. Robert G. Olson – (406) 424-8360

Date of Settlement: Settled October 6, 2015

6. *Jay Nash v. Kerkes Capital, Inc., Sue Kerkes and Blue Moon Enterprises*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-13-798 (Business/Partnership Dispute)

Opposing Counsel: Douglas (Doug) W. Marshall (former)
MARSHALL LAW FIRM, P.C.
108 S. Church Avenue
Bozeman, MT 59715
Phone: (406) 539-3847

Mark Bauer (currently)
P.O. Box 1423
Great Falls, MT 59403
Phone: (406) 727-0800

Presiding Judge: Hon. Gregory G. Pinski (406) 454-6894

Date of Settlement: Settled March 1, 2016

7. *Patrick Volkmar v Makenna Hotel Investments, LLC, d/b/a Crowne Plaza Billings, and DOES 1 through 10*, Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DV-13-0108 (Personal Injury)

Opposing Counsel: Chris Sweeney
MOULTON BELLINGHAM PC
27 North 27th Street, Suite 1900
Billings, Montana 59103-2559
Phone: (406) 248-7731

Presiding Judge: Hon. Ingrid Gustafson (406) 256-2916

Date of Settlement: February 17, 2016

8. *Tammie Klinker v. C Hanging L Ranch, LLP, and John Does 1 through 5*, Ninth Judicial District Court, Teton County, Cause No. DV-13-033 (Personal Injury Defense)

Opposing Counsel: Channing Hartelius
HARTELIUS, DUROCHER & WINTER, P.C.
Attorneys and Counselors at Law

P.O. Box 1629
118 6th Street South
Great Falls, MT 59403-1629
Phone: (406) 727-4020

Gary M. Zadick
UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.
#2 Railroad Square, Suite B
P.O. Box 1746
Great Falls, MT 59403
Phone: (406) 771-0007

Presiding Judge: Hon. Robert G. Olson (406) 424-8360
Date of Settlement: Active

9. *Vanette Nagamori and Farmers Union Mutual Ins. Co., v Dan M. Jacobs, et al.*, Twelfth Judicial District Court, Chouteau County, Cause No. DV-13-26 (Negligent Construction)

Opposing Counsel: G. Patrick HagEstad
MILODRAGOVICH, DALE, STEINBRENNER, P.C.
620 High Park Way
P.O. Box 4947
Missoula, MT 59806-4947
Phone: (406) 532-8891

Presiding Judge: Hon. Daniel A. Boucher (406) 265-5481ext. 231
Date of Settlement: June 4, 2014

10. *Glenn Van De Sype and Shantelle Van De Sype v. Allen Keech, G & L Transit, and Does A through Z*, Montana Eighth Judicial District Court, Cascade County Cause No. CDV-12-0987 (Personal Injury)

Opposing Counsel: SMITH, WALSH, CLARKE AND GREGIORE, PLLP (formerly)
104 2nd Street South, Suite 400
P.O. Box 2227
Great Falls, MT 59403
Phone: (406) 727-4100

Paul Haffeman (currently)
DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.
P.O. Box 2103
Great Falls, MT 59403
Phone: (406) 761-5243

Presiding Judge: Hon. Kenneth R. Neill (406) 454-6897 (retired)
Date of Settlement: Active

11. *Gabriel Pearson v. Bernice McPhillips and James Raulston*, Montana Ninth Judicial District Court, Toole County, Cause No. DV-14-035 (Fire Damage Claim); Montana Supreme Court Cause No. 16-0100

Opposing Counsel: Kirk D. Evenson
MARRA, EVENSON & BELL, P.C.
2 Railroad Square, Suite C
P.O. Box 1525
Great Falls, MT 59403-1525
Phone: (406) 268-1000

Presiding Judge: Hon: Robert G. Olson (406) 424-8360

Date of Settlement: Summary Judgment affirmed on appeal on behalf of Defendant McPhillips on October 11, 2016

12. *J & C Moodie Properties, LLC v. Deck, et al.*, Montana Eighth Judicial District Court, Cascade County, Case No. BDV-12-0751 (Construction Defect Claim)

Opposing Counsel: James C. Cummings
CUMMINGS LAW FIRM
2001 11th Avenuc, Suite 28
P.O. Box 4702
Helena, MT 59604-4702
Phone: (406) 457-2948

Presiding Judge: Hon. James A. Haynes (406) 375-6790

Date of Settlement: Summary Judgment November 25, 2014

13. *Kristine Kromarek-Leghorn v. Anna Johns, d/b/a Holiday West Apartments*, Montana Eighth Judicial District Court, Cascade County, Cause No. ADV-11-0644 (Personal Injury Defense)

Opposing Counsel: Richard J. Martin
LINNELL, NEWWHALL, MARTING & SCHULKE, P.C.
120 - 1st Avenue North
PO Box 2629
Great Falls, MT 59403
Phone: (406) 453-4503

Presiding Judge: Hon. Thomas M. McKittrick (retired)

Date of Settlement: May 7, 2012

14. *Kimberly LaCoste v. Dawn Marie Handa and the State of Montana*, Eighth Judicial District Court, Cascade County, Cause No. DDV-11-0583 (Personal Injury)

Opposing Counsel: Pamela Snyder-Varnes
State of Montana, Risk Management & Tort Defense Division
1625 11th Avenue, Middle Floor
P.O. Box 200124
Helena, MT 59620-0124
Phone: (406) 444-1816

Presiding Judge: Hon. Dirk M. Sandefur (406) 771-6566

Date of Settlement: October 17, 2013

15. *Kimberly LaCoste v. Raven Volkomener and DOES A through Z*, Eighth Judicial District Court, Cascade County, Cause No. ADV-11-0360 (Personal Injury)

Opposing Counsel: Gregg Smith
SMITH & OBLANDER
PO Box 2685
104 2nd Street South, Suite 101, Galleria Building
Great Falls, MT 59403-2685
Phone: (406) 453-8144

Presiding Judge: Hon. Dirk M. Sandefur (406) 771-6566

Date of Settlement: August 14, 2013

16. *Gerald L. Collins v Estate of Carol Ann Collins, et al.*, Montana Eighth Judicial District Court, Cascade County, Montana, Cause Number CDV-09-827 (Foreclosure)

Opposing Counsel: Cameron Ferguson
CAMERON FERGUSON LAW OFFICES
600 Central Plaza, Suite 408
P.O. Box 1629
Great Falls, MT 59403
Phone: (406) 727-4020

Presiding Judge: Hon. Kenneth R. Neill (406) 454-6897 (retired)

Date of Settlement: Judgment entered: September 11, 2013

17. *Jerri Rollins v. Heritage Inn, Inc., and Does 1 through 10*, Montana Eighth Judicial District Court, Cascade County, Cause No. DDV-09-240 (Personal Injury)

Opposing Counsel: Bill Gregoire
SMITH, WALSH, CLARKE, AND GREGOIRE, PLLP
PO Box 2227
104 2nd Street South, Suite 400
Great Falls, MT 59403-2227
Phone: (406) 727-4100

Presiding Judge: Hon. Dirk M. Sandefur (406) 771-6566

Date of Settlement: November 5, 2012

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

In the last five years I have had the opportunity to defend clients before administrative boards or commissions dealing with wage an hour issues, human rights matters, and unemployment insurance issues. These cases dealt with presenting testimony before an examiner and subsequently making argument presentation to an appeals board.

27. If you have published any legal books or articles, other than Law Review articles, list them, giving citations, dates, and topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, state the topic, date and group to which you spoke.

List of Publications & Presentations

(2010-present)

State Bar of Montana: Montana Lawyer - "President's Message"

- | | |
|---|---------------------------------------|
| 1. "We Need to Laugh at Ourselves" | August 2010: Vol. 35, No. 9 |
| 2. "What Have You Done for Me Lately" | October 2010: Vol. 36, No. 1 |
| 3. "Ghost Writers in the Big Sky" | November 2010: Vol. 36, No. 2 |
| 4. "Coffee, Donuts, and Civility" | December/January 2010: Vol. 36, No. 3 |
| 5. "When Bench and Bar Get Together" | February 2011: Vol. 36, No. 4 |
| 6. "The Future of the Bar, Ours to Shape" | March 2011: Vol. 36, No. 5 |
| 7. "New Methods of Mentoring" | April 2011: Vol. 36, No. 6 |
| 8. "The Need for Education" | May 2011: Vol. 36, No. 7 |
| 9. "Where Do We Go From Here?" | June/July 2011: Vol. 36, No. 8 |
| 10. "We Must Persist 'til Justice Triumphs" | September 2011: Vol. 36, No. 10 |

State Bar of Montana:

1. **The Montana Citizen's Guide to the Courts** - *Contributing Editor*
2. **Montana Guide to Turning 18** - *Contributing Editor*
3. **Personal Finance: A Resource Guide for Montana Veteran's** - *Project Coordinator*

National Conference of Bar Presidents

1. **2016 NCBP Annual Meeting: San Francisco**
 - *Unified Bar Issues: What Does the Future Hold? – Producer/Co-moderator*
 - *State Bar Roundtables – Co-moderator*
2. **2016 NCBP Midyear Meeting: San Diego**
 - *Challenges for Unified State Bar - Producer*
3. **2015 NCBP Annual Meeting: Chicago**
 - *A Discussion of Unified Bar Issues – Moderator*
 - *State Bar Roundtables: Our time to talk - Moderator*
4. **2015 NCBP Midyear Meeting: Houston**
 - *Unified Bar Issues - Moderator*
3. **2014 NCBP Midyear Meeting: Chicago**
 - *NCBP Breakout Discussion Session for State Bar Leaders - Moderator*
4. **2014 NCBP Annual Meeting: Boston**
 - *NCBP Breakout Discussion Session for State Bar Leaders - Moderator*
5. **2013 NCBP Midyear Meeting: Dallas**
 - *Quick Hits - New Lawyer Services to Attract and Retain Members - Panelist*
6. **2013 NCBP Annual Meeting: San Francisco**
 - *NCBP Breakout Discussion Session: When the Rubber Hits the Road – Moderator*

State Bar of Montana: CLEs and Presentations

1. **2016 Roadshow: Billings**
 - *What The Frack? (Confidentiality and Conflicts) – Presenter*
2. **2016 Roadshow: Missoula**
 - *What The Frack? (Confidentiality and Conflicts) – Presenter*
3. **2016 Cascade County Bar Association CLE**
 - *Ethics and Technology – Speaker*
4. **2016 St. Patty's Day CLE: Fairmont**
 - *There's a Snowbal's Chance You Will Have Ethics Issues With Technology - Speaker*
5. **2016 CLE & Ski: Big Sky**
 - *There's a Snowbal's Chance You Will Have Ethics Issues With Technology - Speaker*
6. **2015 Roadshow: Kalispell - Moderator**
7. **2015 State Bar Annual Meeting: Missoula**
 - *State of the Law in Montana – Moderator*
8. **2015 New Lawyers' Workshop and Roadshow: Bozeman - Faculty and Moderator**
9. **2015 State Bar Board of Trustees Meeting: Anaconda**
 - *Presentation on ABA Ethics 20/20 - Speaker*
10. **2014 State Bar Meeting: Big Sky**
 - *Montana Supreme Court Argument: Post Argument Student Program - Moderator*
11. **2014 New Lawyers' Workshop and Roadshow: Helena - Faculty and Moderator**
12. **2013 State Bar Annual Meeting**
 - *21st Century Discovery - Speaker*
13. **2013 Annual CLE and SKI: Big Sky**
 - *Family Corporations: 20+ Years Out - Speaker*
 - *The Evolution of Practicing Law in 2013: Ethically and Competently - Speaker*
14. **2013 Annual Dispute Resolutions CLE: Issues, Ethics, and Opportunities in Dispute Resolution: Bozeman**
 - *Arbitration and Mediation Opportunities - Speaker*
15. **2012 Law School Presentation**
 - *E-Discovery, Legal Research, Use of Technology, and Social Media - Speaker*
16. **2012 New Lawyers Workshop and Roadshow: Bozeman - Faculty and Moderator**
17. **2012 New Lawyers Workshop and Roadshow: Helena**
 - *Professionalism and Civility: Positive Habits for an Effective Practice - Moderator*
18. **2011 New Lawyer's Workshop/Roadshow: Great Falls - Speaker**
19. **2011 State Bar Annual Meeting: Kalispell**
 - *Appellate Practice Before the Montana Supreme Court - Faculty and Moderator*
20. **2011 Law School Presentation**
 - *Technology in a Trial Setting - Speaker*
21. **2011 New Lawyer's Workshop, Helena - Faculty**
22. **2011 Law School for Legislators: Helena - Speaker**
23. **2010 New Lawyer's Workshop: Bozeman - Faculty and Moderator**
24. **2010 New Lawyer's Workshop/Roadshow: Missoula - Faculty and Moderator**

Montana Judicial Conference Presentations:

1. **2012 Judicial Conference: Bozeman**
 - *Judicial Presentation on Technology - Speaker and Moderator*
2. **2011 Judicial Conference: Missoula**
 - *Social Media, Internet, and Court Room Presentations - Speaker and Moderator*

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all bar associations and legal professional societies of which you are a member. Provide the titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

Bar Related Positions

President, State Bar of Montana (2010-2011)
Immediate Past President, State Bar of Montana (2011-2012)
President-Elect, State Bar of Montana (2009-2010)
Secretary/Treasurer, State Bar of Montana (2007-2009)
Trustee, State Bar of Montana (1993-2007)
President of Young Lawyers Section, State Bar of Montana (1988-1989)
State Bar of Montana Finance Committee (Former Chair)
State Bar of Montana Technology Committee (Current Chair)
State Bar of Montana Law Education and Information Committee (Former Chair and Current Member)
State Bar of Montana Professionalism Committee (Current Member)
State Bar of Montana Past Presidents' Committee (Former Chair and Current Member)

Legal Professional Societies

Executive Counsel National Conference of Bar Presidents (2011-2014)
NCBP Finance and Investment Committee (Former Member)
NCBP Membership Committee (Former Chair and Current Member)
NCBP Program Committee (Current Member)
Montana Trial Lawyers Association (Member)

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the last five years. State the title and date of any office that you have held in each organization. If you held any offices, describe briefly your activities in the organization.

Other Leadership

President, Great Falls Central Catholic High School Board (1999-2010)
United Way of Cascade County Board (2010-Present)
United Way of Cascade County Executive Committee (2011-Present)
United Way of Cascade County Secretary (2011-Present)
Gonzaga University School of Law Board of Advisors (2011-Present)
United Way of Cascade County Vice Campaign Chair (2013-2014)

United Way of Cascade County Campaign Chair (2014-2015)
United Way of Cascade County Campaign Volunteer (Present)

30. Have you ever run for or held public office? If so, provide the details.

Yes. In the 2012 election cycle, I ran for State District Court Judge in Cascade County for the position vacated by the Honorable Thomas McKittrick and currently held by the Honorable Greg Pinski.

31. Please explain your philosophy of public involvement and practice of giving your time to community service.

Several years ago the State Bar of Montana conducted a survey of its members. One interesting correlation was those responding they had high job satisfaction also responded that they had a high number of hours of public service either to the bar and/or the community. I believe this is a natural correlation which I have experienced myself.

I was raised by two parents who not only encouraged me and my siblings to be involved and give back to those in need, but they practiced it daily. I grew up deeply appreciating my parents' giving to those in need and serving on boards. My father was often on the Parish board or school board for our Catholic Church.

My legal career has allowed me the opportunity to volunteer in public service leadership roles both within the Bar and within my community. The rewards I received in seeing the impact of the work done far exceeds any and all time committed to the efforts. Additionally, it allows me to serve with and see a side of our community which is both uplifting and humbling. I am grateful to have had this opportunity.

E. PROFESSIONAL CONDUCT AND ETHICS

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars.

No

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, provide the details.

No

34. Have you ever been arrested or convicted of a violation of any federal law, state law, or county or municipal law, regulation or ordinance? If so, provide the details. Do not include traffic violations unless they also included a jail sentence.

No

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, provide the details.

No

36. Is there any circumstance or event in your personal or professional life that would, if brought to the attention of the Commission, Governor or Montana Supreme Court, affect adversely your qualifications to serve on the court for which you have applied? If so, provide the details.

No. There are no circumstances or events in my personal or professional life which would adversely affect my qualifications to serve on the court. It is appropriate to point out, however, that I, personally, and my former firm of Deschenes and Sullivan are parties to a lawsuit. *James A. Kemp v. Joseph M. Sullivan and Deschenes and Sullivan, Montana Sixth Judicial District Court, Park County, Cause No. DV-12-179.*

F. BUSINESS AND FINANCIAL INFORMATION

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, provide the details, including dates.

On April 15, 1997, I formed a family limited liability company by the name of Sullifive, LLC. It was intended for any lawful business purpose with its primary initial objective being a holding company for shares of stock. Nothing ever materialized from this business and it ceased to exist pursuant to the records of the Secretary of State on December 1, 2005.

On October 8, 2003, I, along with Gary S. Deschenes, created Compass Properties, LLC. We are both managing members and are the only members of that limited liability company. This company is currently in good standing with the Secretary of State. The sole asset of this company is the building and related real estate found at 309 1st Avenue North, Great Falls, Montana 59401. The business stands in the position of a landlord renting the office space of the building to the tenants therein.

38. If you are an officer, director, or otherwise engaged in the management of any business, provide the name of the business, its nature, and the nature of your duties. If appointed as a district court judge, state whether you intend to resign such position immediately upon your appointment.

I am one of the two managing members of the limited liability company of Compass Properties, Limited Liability Company, as described above.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, identify the source and the approximate percentage of your total income it constituted over the last five years.

The sole source of fees or compensation, other than from my legal practice, are the rents received by the Compass Properties, Limited Liability Company. The net proceeds received by myself through this limited liability company is less than 10% of my income.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or that in any manner or for any reason might embarrass you? If so, please explain.

No

41. If appointed by the Governor, are you prepared to disclose the information required under 2-2-106, MCA (i.e., the name, address and type of your business; any present or past employer from which you currently receive benefits; any business or professional entity or trust in which you hold an interest; any entity in which you are an officer or director; and any real property, other than a personal residence, in which you hold an interest)?

Yes

42. Have you filed appropriate tax returns as required by federal, state, local and other government authorities? Yes No

If not, please explain.

43. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?
 Yes No

If yes, please explain.

44. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five years? If so, provide the details.

No

G. WRITING SKILLS

45. In the last five years, explain the extent to which you have researched legal issues and drafted briefs. State if associates or others have generally performed your research and the writing of briefs.

Over the last five years, I have been a partner in a two attorney law firm as well as a sole practitioner. In both situations, there were no associates, paralegals, or other individuals with the capability of performing legal research or drafting legal briefs. Accordingly, everything generated by my practice over the last five years is based solely on my own legal research and drafting.

46. If you have engaged in any other types of legal writing in the last five years, such as drafting documents, etc., explain the type and extent of writing that you have done.

In addition to motion practice and other legal writing conducted as it relates to my litigation work, I have drafted deeds, wills, and documents related to the formation of business entities. Additionally, I have been called upon to provide coverage opinions and analysis of insurance matters.

47. Attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

Attached hereto as Exhibit A is a 10-page excerpt from the Respondent's Brief in; *In the Matter of the Estate of Cecelia Justene Harmon, 360 Mont. 150, 253 P.3d 821, (2011) (Case No. DA 10-0341)*. The brief, in its entirety, can be found at <http://supremecourtdocket.mt.gov/view/DA%2010-0341%20Appellee%20--%20Brief?id={1ABE3D7C-9EC1-481B-AAA9-EE853BC9F6FF}>

48. What percentage of your practice for the last five years has involved research and legal writing?

At least 60% of my practice over the last five years involves research and legal writing.

49. Are you competent in the use of Westlaw and/or Lexis?

I am competent in utilizing the legal research software produced by Westlaw, Lexis, and Fastcase.

H. MISCELLANEOUS

50. Briefly describe your hobbies and other interests and activities.

I enjoy being a fan of many sports. I am most avid (some would say rabid) about Gonzaga University basketball. My support includes both the men's and the women's programs. It was especially fun two years ago watching my niece play on Gonzaga's women's team. Unfortunately for me, but a credit to her, she has graduated and is now working on a Masters Degree.

I grew up playing multiple sports and continue to participate in all forms of athletic activity. I am a passionate cyclist and enjoy putting in 100-150 miles a week, weather permitting.

I also enjoy the past times of playing guitar and singing in group settings such as choir.

However, probably my favorite activity is getting together with family. Over the last two years, our immediate and extended family has experienced three weddings, an unexpected funeral, and the birth of the first grandchild. The joys and sorrows these events have brought emphasize the importance of those times together. I cherish the time with my new granddaughter, my now four daughters, and my wife.

51. Describe the jobs that you have held during your lifetime.

Attached hereto as Exhibit B is a copy of an article from the Montana Lawyer "*Our New President Brings the Association a Wide Set of Skills*" – October 2010: Vol. 36, No. 1. This personal

profile will provide a better understanding of my work and personal background. For those that have full access to the State Bar of Montana website, this article can be found at:

http://montanabar.sitem.com/global_engine/download.asp?fileid=69390835-19E3-4F58-9D0A-7ED9CDD1753C&ext=pdf.

The earliest job I remember having started in approximately third grade where we were allowed to go into the fields in the Portland area and pick strawberries for \$1.25 a flat for Smuckers Jam. I also mowed lawns and delivered the Oregon Journal which was the evening paper produced in Portland, Oregon, at the time.

During my high school years I worked as a cook in a fast food restaurant and as a cook in an Italian restaurant/pizzeria. I also spent a summer as a lifeguard at a Catholic Youth Organization (CYO) Summer Camp.

As I prepared for college, a friend of mine and I purchased a painting business. I put myself through college based on scholarships, grants, work study, and running a painting business during the summers.

Following graduation from Gonzaga University with a Bachelor of Science degree in Mathematics, I was hired by an aerospace contractor, Martin Marietta (now Lockheed/Martin), on a joint Department of Defense/NASA contract to construct a second launch site for the Space Transportation System (Space Shuttle) at Vandenberg Air Force Base in central California.

During law school, as mentioned previously, I worked as a legal research assistant for associate professor Craig Belles. I also worked, through an externship program, as a law clerk for the Honorable Smithmoore P, Myers, United States Magistrate for the Eastern District of the State of Washington.

52. Identify the nature and extent of any pro bono work that you have personally performed during the last five years.

The attorneys in Cascade County are fortunate to have available to them the service of the Cascade County Law Clinic. Through the clinic, clients are screened and materials are prepared for use by members of the local Bar. One of the District Court Judges sends a letter asking an attorney to take a given case.

Through this process I receive between one and three cases a year in which I am asked to take on representation of one of these clients. I have done this over the last twenty years. More recently, I have shifted to acting as a mediator in these types of cases on a *pro bono* basis.

53. In the space provided, explain how and why any event or person has influenced the way that you view our system of justice.

Early in my legal career I had the privilege of working for the Honorable Smithmoore P. Myers, while he was the United States Magistrate for the Eastern District of the State of

Washington. Magistrate Myers served Gonzaga School of Law as Dean from 1955-1965; was appointed United States Attorney for the Eastern District in 1965; again served as Dean of the Gonzaga School of Law from 1975-1978; and was then appointed United States Magistrate in 1978.

The character and integrity of Smithmoore P. Myers is an example which is unparalleled. This is reflected in the fact the Spokane County Bar Association's Professionalism Award is named after him.

However, Magistrate Myers was first and foremost an educator. The time I spent working for him provided me with one of the best educational experiences imaginable. I learned immense amounts viewing matters from the perspective of the bench, but more importantly, I learned the importance of Court's role in ensuring justice. Magistrate Myers taught judicial decisions need to instill a confidence in the parties and the public that the Rule of Law will be followed and all would receive a just and fair opportunity to be heard.

As an example, opposing parties briefed a motion. One party's large Spokane law firm submitted a lengthy brief with a multitude of citations. The other party's solo practice attorney filed just a few page brief with no citations to any authority. Based on the weight of the briefs (either actual weight or authorities cited), the first party had the prevailing argument. The Magistrate, however, simply asked the question, "Which is correct?" The answer required researching all the citations of the one brief to ensure they correctly applied as well as researching all authority which should have been cited in the other party's brief. The result was a correct decision based on the existing law, not based on which side had the better attorney, greater resources, or superior financial means to wage their case.

There are many more lessons taught by Magistrate Myers, all of which made an enormous and lasting impression on me. It is not enough to merely give the impression we are seeking to achieve justice. We must attempt each day as attorneys to serve our clients in such a way as to achieve an end which best benefits them while doing so in such a manner as to also achieve a just result. In the context of the Court's role, these principles require constantly seeking to instill in the parties and the public a confidence that fairness will be the norm and justice the goal with regard to any matter coming before the bench.

54. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

Qualities important in a good District Court Judge include strong ethics, intellect, and judicial demeanor to ensure the parties and the public are being treated with fairness. Also important is the education, broad experience, and courage to take on the most complex and controversial cases that might arise. Finally, a good judge needs the ability to communicate the determinations made in such a manner as to reflect the character and integrity of the Court and, in so doing, instill a confidence in the parties and the public that justice is being served.

Each of these qualities is important. They are intertwined. All these qualities are necessary to ensure both actual fairness and the perception of fairness are maintained in the court room.

Additionally, in the Eighth Judicial District all judges must be capable of taking on a substantial work load and handle that work load in an efficient manner. The Eighth Judicial District is currently overloaded with cases. The judges must be willing to put in the time to move the docket forward. This requires a commitment beyond what might be required in other districts.

55. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

While not set in stone, the following of a given body of precedent is crucial. An attorney providing a client with a reasonable evaluation of their case needs to be able to state, with a level of certainty, the likelihood of any determination which will initially be made at a trial court level and subsequently at the appellate level. Without that level of certainty, many matters which would otherwise be resolved will languish because an answer to an issue will always be up in the air.

That being said, there are some times when the precedent is a round peg and the circumstances of the particular case are a square hole. The precedent may not fit the circumstances. It is in this situation where flexibility is necessary; analysis by analogies is common; and decisions must be derived from the underlying reason for the precedent or the precedent rejected because the underlying reason does not fit.

56. In the space provided, state the reasons why you are seeking office as a district court judge.

I have had the privilege over the last 30 years to practice in a broad variety of law. There have been many challenges. There have been new and interesting areas and many quality clients whom I have had the opportunity to serve.

Simultaneously, I have had the opportunity to do a great deal of volunteer public service. These opportunities have included locally within our community with United Way, across the State through projects with the State Bar, and nationally with the American Bar Association and the National Conference of Bar Presidents.

The office of District Court Judge offers me the opportunity to marry these two areas of law and public service. As a District Court Judge, I will be faced with a broad spectrum of cases which will continue to challenge me with respect to the varied areas of law. Simultaneously, the position will make me a full time public servant and allow me to perform duties which make a great impact on our community. It would be my hope this could be done in a positive manner and instill in the public a sense that the Court and the Judicial System, as a whole, is administered in a fair and just manner while providing the public with security based on the knowledge those who need to be incarcerated are dealt with firmly.

57. What items or events in your career have distinguished you or of which you are most proud?

I am proud I have been able to serve the members of the State Bar of Montana as well as the people of Montana through my work with the State Bar of Montana. This work has been rewarding. By helping the members of the State Bar of Montana perform their duties to their clients in the best possible manner, the public is well served and the Judicial System is maintained at the highest quality level.

That being said, I would point to my individual clients as the area in which I am most proud. There is no better feeling than a client's reaction to the result you have achieved for them and they express a high level of satisfaction for your work.

58. Provide any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

In addition to the matters which have been addressed previously, I believe it is important to stress I am at a point in my career where I have the broad legal background, extensive public service experience, and deeply held desire to take on the duties of the District Court Judge. I am well aware of the load that is required. I have a good understanding from discussing matters with current District Court Judges as to the makeup of that workload and the processes necessary to effectively move through all the types of cases which need to be addressed. My broad experience, leadership roles, and reputation among members of the Bar make me well suited to take on this role and I willingly do so.

59. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge applicant?

My volunteer public service work has always involved taking on leadership roles. Whether that was leading the group that restarted Great Falls Central Catholic High School; leading the State Bar of Montana first as a Trustee, then as an Officer, and ultimately as its President; or helping raise over a million dollars a year for the needs of Cascade County over each of the last five years; the leadership roles I have held consistently required listening to varied views and ultimately having to make the final decision. This process goes on daily for a District Court Judge and greatly impacts the lives of the individuals involved. I believe I have honed the skills of listening, analyzing, and reaching determinations through my leadership roles which will translate in a positive manner to the roll of acting as a District Court Judge.

These leadership roles have never been about the position. The leadership roles have always been about focusing quality individuals on the positive changes which were needed and the ways to achieve those changes.

When restarting Great Falls Central Catholic High School, the Diocese of Great Falls/Billing agreed, but initially required the raising of \$4.5 million before the project could proceed. The Great Falls community is very giving, however, raising that level of donations from a predominantly blue collar community for a school which did not yet exist was a daunting task.

The challenge was to listen. The required funds were based on the need to buy or build a structure to house the school. The leadership role in this situation involved listening to the required need and bringing together committee/board members who could creatively develop solutions. The solution was to lease excess classroom space from the University of Great Falls for the first four years. Fund raising was much more fruitful if donors were shown an existing school as opposed to the idea of a school. After four years as guests of the University of Great Falls, Great Falls Central Catholic High School was able to move into a newly constructed facility.

As President of the State Bar of Montana, the task was to recognize who we served, focus efforts to better serve those individuals, and, in the end, move towards developing a more competent and efficient bar membership, which in turn would better serve the public. At the time the State Bar, as an institution, had existed for nearly fifty years. While monumental change might be desired, realistic change was to move the institution incrementally in a positive direction.

This began with small steps. It involved educating the Bar's Board of Trustees as to the services provided member (often a mile wide, but an inch thick). It involved asking what the members really needed. In the end and through the hard work of officers and board members, the Bar was able to start offering services to members such as FastCase (an online legal research tool) which is now widely used by Montana attorneys and which is provided to them as part of their dues. This process has continued and the Bar will soon be offering members case management software from Cleo and MyCase.

In my work with United Way of Cascade County and, in particular, work on the Annual Campaign, we were able to raise in excess of \$5.5 million over the last five years. However, the grant requests for worthwhile causes have been twice the available funds over the same time frame. Additionally, while each annual campaign was highly successful, the numbers showed a diminishing donor base due to issues such as an aging population.

My leadership role involved reviewing our method of donor engagement, how best to increase existing donor giving, and how to increase the donor base, both as to individuals and businesses. In the end, we restructured how we ran our annual campaign. The past method of fundraising consisted of approaching donors once a year and merely asking for funds (cold calls). We now work year-round with businesses to engage the business and the employees of the business in projects and events around the community which involve the giving of their time and energies. This creates a relationship between United Way and the business separate and apart from merely giving a donation. Once the business and its employees are engaged in these activities and this ongoing relationship, the asking for donations is no longer "cold" and the willingness to give, once the need is truly seen, is increased.

This process was just initiated this last year. It is anticipated it will take as much as five years to fully implement. However, preliminary efforts have already shown both increased community event involvement and increased donations with those businesses who have become more involved in those community events.

Currently, the Eighth Judicial District has an overwhelming number of cases. There is no indication the steady increase in caseload is slowing. Others are working diligently to add a fifth judge. This will relieve twenty percent of each judge's load. However, this still leaves each judge with over 1,200 cases with the number continuing to increase each year.

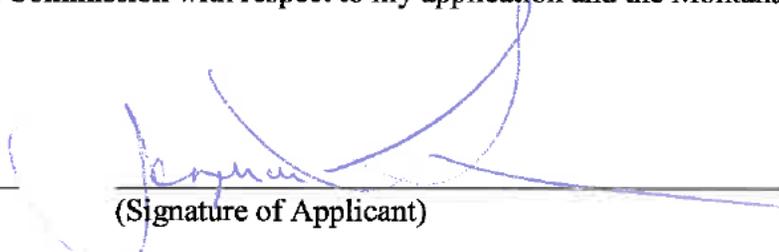
In addition to each judge merely working harder to address the increasing caseload and in addition to adding another judge, we need to look at any and all other means the current judicial system can use to better meet the needs of the people of Cascade County and the State of Montana as a whole. There is no magic pill or one single step which fixes this ever increasing caseload. However, like the processes and issues described in the above examples, we need to bring stakeholders together and begin to develop methods and approaches which will address this issue.

I have had the occasion to work with many good people in this community to solve issues which seemed as formidable as the current caseload of the District Court Judges. I will focus this experience on the issue if given the opportunity to serve as District Court Judge.

CERTIFICATE OF APPLICANT

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 8th Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Montana Code of Judicial Conduct, if appointed.

11/23/16
(Date)


(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by **5:00 p.m. on Thursday, December 22, 2016.**

Mail the signed original to:
Office of Court Administrator
c/o Lois Menzies
P.O. Box 203005
Helena, MT 59620-3005

Send the electronic copy to: mtsupremecourt@mt.gov

Exhibit

A

No. DA 10-0341

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF THE ESTATE OF
CECELIA JUSTENE HARMON,

Deceased.

BRIEF OF RESPONDENT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, Cause No. BDP-09-074

Appearances:

Joseph M. Sullivan
Deschenes & Sullivan
PO Box 3466
Great Falls, MT 59403

*Attorney for Personal Representative of the Estate of Cecelia Justene Harmon,
Respondent*

Steven T. Potts
Attorney at Law
600 Central Plaza, Suite 420
Great Falls, MT 59401

Attorney for Appellant

SUMMARY OF ARGUMENT

1. THE SWORN TESTIMONY OF A FULLY EXECUTED, ATTESTED, WITNESSED AND SELF PROVED WILL ESTABLISHES THE ABSENCE OF A GENUINE ISSUE OF MATERIAL FACT

The decedent in this case, Mrs. Harmon, executed a Will on January 31, 2009. The Will was fully executed, attested, witnessed, and self proved. Mrs. Harmon, under oath, attested that she was signing and executing the Will willingly, freely, and voluntarily. Two witnesses to the execution of the Will also testified under oath that to the best of their knowledge Mrs. Harmon was at the time of executing the Will of sound mind and under no constraint or undue influence. This testimony along with the principles of law applicable to self proved Wills established the absence of any genuine issue of material fact with regard to any claim of undue influence.

2. A TENANT NON FAMILY MEMBER OF THE DECEDENT CANNOT RELY ON SELF SERVING STATEMENTS, INADMISSIBLE HEARSAY, AND STATEMENTS OF WITNESSES WITHOUT PERSONAL KNOWLEDGE TO OVERCOME SUMMARY JUDGMENT

Waite was a tenant and caretaker for the decedent. He seeks to negate the Last Will and Testament of Mrs. Harmon by claiming it was obtained by undue influence. He attempts to overcome the express testimony in the Will by presenting testimony containing his own self serving statements, statements of himself and other witnesses

who were not present at the time the Will was executed, and statements supposedly made by the decedent which lack any form of independent corroboration. Waitt's argument, taken to its farthest extreme would allow anyone off the street who has no relationship or contact with a decedent to contest the probate of an existing Will of a decedent merely by claiming they had been promised substantial portions of the Estate at sometime prior to the decedent's passing.

This type of improper interference with the express written intent in a decedent's Will is prohibited. The presumptions found in Montana law with regard to the validity of self attested Wills act as safe guards against such interlopers. Those principles combined with the strict standards of the affidavits in the context of a Rule 56, M.R.Civ.P., summary judgment motion create a high standard for overcoming a summary judgment in the case of claims for undue influence. Waitt failed to present evidence sufficient to meet these standards. Accordingly, this Court should affirm the District Court's summary judgment.

ARGUMENT

A. THE DISTRICT COURT'S SUMMARY JUDGMENT ORDER IS BASED ON SOUND RATIONALE AND SHOULD BE UPHELD

The nature of the matter before this Court is a Will contest brought as part of an ongoing Probate proceeding. The issue before this Court, is whether a purported holographic Will supposedly created by Mrs. Harmon dated December 23, 2008, should be allowed to supercede a subsequent fully executed, attested, witnessed, and self proved Will dated January 31, 2009, which expressly revoked any and all former Wills.

1. THE DISTRICT COURT'S SUMMARY JUDGMENT ORDER CORRECTLY FOUND WAITT FAILED TO RAISE SUFFICIENT ISSUES OF MATERIAL FACT TO OVERCOME SUMMARY JUDGMENT

a. The District Court Correctly Found the Personal Representative Had Established a Total Absence of Genuine Issue of Material Fact

Waitt, a non-relative tenant of the decedent, claims Mrs. Harmon's Will of January 31, 2009, is not valid asserting it was procured as a result of undue influence.²⁹ No factual basis for this alleged invalidity is provided in Waitt's

²⁹Doc. #18, page 2, paragraph 6; See, also, Tr., page 23, lines 11-13 and Tr., page 33, lines 11-12 (The District Court and Waitt, through his counsel, refined Waitt's claim to one solely of undue influence.).

Petition.³⁰

Summary judgment is appropriate when the pleadings, sworn testimony, and discovery on file show that there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law.³¹ In this case, sworn testimony exists in the form of the Will submitted as part of the application for informal probate.³²

The Will of January 31, 2009, contains the sworn testimony of Mrs. Harmon and two witnesses to the signing of the Will. Mrs. Harmon testified that she had been sworn and that under oath declared she signed and executed the Will of January 31, 2009 willingly, freely, and voluntarily. The two witnesses similarly testified under oath that to the best of their knowledge at the time of the execution of the Will, Mrs. Harmon was of sound mind and was under no constraint or undue influence. Testimony, based on three people present at the time the Will was executed, establishes Mrs. Harmon acted willingly, freely, voluntarily, and without constraint or undue influence.

A self proved Will is presumed to meet all requirements of execution subject

³⁰Tr., page 32, lines 19-20.

³¹Rule 56(c), M.R.Civ.P.

³²Doc. #'s 1 and 2.

to rebuttal, and is conclusively presumed to be in compliance with signature requirements of execution.³³ Where a duly executed Will is admitted into Probate, a presumption exists that the Testatrix was competent and of sound mind.³⁴ It is the policy of the courts to sustain a Will if it is possible to do so, and every reasonable presumption will be indulged in favor of due execution of a Will.³⁵ The party contesting a duly executed Will has the duty to establish all statutorily specified circumstances which would prohibit the Will's administration into probate.³⁶ The duty to prove undue influence lies with the party claiming undue influence.³⁷

Based upon the presumptions and duties set forth above, all requirements of execution by Mrs. Harmon are presumed to be met, all signature requirements by Mrs. Harmon are conclusively presumed to be met, and Mrs. Harmon is presumed to have been competent and of sound mind at the time she executed the Will on January 31, 2009. The sworn attestations of the decedent and the witnesses establish an absence

³³§72-3-309(2), MCA.

³⁴*Estate of Brooks*, 279 Mont. 516, 521-522, 927 P.2d 1024, 1027 (1996).

³⁵*In re Bragg's Estate*, 106 Mont. 132, 76 P.2d 57, 61(1938).

³⁶§72-3-310, MCA (“Contestants of a Will have the burden of establish the lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.”)

³⁷*Id.*

of any material issues of fact as to any claim of undue influence. Based on these presumptions and the testimony presented, the District Court correctly concluded the Personal Representative, Roger Harmon, had met his burden of showing a total absence of genuine issue of material fact as to the claim of undue influence.³⁸

b. **The District Court Correctly Found Waitt Failed to Present Admissible Evidence Sufficient to Overcome the Testimony of Mrs. Harmon and the Witnesses to the Will's Execution**

The burden then shifts to Waitt to establish a genuine issue of material fact. Waitt was required to set forth specific facts showing that there is a genuine issue for trial³⁹ and present substantial evidence as opposed to mere denial, speculation, or conclusory statements.⁴⁰ Any affidavit Waitt presented opposing summary judgment was required to be made of personal knowledge and to set forth facts which would be admissible in evidence.⁴¹ Absent such a showing, by admissible evidence as is required by Rule 56(e), M.R.Civ.P., the District Court was correct in entering

³⁸Tr., page 39, lines 10-14.

³⁹Rule 56(e), M.R.Civ.P.

⁴⁰*Monroe v. Cogswell Agency*, 356 Mont. 417, 426, ¶30, 234 P.3d 79, 86, ¶30 (2010).

⁴¹*PPL Montana, LLC v. State*, 355 Mont. 402, 435, ¶92, 229 P.3d 421, 444 (2010) (Affidavits made without personal knowledge and based on hearsay cannot be considered on summary judgment.); *Smith v. Burlington Northern and Santa Fe Rail Company*, 344 Mont. 278, 292, ¶39, 187 P.3d 639, 649, ¶39 (2008).

Summary Judgment against Waitt.⁴²

Additionally, in the context of the claim of undue influence in the execution of a Will, this Court has noted it is not sufficient to only show that one person had influence over another. Rather, one must show influence in fact was exercised directly to procure the execution of the Will:

“ ‘Mere general influence in the affairs of life or method of living at the time of the execution of a will of a Testator is not proof of undue influence in the contemplation of our statute, and, in order to establish it as a fact, it must be shown by proof that **it was exercised upon the mind of the Testator directly to procure the execution of the will.** Mere suspicion that undue influence may have or could have been brought to bear is not sufficient. It is never presumed, and must be proven like any other fact.’ ”⁴³

Therefore, here, Waitt was required to show specific facts establishing Roger Harmon exercised influence directly on the mind of Mrs. Harmon to procure the execution of the Will or Waitt’s claims are subject to summary judgment.

(1) The Affidavits Presented by Waitt Lack Personal Knowledge

Waitt presented three affidavits in his attempt to overcome summary judgment

⁴²Rule 56(e), M.R.Civ.P.

⁴³*Estate of Lightfield*, 351 Mont. 426, 433, ¶33, 213 P.3d 468, 474, ¶33 (2009). (emphasis added) (citing *Estate of Wittman*, 305 Mont. 290, 296, ¶21, 27 P.3d 35, 39, ¶21 (2001)).

his own, Mr. Kermie Knudson's, and Mrs. Emma White's. Waitt's own affidavit states he was not present at the time Mrs. Harmon executed her Will on January 31, 2009.⁴⁴ Neither Mr. Knudson nor Mrs. White claimed to have been present at the time the Will was executed.⁴⁵ Accordingly, none of these affiants are capable of testifying from their personal knowledge of the Will's execution or as to any alleged undue influence exerted to procure the Will at the time the Will was executed. Absent such a showing and in light of the testimony of the decedent and the two witnesses who were present, it stands undisputed Mrs. Harmon signed her Will of January 31, 2009, willingly, freely, and voluntarily, and without constraint or undue influence. This undisputed evidence alone mandates entry of summary judgment as to Waitt's claim of undue influence.

(2) The District Court Correctly Excluded Hearsay Found in Waitt's Affidavits

- (a) Waitt Cannot Raise for the First Time on Appeal Issues Regarding Hearsay He Failed to Present to the District Court at the Time Summary Judgment Was Being Considered

Waitt claims the District Court erred in rejecting as hearsay portions of his affidavit and that of his witnesses. However, he never presented any argument at the

⁴⁴Doc. # 32; Tr., page 34, lines 13-15.

⁴⁵Doc. #'s 35 and 48.

time of the summary judgment hearing as to why such statements were admissible. He **now** claims the statements contained in those affidavits are admissible under §26-1-103, MCA; Rules 803(2),(3), and (24), M.R.Evid.; and Rules 804(b)(5), M.R.Evid.

The impropriety of the hearsay in Waitt's affidavits was raised and argued as a violation of Rule 56(e), M.R.Civ.P.⁴⁶ The District Court concluded the statements to be hearsay and that they failed to qualify under Rules 804(a) through (f).⁴⁷

Waitt's current arguments regarding the exclusion of these statements could and should have been raised at the time of the summary judgment hearing. Waitt failed to do so.

This Court has held:

“ ‘...[I]t is fundamentally unfair to fault the Trial Court for failing to rule correctly on an issue it was never given the opportunity to consider. Furthermore, it is unfair to allow a party to choose to remain silent in the Trial Court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome...is unfavorable.’ ”⁴⁸

Waitt remained silent at the time of the summary judgment hearing as to the

⁴⁶See, Doc. #37, pages 9-13.

⁴⁷See, Doc. #37; Tr., page 34, line 19 through page 35, line 10.

⁴⁸*Timis v. Young*, 305 Mont. 18, 20, ¶8, 22 P.3d 1122, 1124, ¶8 (2001) (citing *Day v. Payne*, 280 Mont. 273, 276-277, 929 P.2d 864, 866 (1996)).

Exhibit

B

Lawyer

THE STATE BAR OF MONTANA

**Meet
the new
leaders
of the
State
Bar**



Photo by John Gedwin

President Joe Sullivan & the others you elected

ELECTIONS

**Winding
down
the
Supreme
Court
campaigns**



**Will voters
throw out
the Montana
Constitution
in November?**

- See Page 17

**Bar
member
survey
coming**



**There's nothing like
a Bolivian prison**

*A Montanan's descent into
a legal-system Weirdsville*

Our new president brings the association a wide set of skills

From the Ironman to the Space Shuttle

Joe Sullivan, the Great Falls attorney who took the State Bar of Montana's presidential gavel at the Annual Meeting last month, is one of the rare people carting around three hard-earned professions – as a mathematician, psychologist, and lawyer. While his grandfather was a yardmaster for a railroad in North Dakota, the grandson brought new dimensions to his family by working on Space Shuttle launches.

Now, he has an opportunity over the next year to make his mark on the State Bar of Montana.

Joseph Michael Sullivan, 51, was raised as one of four siblings in Portland, Ore. His father, who died a year ago, was a sales representative for Gerber Baby Products for 30 years. His mother, still living, was a homemaker and secretary, the latter for employers such as Shell Oil and Safco Insurance.

In his early years, Mr. Sullivan attended Catholic schools in Portland. When his father was transferred to Seattle he attended and graduated as an honors student from Lake Washington High School in Kirkland, Wash.

Mr. Sullivan went to college at Gonzaga University in Spokane, where he double majored in Mathematics and Psychology. He graduated with honors from the University's honors program doing his senior honors thesis on artificial intelligence. While attending Gonzaga he helped coach a women's intramural flag-football team. In so doing, he met one Parker Emmons, a Broadcast/Communications major. Ms. Emmons, now going by the last name Sullivan, married Mr. Sullivan 28 years ago in Great Falls.

Upon graduation, Mr. Sullivan took a position as a systems analyst with the aerospace contractor Martin Marietta (now Lockheed/Martin) on a joint Department of Defense/NASA contract to construct a second launch site for the Space

Transportation System (more commonly known as the Space Shuttle) at Vandenberg Air Force Base in central California. A little over a year later, he applied for and was accepted to Gonzaga University School of Law.

In 1982, he married Ms. Emmons and two weeks later began law school. The two lived in Spokane for the next 3-1/2 years where Parker Sullivan worked for KHQ-TV as a promo-

tion and production assistant while Mr. Sullivan attended law school. During this time the Sullivans were blessed with two daughters – Loran and Kelly.

During law school, Mr. Sullivan participated as a member of the school's National Moot Court team. Also, "as an attempt to maintain some form of equilibrium," he said, he trained for and participated in five triathlons including a half ironman.

Upon graduation from law school, Mr. Sullivan accepted an associate position at the 13-member law firm of O'Donnell, Ramis, Elliott & Crew in Portland, in the firm's litigation department. During this time he took the bar exams for and was admitted to the state bars of Oregon and Washington.

In 1987, the Sullivans decided to move to Great Falls, Montana. Mr. Sullivan took a

associate position with former District Court Judge William Coder and Mr. Sullivan's father-in-law, Robert Emmons. Mr. Sullivan successfully passed the Montana Bar exam and was admitted to practice before the Montana Supreme Court. Ms. Sullivan, in the meantime, took a position as promotion and production director of KFBB-TV in Great Falls. During this time, they had a third daughter, Jocelyn.

Mr. Sullivan has been a partner with Gary Deschenes in the Great Falls law firm of Deschenes & Sullivan since 2003. He maintains a general trial and appellate practice with emphasis on personal injury cases, contract law, insurance law,



Photo by John Godwin

and mediation.

In 1987, Mr. Sullivan attended his first Annual Meeting of the State Bar of Montana. There he attended a meeting where the Young Lawyers Section (now New Lawyers Section) was successfully rejuvenated and at which Mr. Sullivan was elected section vice-president. In 1988, Mr. Sullivan went on to lead the Young Lawyers Section which sparked his interest in committee and leadership roles within the State Bar.

Mr. Sullivan has served on and chaired several State Bar committees including the Law-Related Education Committee and the Bar's Technology Committee. In 1994, he became a State Bar trustee representing the 8th and 9th Judicial Districts. He served in that position until he was elected secretary-treasurer of the State Bar in 2007. Subsequently, in 2009, Mr. Sullivan was elected president-elect.

Mr. Sullivan served on several community based committees including several United Way Campaigns in Cascade County. However, the greatest amount of his spare time since 1999, he said, has been spent as the head of a committee to restart Great Falls Central Catholic High School and for the next 10 years as president of the school's board.

With one daughter, a graduate of Gonzaga University in Marketing, working and living in Seattle; a second daughter, a graduate of the University of Portland, teaching third grade in El Paso, Texas; and a third daughter attending Saint Benedict's College in Saint Joseph, Minn.; the Sullivans find themselves as empty nesters for the first time. No longer being consumed by school-related events, they are able to begin to focus on some outside interests. Some of Mr. Sullivan's other interests include playing guitar, cycling and swimming (nowhere near the triathlon-era lengths in excess of 100 and 5 miles respectively a week), and following Gonzaga basketball.

The *Montana Lawyer* asked Mr. Sullivan several questions relating to his Bar presidency; his answers follow:

❷ What are your top goals for the State Bar of Montana in the following year?

"The goal this year is to get back to basics. We, as the Bar, need to serve our fellow members. We each need to assist our fellow members to practice law to the best of their ability. If we do that – scholarly, ethically, and financially – the reasons given for the creation of the Bar in the Supreme Court's Order of 1974 would be met. As a result, we will be able to best serve the public one client at a time with affordable quality access to our judicial system."

❸ The State Bar budget is getting a close examination by a Bar committee. Do you foresee any major changes in the State Bar's operations?

"I foresee continual improvement in the efficiency of the State Bar's operations. We will work to do things both better and more cost-effectively. While this may mean some changes, I do not foresee anything that would be considered a major

More **JOE SULLIVAN**, Page 18



New Bar president-elect: Shane Vannatta. Mr. Vannatta's practice focuses principally in business law with the Worden Thane law firm in Missoula. He graduated (with honors) from the University of Montana School of Law in 1993. He served as president of the Missoula New Lawyers Association, chair of the State Bar New Lawyers Section, president of the Western

Montana Bar Association and chair of its Pro Bono Program, chair of the State Bar Board of Trustees, and is chair of the State Bar's Professionalism Committee.



New chair, Bar Board of Trustees: Randall A. Snyder. Mr. Snyder obtained his BA (honors) in Speech Communication from UM in 1977, and JD from UM Law School in 1980. He spent three years in the Cascade County Attorney's Office in Great Falls, then opened his practice in Bigfork. Mr. Snyder has served on the CLE Institute and has taught real estate classes. He

has served as the Area A trustee since 2006.



New Bar trustee: Elen Donohue.

Ms. Donohue has been the deputy county attorney for Anaconda-Deer Lodge County since September, 2009. With a master's in Social Work from Temple University, she has won many awards for her volunteerism and her work in the fields of domestic violence and community health. She was a hospice social worker, facilitated a battered

women's support group, directed a federal violence prevention grant, and was executive director of Safe Space Inc., Graduating from the UM School of Law in 2007, she has been staff attorney with Montana Legal Services. She is chair of the Butte Community Health Center Board.



New Bar trustee: Leslie Halligan.

Ms. Halligan earned her JD from the UM School of Law in 1986; a BA in Political Science at UM in 1983; and was awarded a Truman Scholarship in 1981. Since 1991, she has been a Missoula deputy county attorney, and recently has been teaching Child Advocacy Law at UM. She is a member of the Women's Law Section, past-president of the Western Montana Bar Association. She received the State Bar's Pro Bono Award in 1992, and WMB's 1999 Public Service Award. She is on the Missoula Federal Credit Union board, and is involved in Big Brothers Big Sisters and Boy Scouts.

discrimination laws, and established a strong right to privacy.

Even today, the document has many admirers, including Fritz Snyder, a UM professor, director of the UM law library, and author of "The Montana State Constitution: A Reference Guide." He says the state's 1972 constitution remains among the nation's most progressive.

"[It's] widely considered to be one of the most forward-looking state constitutions in the country," says Snyder, who also opposes CC-2.

BUT NOT EVERYONE SHARES Snyder's admiration. Critics call the constitution flawed, specifically because it's full of vague and ambiguous language that invites confusion and, in turn, litigation. CC-2's proponents maintain citizens would be best served by a more clearly worded guiding document.

"It's a question of having language that everybody understands," says state Sen. Joe Balyeat, R-Bozeman, who supports CC-2. Balyeat maintains several existing constitutional provisions provide evidence of ambiguous language. Perhaps the most prominent example, he says, comes in the same section others laud – the right to a clean and healthful environment.

"I don't necessarily see anything wrong with having environmental protections," Balyeat says. "What we are saying is that the rights are written in such a way that they invite everything going to court, where the judge decides."

Balyeat contends that citizens and their elected representatives are better equipped to make those decisions, and too much judicial discretion results in legal uncertainty. It also discourages companies from setting up shop in Montana, and hurts the economy.

"It's like putting up a 'unwelcome mat' for business," he says.

Yet scholars like Snyder say if voters approve a constitutional rewrite, Montanans risk the loss of significant protections. He also worries about the expense of holding another convention. Based on 1972 rewrite costs, Snyder estimates crafting a new constitution today would cost taxpayers more than \$3.3 million.

"You can't just have a bunch of folks show up and spout ideas," he says, adding that any rewrite would be subject to another vote.

AS THE DEBATE continued to play out before the November election, the *Montana Law Review* dedicated its annual Honorable James R. Browning Symposium Oct. 7 and 8 to examine the existing constitution in light of contemporary issues [the September *Montana Lawyer* magazine presented the symposium's agenda].

Ellingson was asked to speak during the symposium, and as part of her preparation she pored over transcripts of the 40-year-old debates. She was more than a little amused at what she found.

"I had sort of forgotten," she says. "I really was pretty outrageously feisty." ○

JOE SULLIVAN, from Page 9

change.

"The Board of Trustees has scrutinized the budget annually for as long as I have been involved with the Bar. Two years ago, under the leadership of Chris Tweeten, I was asked to head an ad hoc committee to find ways to reduce expenses as well as increase revenues aside from increasing any dues. The Bar's staff worked hard to identify anything possible that could be cut and Executive Director Chris Manos worked hard to achieve savings. The result of that work is reflected in this last year's budget where a projected shortfall did not occur despite increased costs in necessary budget line items and a decrease in our investment revenues."

■ Some State Bar members say they have neither the time nor inclination to do pro bono or community service work. How do you reply to them?

"This may not be what some people want to hear, but I would tell these members that currently no one is forcing them to do so. However, I would prefer they saw this as a 'want to' as opposed to a 'have to.'

"Rule 6.1 of the Rules of Professional Conduct merely states that an attorney has a responsibility to perform legal services for those unable to pay. It separately states an attorney 'should' perform at least 50 hours of pro bono publico service per year. I note this separation in the language because while many assume the term 'pro bono' means 'for free' it does not. The full proper term is 'pro bono publico' and translates to 'for the public good.' Only in recent history has the term been used in a more narrow spectrum in which monetary concepts were added. True pro bono publico is any use of your talents to help the public as opposed to merely using those skills for personal gain. So we do not continue this misnomer, let's address the true nature of the beast – we are talking specifically about providing legal services to those with little or no income which is a type of service which falls under the broader term of pro bono publico.

"Further, I believe that to actually require such service, as is the case in Mississippi, is nothing short of forced volunteerism and taxation. Forced volunteerism is an oxymoron and results in unnecessary negative reactions of refusal, defiance, and rejection. As to taxation (i.e. requiring 50 hours a year for a person who normally charges \$150 per hour is requiring the attorney to give \$7,500 per year), it too would create negative reactions (two words – tea party).

"I am well aware of the arguments that the license to practice law is a privilege and with that privilege comes responsibilities. I do not disagree with that. However, I also believe you can achieve a lot more good with a positive than with a negative. To make the situation a positive, the person asked to perform the work must (1) feel comfortable doing the work asked of him or her, and (2) feel some satisfaction in performing the work.

"We need to ensure attorneys know of opportunities to provide services they feel comfortable providing. A tax lawyer

may not feel comfortable litigating a contested divorce. Yet, there are plenty of low-income elderly who need help with their taxes. On the flip side, I know very few trial attorneys who are equally skilled at tax. If we fit the opportunity to the skill we reduce the stress and increase the potential for satisfaction. I believe this reduces the resistance to help in that given area of need.

"Another approach is to provide Continuing Legal Education classes on the subject areas where low-income legal needs are the greatest. Also, like with the Cascade County Law Clinic, programs need to optimize the use of a volunteer attorney's time and assist in preparation of the client's needs. This in turn relieves a great deal of the stress, both in terms of time and work, and results in a high level of satisfaction. This too increases the willingness of attorneys to assist.

"There are two undeniable truths: (1) the need for legal services for those with little or no income is staggering, and (2) we, as attorneys, are the only individuals qualified to help service this need. While I believe the responsibility to meet this need belongs to everyone, not just attorneys, the reality is we are the front line. So while the attorneys reluctant to perform work for those with low or little income are not required to do so, I would implore them to give of their time while trying to provide them methods which decrease the burden caused and, hopefully, creating the greatest possible satisfaction. Not everyone will agree to provide services, but potentially more will."

❖ **What is the most important lesson you have learned as a lawyer that they didn't teach you in law school?**

"To really listen.

"I best serve my clients when I listen to what they are really saying. I cannot use cookie-cutter methods of dealing with cases. I must address each case knowing I need to customize my work to their needs, within their budget, and to achieve the best goal for them.

"I do best in court when I listen to the question a judge or justice poses. If they have read the briefs, they know my arguments. I need not regurgitate those points. I need to hear where the court's interests and concerns lie in order to address those issues and best serve my client and the court.

"As a mediator, I need to listen to both sides and hear where the problem lies. Sometimes this is beyond the mere facts and law. Often there is an emotional aspect that overrides the case and is the barrier to resolution. By really listening to the parties a solution often presents itself.

"As a husband and a father, I need to listen to the needs of my family. There is a balance that is needed. While we may think that endless hours and making lots of money will allow us to give our families everything they need, that may not be what they are asking of us. I know for myself that while my dad was on the road a lot, I could guarantee if I searched the stands at a football game, a basketball game, or a track meet I could find my dad watching. That meant more to me than anything he could provide monetarily. I do not remember actually telling him I wanted him to come, but he was able to listen to my needs anyway.

❖ **What motivated you to become involved in State Bar leadership? What would be your pitch to get more members involved?**

"I moved to Montana in 1987. One of the first things I noticed was the great network that existed between the graduates of the University of Montana's School of Law. I saw the Young Lawyers Section (now New Lawyers Section) of the State Bar as a great way to make the same type of connections (and indirectly tap into the existing UM network). Working in the Young Lawyers Section exposed me to the work of the State Bar's Board of Trustees and the Bar committees. I saw the value of work these people were doing and felt compelled to participate.

"The more involved I became the better I understood that collectively we could accomplish so much more than we could individually. This especially holds true with the most difficult of problems. Being from Great Falls, I have lost far too many friends and fellow attorneys to suicide. One struggles asking what can I do? Even the Cascade County Bar has found it difficult to get any traction on the problem. However, realizing this was not just a Great Falls issue and working collectively and statewide we, as a Bar, have begun to chip away at the problem through education, counseling, and emphasis on reducing the pressures in our practices that may lead to these problems.

"The opportunity to work on solving a multitude of issues in our practice has kept me involved and instilled in me the desire to take on greater leadership roles over time. I believe that letting others know the positive and fulfilling experience I have had in my different leadership roles in the Bar will encourage them to consider doing the same. I know it is a cliché, but I have gotten much more out of this experience than I have put into it. I can say from experience, it is well worth the effort."

❖ **What have you enjoyed the most during your years working with the State Bar?**

"The people. I have been able to travel around the state and meet attorneys from Glendive to Libby. I have been astounded by the diversity of backgrounds of individuals both prior to becoming attorneys and as to their areas of practice once they became attorneys. I am in awe of our members' wealth of expertise in varied areas of law. Also, I am pleasantly surprised by the unique choices of lifestyles that would be hard to achieve in areas others than Montana. We are an eclectic bunch, to say the least.

"While my practice is diverse and enables me to travel across the state, I never would have met as many members of our Bar without participating in Bar leadership roles. This Bar is made up of a lot of good people who take what they do for their clients seriously, and see the rule of law not merely as a theory but as something that needs to be applied and protected on a daily basis. I am extremely proud to be a member of this Bar and am humbled in being allowed to serve each member as president for the next year." ○