

CONSIDERATION OF SENATE BILL 315:

TRANSFERRING PUBLICATION OF THE MCA AND  
THE OFFICE OF CODE COMMISSIONER TO THE  
DEPARTMENT OF ADMINISTRATION.

Senator Turnage, District 13, introduced the bill as its sponsor. He stated that the purpose of the bill is not to express any personal animosity on his part toward the Code Commissioner -- but just to see that two tasks are not performed by one person, those being Code Commissioner and Director of the Legislative Council. He said that the real problem is one of separation of powers. The legislature is publishing the Code through the Legislative Council, which is being administered by the Director as Code Commissioner. He feels that this should be an executive function under the auspices of the State Department of Administration. He presented two fact sheets (marked Exhibits C and D, attached to these minutes), and said that the figures on the two sheets did not reconcile, and that neither of them reconciled with the fiscal note which accompanied the bill.

Senator Turnage stated that the cost of two billion dollars per biennium for subsidizing the publication of the law books should not be continued without some system of checks being established. He presented letters supporting the concept of the bill (marked Exhibits E through K, attached to these minutes), and a letter from the Code Commissioner stating that they were out of Code books (marked Exhibit L and attached to these minutes). He presented a list of people working on the Codes (marked Exhibit M and attached to these minutes), and said that probably even more would be joining the staff in the future.

Bob Corette, President of the State Bar of Montana, gave the committee some of the history of the publishing of law books in Montana, and stated that the Codes should be put into an agency which could contract to get it done.

Paul Keller, Helena attorney spoke in support of the bill, and said that he felt a private contractor should be doing the printing job.

Michael Hughes, representing the State Bar of Montana, stated that the lag between the legislative session and the production of the updated books results in lawyers practicing "in the dark".

Also speaking in support of the bill were Walter Murfitt; and Mike McCabe, speaking as President of the State Bar Association, who said that there is an added cost of retrials, which has to be born by the counties, because of the delay in

access to current law.

Diana Dowling, speaking at the invitation of Chairman Anderson, gave the committee some of the credentials from her background and explained the process of getting a bill which has been passed incorporated into the Codes. She feels Montana Codes are superior to its former law books. She then gave a rundown on the problems and scheduling involved in getting the Codes out on time.

Rep. Bob Marks, District 80, member of the Legislative Council during the entire time it worked on recodification, said that he feels the new Codes are much easier for the lay person to use. He feels there would be problems, such as greater expense, if the Codes were moved to the Department of Administration. He said that there is a problem in the area of printing the Codes, but suggested that an interim study might be a better approach than this bill.

Sheri Sprigg, Helena attorney, said that she feels the real issue is whether or not the Department of Administration can do a better job than the Legislative Council is doing. She does not feel that this would be the case. As a trustee of the State Bar, she did not feel that it was the job of the State Bar lobbyists to decide what the best solution to the problem would be. She opposed passage of the bill.

In closing, Senator Turnage stated that the problem lies in having both the Code Commissioner and the Legislative Council Director in the same branch of government.

Senator Anderson asked why \$267,000 had reverted back to the state rather than being used to get the annotations out earlier. Mrs. Dowling pointed out that the money had been budgeted for computer staffing; and because it ended up taking the lawyers so much longer than had been anticipated, the necessity for such additional staff had never materialized. Also, because of lack of room and time to train new lawyers, the decision had been made not to add legal staff.

Senator Mazurek stated that if there is an obligation to trim costs, the legislature should do so themselves rather than turn it over to the executive branch.

Senator S. Brown pointed out that transferring the printing to a private firm will result in much higher costs to each purchaser of the Codes, especially if the legislature stops subsidizing the printing.

Diana Dowling pointed out that although the legislature has been subsidizing the Codes' publication cost, because of the huge initial outlay for getting the job done, this would not

be the case in the future. As the staff dwindled to the few who would be required to maintain the Codes, the cost would drop to a level which could be borne by the purchasers.

Senator Mazurek suggested that there could be a duplication of effort if the printing was transferred to the Department of Administration. Mrs. Dowling said that the data base of the Department of Administration would not be the same as the Legislative Council's data base, and this could be a problem.

Senator Anderson said that perhaps the best solution would be for the State Administration to sit down with the Legislative Council and frame a cost and time estimate for such a move.

CONSIDERATION OF SENATE JOINT RESOLUTION 9:

DIRECTING THE ESTABLISHMENT OF A COMMITTEE  
TO DIRECT THE TRANSITION OF THE CODE  
COMMISSIONER TO THE DEPT. OF ADMINISTRATION.

Senator Turnage submitted the bill for the committee's consideration, without explanatory remarks of any sort.

CONSIDERATION OF SENATE BILL 277:

AMENDING 46-18-203 TO PREVENT JUSTICES  
OF THE PEACE FROM PLACING OFFENDERS ON  
PROBATION.

Senator Van Valkenburg introduced the bill at the request of the Department of Institutions. The intent of the bill is to get probation and parole officers from having to accept referrals from justices of the peace and police judges. However, he said that the bill was so poorly written that it seemed likely to cause more problems than it would solve.

Nick Rotering, legal counsel for the Department of Institutions, presented a fact sheet and written amendments (marked Exhibits N and O, and attached to these minutes).

Mike McCabe spoke in opposition to the bill on behalf of the Montana Magistrates Association. He said that he feels it would have the effect of limiting the judge or justice of the peace in dealing with the people who are sentenced in their courts.

CONSIDERATION OF SENATE BILL 329:

LIMITING GOVERNMENTAL LIABILITY FOR  
DAMAGES TO ACTS ARISING OUT OF A  
GOVERNMENTAL FUNCTION.

Senator Van Valkenburg introduced the bill as an attempt to

bring to the legislature's attention a problem with the constitutionality of the present law regarding the limitation of liability for proprietary functions. He said that if local governments are relying on the constitutionality of this portion of the law, and are insured accordingly, they could find themselves in financial trouble.

Mike Meloy, representing the Montana Trial Lawyers Association, spoke in support of the bill. He made reference to the case of Mackin vs. State of Montana, in which the Supreme Court avoided addressing the constitutionality of the law. He felt that their opinion did give fair warning of what is apt to happen under the law as it exists. He feels that the term "governmental immunity" permits the legislature to impose limitations on liability for governmental functions, but not proprietary functions.

Mike Young, of the Department of Administration, said that the Mackin case did not answer any of the questions on this subject. He said that if the idea is to delete the non-economic limitations to proprietary functions, then a two-thirds majority in each house will be required to determine this.

Arnold Kuenning, on behalf of Public Risk Insurance Management, passed out a prepared statement (marked Exhibit P and attached to these minutes) in opposition to the bill.



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Senator Anderson  
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/14/81

NAME	PRESENT	ABSENT	EXCUSED
<del>Anderson, Mike, Chr. (R)</del>	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Burt Annin DATE: 2-16-81

ADDRESS: P.O. Box 4210

PHONE: 449-5622

REPRESENTING WHOM? SRS

APPEARING ON WHICH PROPOSAL: SB 253

DO YOU: SUPPORT? X AMEND? X OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

23

Lab Pinettes

Griffiths

723 3205

State Bank of Montana

SR 3151 SSR 9



\_\_\_\_\_

29





NAME: MICHAEL J. HUGHES DATE: 2/16

ADDRESS: 406 FULLER, HELENA, MT

PHONE: 442-3690

REPRESENTING WHOM? State Bar of Montana

APPEARING ON WHICH PROPOSAL: 56.315

DO YOU: SUPPORT? ✓ AMEND?            OPPOSE?           

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: WALTER S. MURFIT DATE: 2-15-51

ADDRESS: 24 W. 6<sup>th</sup> Ave - Box 1144 - Helena

PHONE: 702-7452

REPRESENTING WHOM? Self - Montana Bar Assoc

APPEARING ON WHICH PROPOSAL: SJ-9- SB 315

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: The most recent enactment of  
the Legislature must be on the  
hands of those affected thereby  
by the effective date of July 1 -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Alan Kolerian

DATE: 2-10-57

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John S. Smith DATE: 7/10/61

ADDRESS: 455 N. Lincoln - HONOLULU, HI 96813

PHONE: 4-5751

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL: 58 1-1-57

DO YOU:      SUPPORT?                      AMEND?                      OPPOSE?

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

.....

\_\_\_\_\_

1

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME :

Norma Vestre

DATE: 2-16-81

ADDRESS :

P.O. Box 4210

PHONE :

449 - 3865

REPRESENTING WHOM?

SRS

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?



OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU :

SUPPORT?

AMEND?

OPPOSE?

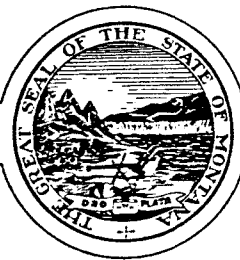
COMMENT 3:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

Exhibit A



TED SCHWINDEN, GOVERNOR

P.O. BOX 4210

STATE OF MONTANA

HE ENA, MONTANA 59604

Amendments proposed by the department of social and rehabilitation services before the Senate Judiciary Committee on February 16, 1981 in its consideration of SB253.

Page 10, line 21:

(c) limited-legal-custody termination of the parent-child legal relationship;

REDESIGNATE PARAGRAPHS (d), (e), and (f) as currently cocified

ADD:

Section 4.

41-3-302. Responsibility of providing protective services. (1)  
The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary, ~~limited~~, or permanent custody of a child when order to do so by the court, including the right to give consent to adoption.

Exhibit 1

# DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES



TED SCHWINDEN, GOVERNOR

P.O. BOX 4210

## STATE OF MONTANA

HELENA, MONTANA 59604

By law the department of social and rehabilitation services and the county welfare departments have primary responsibility to provide the protective services authorized by chapter 3 of title 41 of the M.C.A. The department requests certain amendments to that chapter in order to more fully meet that responsibility. We additionally ask for clarification of the duties and responsibilities enumerated in section 53-2-201.

At line 25 of page one and continuing on page two language has been substituted to be consistent with currently provided services and administered programs.

At line 12 on page 4 the definition of "exploitation for sexual purposes" is clarified by reference to the criminal code definition found at 45-5-625, MCA.

At line 22 on page 4 the definition of "abandons" is changed by substituting language containing those conditions which "make reasonable the belief that the parent does not intend to resume care of the child" as the law now reads. Surrendering custody of a child for six months without an intention to resume care of or to make legal arrangements for the care of the child is when the belief that the child is abandoned is "reasonable" under the proposed amendment. Or, when no parent can be located and efforts to locate the parents have been unsuccessful for ninety days the belief that a child is abandoned becomes "reasonable".

The definitions added at lines 9 and 14 on page 6 are "housekeeping" definitions. The changes suggested in the reporting requirement at line 12 on page 7 simply adds terminology currently used regarding "child care facilities".

On page 10 at line 21 the department asks that the reference to limited legal custody be omitted. Custody is appropriately limited when custody is granted to the department on a temporary order. Any limited custody is temporary custody and the reference is not needed. With the sponsor's permission the department would add an amendment as follows: (c) termination of the parent-child legal relationship; Petitions asking for permanent custody of youths in need of care ask for termination of the parental rights. A statutory reference will simply sanction that form of relief.

Another amendment the department requests with the sponsor's permission is one necessary for consistency with the removal of the reference to limited legal custody. Section 41-3-302 grants the department authority to take temporary, limited or permanent custody of a child. We would omit the reference to "limited" in that section.



JOHN D. LaFAVER  
LEGISLATIVE FISCAL ANALYST

STATE OF MONTANA

Office of the Legislative Fiscal Analyst

Room 105  
STATE CAPITOL  
HELENA, MONTANA 59601  
406/449-2986

*Exhibit C*

February 2, 1981

Senator Jean Turnage, President  
Montana State Senate  
State Capitol Station  
Helena, MT 59620

Dear Senator Turnage:

In response to your request, we addressed three activities in assessing all code-related costs of the Montana Codes, as performed by the legislative council. These include:

1. legal services;
2. legislative services, which provides data-processing services; and
3. printing and distribution of the codes and code annotations.

Each of these areas will be discussed separately with code-related costs estimated for each. Costs of these three programs are aggregated below.

TABLE I  
Consolidation of the Estimated Code-Related Costs  
(1980-1983)

	Actual 1980	Approp. 1981	---Requested---		
			1982	1983	TOTAL
Personal Services	\$ 378,507	\$396,088	\$ 547,653	\$455,866	\$1,788,114
Operating	1,022,508	299,889	649,014	357,693	2,329,104
Capital	13,604	2,000	25,000	15,000	55,604
TOTAL	\$1,414,619	\$697,977	\$1,221,667	\$838,559	\$4,172,822

1. Legal Services

The legal services staff includes a director, seven attorneys, a legal researcher, two code indexers, and a secretary. Staff commitment to code-related responsibilities in fiscal 1980 and 1981, estimated with the assistance of the legislative council is shown in Table II.

(29)

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TABLE II  
Distribution of Code-Related Responsibilities  
Among Legal Staff

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	Non-Session Year %	Session Year %
Administrator	80	40
Secretary	30	20
Attorneys (6)	85	47
Attorney (1)	30	0
Legal Researcher	85	47
Indexers	100	100
Total percent of personal services expenses paid:	82	39.8

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The second year is significantly different due to other session-related responsibilities such as bill drafting. However, there is a concentrated staff effort immediately after session to codify new laws as well as integrate changes made to existing sections of the codes.

The administrator felt the present distribution of staff time between a session year and a nonsession year would be similar for the 1983 biennium because: remaining titles to be included in the annotations, as well as any new titles, would be completed in December, 1982; and session-related responsibilities would remain essentially the same, with codification of new laws immediately following.

The legal services staff also includes two full-time indexers. These indexers are responsible for compiling the automated "Daily Bill Index" during session, which is finalized into the "Combined Final Status" and Journal Index at the end of the session. The former listing provides the basis for automating the Legislative Review, which indexes all bills passed into law. This document becomes the basis for the index to the Montana Session Laws which is later integrated into the master code index.

Session-related responsibilities are an integral part of compiling the revised code index after each session. These responsibilities, in a sense, form the "building blocks" for compiling the new index. Therefore, it is difficult to define any specific activity as specifically unrelated to code responsibilities.

The administrator indicated that the annotations would be completed in December, 1983. However, she does not feel that the staff could be reduced as they would be used for the following functions in the 1985 biennium:

1. updating annotations (estimates 3.0 FTE will be needed),
2. adding new titles to annotations,
3. providing legal staff support to interim committees.

Therefore, the council was unable to provide an estimate regarding how much of the projected personal services and operating expenses could be factored out if code-related responsibilities were reduced or eliminated.

Table III shows the expenses related to the code this biennium and the upcoming biennium.

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TABLE III  
Legal Services  
Estimated Code-Related Expenses

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	Actual 1980	Approp. 1981	---Requested--- 1982	1983
Personal Services	\$160,832	\$95,259	\$239,502	\$128,196
Operating Expenses*	6,313	5,186	13,058	8,937
TOTAL	\$167,145	\$100,445	\$255,560	\$137,133

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\* A proportionate share of operating expenses was allocated based on the percentage of staff time shown in personal services. This includes 30 percent of the communication expenses actually charged to the management division in 1980. This expense was inflated for the following three years, using LFA inflation factors.

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## 2. Legislative Services

The legislative services division provides support services to the ALTER system. This automated information system allows the council to input all bills during session, update as necessary, and subsequently integrate all new statutes into a code file. This code file automatically prints the codes into camera-ready copy.

Session laws and session journals are also printed from this system and finally, the Montana Codes. Bills input onto the system and subsequently passed into law act as a "building block" to the new set of Montana Codes. Therefore, we could assume that all session-related work on the ALTER system is directly code-related. Such activity entails about eight to nine months of staff time during the session.

During nonsession periods, the division has been involved in automating annotation data, and proofing minutes of the Constitutional Convention. Time expended on constitutional convention activities are not factored out of Table IV.

During a nonsession year, expenses in this function would be limited to maintenance costs of software packages if no code-related responsibilities were assigned.

TABLE IV  
Legislative Services  
Estimated Code-Related Expenses

	Actual 1980	Approp. 1981	---Requested--- 1982	1983
Personal Services	\$210,519	\$290,726 <sup>a</sup>	\$308,151	\$337,670 <sup>a</sup>
Operating Expenses	401,516	269,703 <sup>b</sup>	317,756	306,756 <sup>b</sup>
Capital	<u>13,604</u>	<u>2,000</u>	<u>25,000</u>	<u>15,000</u>
TOTAL	\$625,639	\$562,429	\$650,907	\$659,426

<sup>a</sup>Nonsession personal services only.

<sup>b</sup>Session-related portion (estimated at 30%) is not included.

#### Printing and Distribution

Printing and distribution of the annotations is reported as a separate budget. Table V shows operating expenses significantly higher in 1980 since the total amount appropriated for printing the annotations in addition to printing of the codes was accrued. Thirty-four titles will be printed and distributed in 1981. The remaining seventeen titles are expected to be printed in fiscal 1982. Reprinting of the codes and replacement pages for the annotations is requested in 1983.

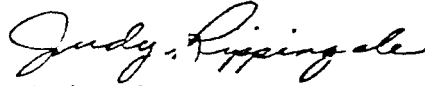
Personal services are eliminated in 1982 and 1983 as duties of a code clerk, budgeted in 1980 and 1981, have been distributed to other staff for the coming biennium.

TABLE V  
Printing and Distribution  
Estimated Code-Related Expenses

	Actual 1980	Approp. 1981	---Requested--- 1982	1983
Personal Services	\$ 7,156	\$10,103		
Operating Expenses	<u>614,679</u>	<u>25,000</u>	<u>318,200</u>	<u>42,000</u>
TOTAL	\$621,835	\$35,103	\$318,200	\$42,000

It is not possible to state precisely the costs of producing the Montana Codes Annotated since many of the functions performed during session are interrelated to the code work. Should you have any questions about the assumptions, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Judy Rippingale".

Judy Rippingale  
Acting Legislative Fiscal Analyst

BB:ve:ff

HOUSE MEMBERS

REX MANUEL  
ROBERT L. MARKS  
JOHN VINCENT

SENATE MEMBERS  
PAT M. GOODOVER  
CHAIRMAN  
CHET BLALOCK  
CARROLL GRAHAM  
FRANK H. ZELBAKER



## Montana Legislative Council

State Capitol  
Helena, 59601

(406) 449-3064

*Exhibit*  
DIANA S. DOWLING  
EXECUTIVE DIRECTOR  
CODE COMMISSIONER

ELEANOR ECK  
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY  
DIRECTOR, LEGISLATIVE SERVICES

ROBERT PERSON  
DIRECTOR, RESEARCH

SHAROLE CONNELLY  
DIRECTOR, ACCOUNTING DIVISION

January 19, 1981

TO: Senator Jean Turnage

FROM: Sharole Connelly, Director of Accounting *Sharole*

Attached is a copy of our budget request for fiscal years 1982 and 1983 for printing, binding, and distribution of the Montana Code Annotated and Annotations. All of the costs listed will be reimbursed to the state of Montana when the volumes are sold. The money is deposited into a revolving fund.

The funds to pay for the listed costs have already been collected by our office from the sale of the 1979 MCA.

Also attached is an estimated direct cost to the Council of General Fund money for Personal Services and Operating Expenses involved to produce the MCA and complete the Annotations. The figures are based on present salaries. Of course, these salaries will increase during the 1982-83 biennium.

This memo does not account for rent, storage space, labor for packing, mailing, invoicing, collecting, because those duties are absorbed by Management staff.

	<u>1982</u>	<u>1983</u>
Revolving Fund:	\$318,200	\$ 42,000
General Fund:	<u>420,557</u>	<u>215,187</u>
	\$738,757	\$257,187

SC:ee  
Enc.



ESTIMATED COSTS TO LEGISLATIVE COUNCIL  
TO PRODUCE MCA AND ANNOTATIONS

General Fund

	<u>FY 1982</u>	<u>FY 1983</u>
<u>Personal Services</u>		
Salaries:		
4 Attorneys	\$ 67,800	\$ 33,900
1 Indexer	16,000	8,000
1 Indexer	17,500	8,750
1 Code Clerk	8,320	8,320
4 Terminal Operators	42,500	21,250
3 Editing Aides	34,000	17,000
4 Proofers	41,020	20,510
Total Salaries	227,140	117,730
Benefits - 18%	40,885	21,191
Total Personal Services	<u>\$268,025</u>	<u>\$138,921</u>
<u>Operating Expense</u>		
Contracted Services:		
Data Processing	123,429	61,714
ALTER Information Systems Contract	24,000	12,000
Equipment Rental	5,103	2,552
Total Operating Expense	<u>152,532</u>	<u>76,266</u>
TOTAL ESTIMATE	<u>\$420,557</u>	<u>\$215,187</u>

MONTANA LEGISLATIVE COUNCIL  
1982-83 BUDGET

REVOLVING FUND

MONTANA CODE ANNOTATED

	<u>Request FY 1982</u>	<u>Request FY 1983</u>
<u>PERSONAL SERVICES</u>		
Salary & Benefits	\$ -0-	\$ -0-
(none-see management)		
<u>OPERATING EXPENSES</u>		
<u>Contracted Services:</u>		
<u>MCA</u>		
Print & Bind - 10,000 pp. @ \$18/p.	180,000	
Data Retrieval - 10,000 pp. @ \$7/p.	70,000	
Extra Titles	25,000	25,000
Microfiche	8,000	
Legislative Review	7,000	
<u>Annotations</u>		
Print & Bind updates		10,000
Total Contracted Services	290,000	35,000
<u>Supplies &amp; Materials:</u>		
Boxes (MCA)	2,000	
Misc. (Invoices, etc.)	5,000	2,000
Mailing Envelopes (Annotations)	1,200	
Total Supplies & Materials	8,200	2,000
<u>Communications:</u>		
Postage		
MCA 15,000 - Annotations 5,000	20,000	5,000
TOTAL OPERATING EXPENSES	\$318,200	\$ 42,000
GRAND TOTAL - MCA	\$318,200	\$ 42,000



# STATE BAR OF MONTANA

2030 ELEVENTH AVENUE • WASHINGTON PLAZA  
P. O. BOX 4669 • HELENA, MONTANA 59601 • (406) 442-7660

*Exhibit E*

EXECUTIVE DIRECTOR  
Kent M. Parcell

February 2, 1981

## OFFICERS

### President

\*Robert D. Corette  
P. O. Box 509  
Butte, Montana 59701

### President-Elect

Alexander A. George  
510 Glacier Bldg  
Missoula, Montana 59801

### Secretary-Treasurer

\*Lawrence D. Huss  
P. O. Box 514  
Helena, Montana 59601

### Immediate Past President

L. Morris Ormseth (Deceased)  
P. O. Box 2269  
Great Falls, Montana 59403

### Chairman of the Board

\*C. S. McCracken  
P. O. Box 1645  
Great Falls, Montana 59403

## TRUSTEES

### Area A

Leonard Lee Kaufman  
P. O. Box 899  
Kalispell, Montana 59901  
R.H. "Ty" Robinson  
P. O. Box 7909  
Missoula, Montana 59807  
Douglas J. Wold  
P. O. Box 1172  
Polson, Montana 59860

### Area B

Max A. Hansen  
P. O. Box 345  
Dillon, Montana 59725  
\*Robert E. Sullivan  
40 E. Broadway  
Butte, Montana 59701

### Area C

\*Charles R. Johnson  
414 Davidson Building  
Great Falls, Montana 59401  
\*C. S. McCracken  
P. O. Box 1645  
Great Falls, Montana 59403

### Area D

John A. Warner  
P. O. Box 152  
Havre, Montana 59501

### Area E

Gregory D. Morgan  
P. O. Box 550  
Bozeman, Montana 59715  
\*Gary L. Spaeth  
Department of Natural Resources  
32 South Ewing  
Helena, Montana 59601  
Sheri K. Spragg  
State Capitol Room 225  
Helena, Montana 59601

### Area F

Torger S. Caas  
507 Montana Building  
Lewistown, Montana 59457

### Area G

Richard F. Cebul  
404 N. 31st Street  
Billings, Montana 59101  
C. David Gorton  
236 Avenue E.  
Billings, Montana 59101  
\*Christopher J. Nelson  
P. O. Box 1914  
Billings, Montana 59103

### Area H

George W. Huss  
507 Pleasant Street  
Miles City, Montana 59301

### ABA DELEGATE

Robert Carantzas  
P. O. Box 2269  
Great Falls, Montana 59403

### \*Executive Committee

Honorable Jean A. Turnage  
State Senator - Lake County  
State Capitol Building  
Helena, Montana 59620

Dear Senator Turnage:

As President of the State Bar of Montana, I want to express to you, on behalf of the State Bar, that we are heartily in favor of SENATE BILL 315.

Our Board of Trustees passed a Resolution which we have forwarded to you, covering the same subject matter. The State Bar is dissatisfied with the way the Montana Codes are being handled, and feels that your bill is the proper procedure for future handling of the Montana Codes.

Will you please present this letter to the Committee and advise that we are heartily in favor of SENATE BILL 315.

Sincerely,

  
ROBERT D. CORETTE, President  
STATE BAR OF MONTANA

cc: Mr. Kent Parcell

*Exhibit F*

LAW OFFICES OF  
MURRAY, KAUFMAN, VIDAL & GORDON, P.C.  
240 FIRST AVENUE WEST  
P. O. BOX 899  
KAUSPELL, MONTANA 59901

TELEPHONE  
406 - 755-5700

MARS: ALL MURRAY  
LEON: RD L. KAUFMAN  
JAME: E. VIDAL  
JOHN: R. GORDON  
JAME: M. RAMLOW

February 4, 1981

Senator Jean Turnage  
Capitol Building  
Helena, Montana 59620

Re: Montana Codes Annotated

Dear Jean:

The undersigned, individually and as one of the Trustees of the Montana Bar Association from Area A, is fully in favor of the resolution regarding the Montana Codes Annotated.

It borders on ludicrous that lawyers in this state are asked to advise clients on legal matters when laws become enacted and effective before we have a chance to review same without moving heaven and earth, and second, the new codification is taking years to annotate.

It is my understanding that Senate Bill 315 addresses this problem. As a lawyer consider this letter as my indication of support for same.

Yours truly,

MURRAY, KAUFMAN, VIDAL & GORDON, P.C.

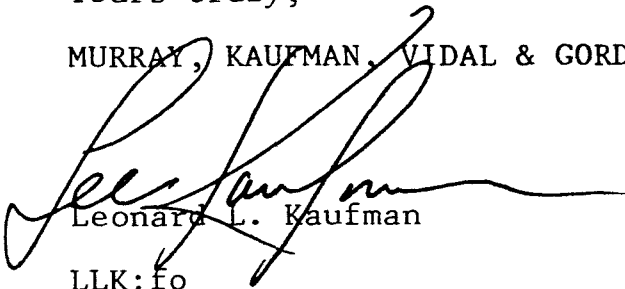
  
Leonard L. Kaufman  
LLK:fo

Exhibit 6

McCAFFERY AND PETERSON, P.C.

ATTORNEYS AT LAW  
27 WEST BROADWAY STREET  
BUTTE, MONTANA 59701

JOHN L. PETERSON

AREA CODE 406  
TELEPHONE 792-1221

February 10, 1981

Sen. Jean Turnage  
Montana State Senate  
State Capitol Station  
Helena, MT 59601

In re: Senate Bill 315

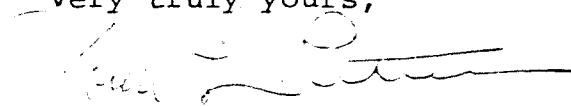
Dear Senator Turnage:

I have had the opportunity to examine S.B. 315 as sponsored by you to change the publication and sale of the Montana Code from the Legislative Council to the Director of Administration under the supervision of the Montana Supreme Court.

I highly endorse such move. The practicing attorney in Montana has been placed in precarious legal position because of delay in the publication of the Code under the present legal set up. Not only that, the Annotation provisions have been woefully inadequate and late.

We had experienced good relations with Allen Smith Company before the 1975 change over. I would advocate that any law which would seek a return to the pre-1975 situation is better than what we are undergoing at this time. I heartily endorse your legislation.

Very truly yours,

  
John L. Peterson

JLP/jk

59

*Exhibit A*

BRUCE M. BROWN  
DEWEY M. HUSS  
GEORGE W. HUSS

LAW OFFICES  
BROWN AND HUSS  
507 PLEASANT STREET  
MILES CITY, MONTANA 59301

TELEPHONE 232-3054

February 6, 1981

Honorable Jean Turnage  
State Senate  
Capitol Building  
Helena, Montana 59601

RE: Senate Bill 315 and Senate  
Joint Resolution No. 9

Dear Senator Turnage:

I am the representative for Area H (the Sixteenth and Seventh Judicial Districts) to the Board of Trustees of the State Bar of Montana.

This letter is to inform you that as a trustee, as a representative of the lawyers in the two Judicial Districts and as a practicing attorney, I fully support your Senate Bill 315 and Joint Resolution No. 9 concerning responsibility for the preparation of the Montana Code Annotated and I urge their passage.

As you are well aware as a fellow practicing attorney, we have experienced numerous problems with the availability of the Code, its lack of timely publication, its lack of timely annotations and its often inadequate and confusing index. Since a timely and accurate code is essential to the proper legal representation of Montana citizens, it is imperative that everything possible be done to facilitate and expedite this end.

Yours sincerely,

BROWN and HUSS

By *George W. Huss*  
George W. Huss

GWH/jn  
enclosure

LAW OFFICES OF  
**CHURCH,  
HARRIS,  
JOHNSON &  
WILLIAMS**

I. W. MURCH (1884-1972)  
G. G. HARRIS (1883-1973)  
BJAR JOHNSON  
CART WILLIAMS  
WM REID  
DALE ORBES  
CREW S. MCCracken  
CHAS C. LOVELL  
DOUGLAS C. ALLEN  
MILT O. WORDAL  
RICH F. GALLAGHER  
DON LABAR  
ROBT P. GOFF  
R. K. TH STRONG  
W. B. RNE JOHNSON  
MICHAEL B. ANDERSON  
GREGORY R. SCHWANDT  
KENNETH T. JARVI

*Exhibit 1*

P.O. BOX 1645 • GREAT FALLS, MONTANA 59403 • THIRD FLOOR NORTHWESTERN BANK BUILDING • PHONE (406) 761-3000

February 4, 1981

The Hon. Jean Turnage  
Montana State Senate  
State Capitol Station  
Helena, MT 59601

Dear Senator:

As a trustee and present chairman of the board of the State Bar I seem to have been exposed more than ordinarily to the vicissitudes surrounding the Montana Code Annotated. In summary, what I have learned is that the Code project and the legislative support duties conflict in the office of legislative council. This seems to be a detriment to both functions.

The lawyers of Montana cannot serve the public without adequate and timely compilations of the Codes. Delay to the extent we have known in the past is intolerable. The problem with short supply is unfortunate and would seem to be something that forethought could avoid. I understand that there is a problem at this time with finding available sets of the Code for the use of newly admitted lawyers.

No lawyer should be expected to try to practice without an up to date, well compiled, carefully indexed Code at his fingertips.

Please express my views to the Committee.

Yours very truly,

  
CRESAP S. MCCracken

CSM  
rcm

*Exhibit*

GREGORY O. MORGAN  
ATTORNEY AND COUNSELOR AT LAW  
612 WEST BEALL, SUITE NO. 3  
BOZEMAN, MONTANA 59715  
TELEPHONE 406 586-0576

February 11, 1981

Senator Jean Turnage  
Montana Senate  
State Capitol  
Helena, Montana 59601

Re: Senate Bill 315

Dear Senator Turnage:

As a member of the Board of Directors of the State Bar of Montana I would like to express my opposition to Senate Bill 315. You should be aware that there are some members of the bar who have a personal antagonism with the Montana Legislative Council and the Code Commissioner. To be sure, those Board members having this feeling voted for the resolution of the Board of Directors demanding quality service and the creation of another state agency with the idea of doing harm.

There are others of us who voted for the resolution in the hopes that it would be constructive. That it would provide the Code Commissioner, the Legislative Council and the Legislature with the impetus to provide sufficient resources to allow for a badly needed expeditious completion of the Montana Code Annotated.

I do not know whether the Supreme Court solicited the opportunity to oversee the Code but my guess is that they have enough on their hands, even with the expanded court.

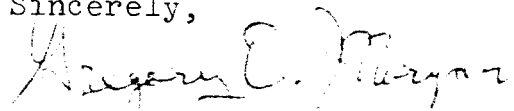
I have read the document from the Code Commissioner justifying the retention of the Code Commission within the legislative Council and concur with it completely. I would urge



Senator Jean Turnage  
February 11, 1981  
Page 2

you to provide the necessary resources for adequate publication and the completion of the task at hand. Based upon the recommendations of the Code Commissioners, I therefore, oppose Senate Bill 315.

Sincerely,



Gregory O. Morgan

GOM/bjm

cc: Diana S. Dowling  
Board of Trustees, State Bar of Montana

# STATE BAR OF MONTANA

2030 ELEVENTH AVENUE • WASHINGTON PLAZA  
P. O. BOX 4669 • HELENA, MONTANA 59601 • (406) 442-7660

Exhibit A  
K

EXECUTIVE DIRECTOR  
Kent M. Parcell

January 12, 1981

## MEMORANDUM

TO: Hon. Jean A. Turnage, Montana State Senate  
FROM: Kent M. Parcell, Executive Director  
SUBJECT: Board of Trustees Resolution RE: Montana Codes Annotated

The following is a resolution passed by the Board of Trustees of the State Bar of Montana at its regularly quarterly meeting on Friday, December 12, 1980.

It was moved and seconded to demand quality service in the publishing and the availability of Montana Codes Annotated, and urge if necessary a creation of another State Agency to prepare Montana Codes Annotated. Motion Passed.

I Kent Parcell, Executive Director of the State Bar of Montana, do certify that the above is the exact wording extracted from the minutes of the December 12, 1980 Board of Trustee meeting.

Sincerely:

Kent M. Parcell  
Executive Director

KMP/dw

OF CERS  
President  
Robert D. Carotte  
P. O. Box 509  
Butte, Montana 59701  
President-Elect  
Alexander A. George  
510 Glacier Bldg  
Missoula, Montana 59801  
Secretary-Treasurer  
Lawrence B. Hess  
P. O. Box 514  
Helena, Montana 59601  
Immediate Past President  
L. Morris Dranseth (Deceased)  
P. O. Box 2269  
Great Falls, Montana 59403  
Chairman of the Board  
C. S. McCracken  
P. O. Box 1645  
Great Falls, Montana 59403  
TRUSTEES  
Area A  
Leonard Lee Kaufman  
P. O. Box 899  
Calispell, Montana 59901  
R.M. "Ty" Robinson  
P. O. Box 7909  
Missoula, Montana 59807  
Douglas J. Wild  
P. O. Box 1172  
Polson, Montana 59860  
Area B  
Max A. Hansen  
P. O. Box 345  
Joliet, Montana 59725  
Robert E. Sullivan  
40 E. Broadway  
Butte, Montana 59701  
Area C  
Charles B. Johnson  
414 Davidson Building  
Great Falls, Montana 59401  
C. S. McCracken  
P. O. Box 1645  
Great Falls, Montana 59403  
Area D  
John A. Warner  
P. O. Box 152  
Harve, Montana 59501  
Area E  
Gregory D. Morgan  
P. O. Box 550  
Bozeman, Montana 59715  
Larry L. Speeth  
Department of Natural Resources  
32 South Ewing  
Helena, Montana 59601  
Sheri K. Sprigg  
State Capitol Room 225  
Helena, Montana 59601  
Area F  
Terger S. Daas  
507 Montana Building  
Lewistown, Montana 59457  
Area G  
Richard F. Cabell  
404 N. 31st Street  
Billings, Montana 59101  
C. David Gertse  
236 Avenue E  
Billings, Montana 59101  
Christopher J. Nelson  
P. O. Box 1914  
Billings, Montana 59103  
Area H  
George W. Hess  
507 Pleasant Street  
Miles City, Montana 59301  
ABA DELEGATE  
Robert Carver  
P. O. Box 2269  
Great Falls, Montana 59403  
Executive Committee

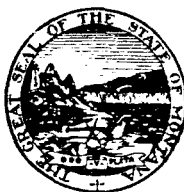
*Exhibit*

**HOUSE MEMBERS**

OSCAR KVAALEN  
CHAIRMAN  
REX MANUEL  
ROBERT L. MARKS  
JOHN VINCENT

**SENATE MEMBERS**

PAT M. GOODOVER  
VICE CHAIRMAN  
CHET BLAYLOCK  
CARROLL GRAHAM  
FRANK HAZELBAKER



# Montana Legislative Council

State Capitol  
Helena, 59601

(406) 449-3064

DIANA S. DOWLING  
EXECUTIVE DIRECTOR  
CODE COMMISSIONER

ELEANOR ECK  
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY  
DIRECTOR, LEGISLATIVE SERVICES

ROBERT PERSON  
DIRECTOR, RESEARCH

SHAROLE CONNELLY  
DIRECTOR, ACCOUNTING DIVISION

ROBERT C. PYFER  
DIRECTOR, LEGAL SERVICES

January 2, 1981

TO: 1981 Legislators  
FROM: Diana S. Dowling, Executive Director *Diana*  
RE: Availability of Codes

A complete set of the 1979 Montana Code (statute text) has been delivered to each committee room, to the leadership, to the Chief Clerk of the House, and Secretary of the Senate. In addition, we have delivered eight sets of the Code to the Chief Clerk for use on the House floor and four sets to the Secretary of the Senate for use on the Senate floor.

There are no additional complete sets of the 1979 Code available. We have sold all of volumes 8, 9, and 10. We have extra copies of the other volumes. If a committee or legislator would like extra copies of certain volumes still in stock, please contact Kay Roos in the Council office (phone 449-3064) and she'll check them out.

You may be interested in House Bill 88 by John Vincent providing for a free set of the Codes to legislators and reserving 50 sets for use by the committees.

Have a good session!

DSD:ee

ROUTE SLIP

MANAGEMENT DIVISION

Diana Dowling  
Bonnie Albiston  
Sharole Connelly  
Eleanor Eck  
Kay Roos  
Kathy Thompson

RESEARCH DIVISION

Robert Person  
Rebecca Meredith  
Anne Brodsky  
Dan Diaz  
Ellen Garrity  
Kathleen Harrington  
Lois Menzies  
Andrea Merrill  
Jim Oppedahl  
Debbie Schmidt  
Sharon Ulberg  
Paul Verdon

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Cort Harrington  
Lee Heiman  
Russ Josephson  
James Lear  
Katherine Orr  
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David Niss  
Greg Petesch  
Jacqueline Terrell  
Nadine Wallace

LEGISLATIVE SERVICES

Roberta Moody  
Bonnie Belden  
Phyllis Cote  
Connie Dixon  
Marle Fuhrmann  
Doris Groot  
Valeri Hanson  
Jane Kufeld  
Martha Lowe  
Marilyn Novak  
  
Mary Ellen Randall  
Nancy Ritz  
  
Carlyce Skjervem  
Patricia Small  
Clarice Smith  
Doug Sternberg  
Jan Vulk  
Patty Taylor  
Dirk Williams

*Exhibit N*

SB 277 (Van Valkenburg) Amends 46-18-203 to prevent city magistrates and justices of the peace from ordering misdemeanor offenders under state supervision.

1. Intent: This amendment would prevent Montana probation and parole officers from being ordered to supervise city and county misdemeanor offenders.
2. Legal Problems: There are problems with the wording of this amendment as introduced. As originally printed the bill removes the authority of magistrates and justices of the peace to impose suspended and deferred sentences. This occurred because 46-18-201 (the referenced law which specifies sentences which can be imposed) does not discuss who may impose these sentences. As currently written the amendment removes the authority of magistrates and justices of the peace to order deferred and suspended sentences. This outcome was neither anticipated nor intended.

The current bill is totally unacceptable to magistrates and justices of the peace.

Additional changes intended to rectify this problem have been prepared for presentation at the hearings (attached).

3. Population Impact: There are currently only 15 misdemeanor offenders under probation and parole supervision throughout the state (9 in Billings). Magistrates and justices of the peace annually convict thousands of misdemeanor offenders. These offenders could, under existing law, be ordered under state supervision. This potential problem has not occurred because of excellent cooperation from magistrates and justices of the peace who have honored local informal understandings and agreements.

This amendment is being introduced to codify the informal agreements.

4. Program Impact: As presented in "Correctional Needs for Executive, Legislative, and Departmental Planning Purposes" presented to the Interim Legislative Committee on Correction Policy and Facility Needs on August 15, 1980, current caseloads for probation and parole supervisors are very high. There is an immediate requirement for additional manpower.

This bill is not expected to reduce the supervisor's caseloads. But it will eliminate the possibility of misdemeanor offenders being referred by magistrates or justices of the peace. It will also allow the available supervisory resources to be applied to felony offenders.

5. Fiscal Impact: None.
6. Department Comment: Magistrates and justices of the peace generally prefer using supervisory resources other than Montana probation and parole for misdemeanants. Probation and parole supervisors have full caseloads of felons. They do not have time to effectively work with local misdemeanants if a magistrate or justice of the peace decided to use them for that purpose.

SB No. 277

A district judge he may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions Board-of-Pardons as provided by law or retain such jurisdiction with the Court.

Amendments:

Line 12: Leave in "magistrate or justice of the peace"

Line 18: Put in "district judge", delete "he"

Line 20: Put in "department of institutions",

# Public Risk Insurance Management, Inc.

(406)443-7810

1714 Ninth Ave., P.O. Box 4848, Helena, Montana 59604

*Dedicated to the concept of the importance of taxpayers' interest in risk and insurance management in government, and organized by and for the Independent Insurance Agents Association of Montana and the Professional Insurance Agents of Montana.*

February 16, 1981

My name is Arnold Kuenning and I am appearing in opposition to Senate Bill 329 on behalf of Public Risk Insurance Management. This organization is an arm of the two independent insurance agents' associations in Montana. Its primary function is to provide insurance markets to the member agents for coverage on public entities, which at times have not been able to readily purchase liability insurance at reasonable cost. In addition, its services have been available for risk management advice and counsel to public bodies, including the State of Montana.

In 1976 a study of the limitations necessary to the constitutional waiver of governmental immunity was done by an interim subcommittee on judiciary of the Legislature. A group headed by the president of P. R. I. M. at that time, Ray Conger of Missoula, provided a great deal of input on the subject at the committee's request, and was available through two days of hearings in the summer of that year.

The report of the committee's study distributed by the Montana Legislative Council contained a complete discussion of the situation, including comparisons of governmental and proprietary functions. It concluded with a package of four Senate bills amending the laws to provide certain limitations on governmental immunity, and all of these were passed overwhelmingly by both houses. You will note that, even after their study, neither the committee nor the Legislature saw fit to draw distinctions between the two types of function, governmental and proprietary.

We think it is impracticable to amend Section 2-9-102 in this fashion, and that it will give rise to unnecessary litigation in many cases against the 124 incorporated cities, 54 counties, 2 city-county governments, hundreds of school districts, and many other subsidiary governmental units, to say nothing of the State's self-insurance fund.

If the statutes in their present form are causing inequities which can be corrected, we agree that corrections should be considered. However, in view of the thorough and deliberate thinking that went into the composition of the present laws governing sovereign immunity, we submit that such amendments should be made only with equal care and deliberation, not merely with the stroke of a pen deleting a few words. The effect on the availability and cost of insurance to all of these governmental units must be weighed, as well as the effect on your own self-insurance fund administered by the Insurance and Legal Division of the Department of Administration.

DATE February 16, 1981

## COMMITTEE ON JUDICIARY

SB 246 SB 329  
 SB 253 SB 315  
 SB 277 SJR 9

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
<i>James Keller</i>	<i>Self</i>	<i>315</i>	<i>X</i>	
<i>John Young</i>	<i>Dept. of Admin.</i>	<i>315</i>		
<i>" "</i>	<i>" "</i>	<i>309</i>		<i>X</i>
<i>A. C. Kierman</i>	<i>Ind. Ins. Co. Can.</i>	<i>329</i>		<i>X</i>
<i>Jay Sweet</i>	<i>Law of Montana</i>	<i>315</i>		<i>✓</i>
<i>Joseph Walsh</i>	<i>SELF</i>	<i>329</i>	<i>-</i>	<i>-</i>
<i>Roger McGledd</i>	<i>IND. INS. AGENT OF MT.</i>	<i>329</i>		<i>X</i>
<i>Phillip A. Boek</i>	<i>MT. LEGAL SERVICES</i>	<i>253</i>		
<i>John G. Gorette</i>	<i>St. Basil of Mont.</i>	<i>315</i>		
<i>Martha Spurr</i>		<i>253</i>		
<i>Rick Hall</i>	<i>Self</i>	<i>329</i>		<i>X</i>
<i>Robert Thompson</i>	<i>Ind. Insurance</i>			
<i>Burt Amrin</i>	<i>SRS</i>	<i>253</i>		
<i>Norma Vesthe</i>	<i>SRS</i>	<i>253</i>	<i>X</i>	
<i>Susan Trust</i>	<i>MT. HOME EC. ASSOC.</i>			
<i>John Spurr</i>	<i>Self</i>	<i>315</i>		
<i>Mick McCabs</i>	<i>1st JUV. HON. ASSN</i>	<i>315</i>		
	<i>Lawrence Clark Court</i>	<i>SJR 9</i>	<i>X</i>	
<i>Cliff Harrison</i>	<i>Mont. Trial Lawyers</i>			
<i>Mick McCali</i>	<i>Mont. Professional Assn</i>	<i>277</i>		<i>X</i>