

Melissa M. Klimpel,
ACP, Editor

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SUMMONS

*Official Publication of
WESTERN DAKOTA ASSOCIATION
OF LEGAL ASSISTANTS*

*An Association for Paralegals/Legal Assistants
www.wdala.org*

PRESIDENT'S MESSAGE

By Shari L. Erdman



Shari L. Erdman

Happy New Year!

There is such an emphasis on making New Year's resolutions. Personally, I don't believe in them and feel they only set you up for failure. I would rather make a commitment to do something better. I think it's easier to commit to smoking less, exercising more, volunteering more or whatever your personal choice is. And this can be done any time of the year. For me it's trying to remember what I've accomplished instead of how much work I have yet to do.

Leigh is hard at work preparing for the spring seminar in April. If you can offer her any assistance, please do so as this is her first time organizing this seminar and it is a lot of work.

The Education Committee should be meeting soon to discuss possible teleseminars during the year. If you have ideas or topics you would

like discussed, please share them with any member of the Education Committee.

Also, if there is a committee you have interest in, please let me know. It's a fun way to get to know others and help WDALA at the same time.

Thank you for being a member of WDALA and I look forward to seeing you at our seminars this year. Please feel free to contact me any time at 701-774-6813 or serdman@crowleyfleck.com if you have any questions or concerns.

I wish you and your family a happy, healthy, and prosperous 2013!

CALENDAR OF EVENTS

April 1, 2013	Application Filing Deadline for May CLA/CP Exam Window
April 18, 2013	WDALA Spring Seminar, Minot
April 19, 2013	Deadline to submit <i>Summons</i> articles
May 1-31, 2013	CLA/CP Exam Testing Window
July 10-12, 2013	NALA Convention, Portland, OR
August 1, 2013	Application Filing Deadline for September CLA/CP Exam Window
September 1-30, 2013	CLA/CP Exam Testing Window



Congratulations to Char Jacober, ACP



Char Jacober, ACP

Char Jacober, ACP, has successfully completed NALA’s Advanced Paralegal Certification course on Business Organizations: Incorporated Entities. Char is now entitled to use the “ACP” (Advanced Certified Paralegal) credential.



Carmen Dukeman

TREASURER’S REPORT

By Carmen Dukeman

The treasury balance for the Western Dakota Association of Legal Assistants, as of December 31, 2012, is \$13,864.77.

WESTERN DAKOTA ASSOCIATION OF LEGAL ASSISTANTS 2012-2013

OFFICERS/EXECUTIVE COMMITTEE

President..... Shari Erdman
 First Vice President..... Leigh Johnson
 Second Vice President Lynette Anderson, ACP
 Secretary Jen Defoe, ACP
 Treasurer Carmen Dukeman
 Parliamentarian.....Laurie Guenther, ACP
 NALA LiaisonAfton Basden, CP

BOARD OF DIRECTORS

Region I..... Shari Erdman
 Region II.....Mary Sue Knutson, CLA
 Region III Melissa Klimpel, ACP
 Region IV

COMMITTEES

Education Leigh Johnson (Chair); Traci Hilsabeck, ACP;
 Afton Basden, CP; Corrina Pfaff; and Candace Schafer, CLA
 Membership Lynette Anderson, ACP
 Finance/Budget Carmen Dukeman
 CLA ChairmanAfton Basden, CP
 Nominations/Elections Melissa Hamilton, ACP
 Auditing Donna Seright and Lorelee Clay
 Legal Assistant DayJen Defoe, ACP and Melissa Hamilton, ACP
 Ethics/Professional Development..... Vicki Kunz, ACP
 Summons Melissa Klimpel, ACP
 Library Melissa Hamilton, ACP
 State Bar/NDTLA Liaison Vicki Kunz, ACP
 Historian Laurie Guenther, ACP
 Student Liaison Vicki Kunz, ACP
 Website..... Jen Defoe, ACP and Lorelee Clay



Leigh Johnson

FIRST VICE PRESIDENT'S REPORT

By Leigh Johnson

Happy New Year, WDALA members! The WDALA Spring Seminar is scheduled for Thursday, April 18, 2013, and will be held at the Sleep Inn, in Minot, North Dakota. I am still in the process of planning all of the exciting topics and speakers.

Some of the potential topics include: The Intersection of Traumatic Brain Injury and the Justice System – a topic of much interest for participants as numerous members work in the personal injury area; Trusts 101 – irrevocable life insurance trusts, trusts used for tax reduction, grantor trusts, and ethical considerations; Research Skills and more efficient ways to conduct internet searches—a topic that would be of interest to our members as it is a practical skill necessary for finding key

information; and Mineral Law Issues—the oil and gas business is thriving so this seemed like a topic that would be of importance to our members. I will be mailing out the brochures for the spring seminar sometime in February. I hope to see you there!

If you have any other suggestions for speakers or topics for the spring seminar, please let me know. It is helpful to know what topics are of interest to the WDALA members. You can reach me with your suggestions and ideas at: ljohnson@bkmpc.com or 701-258-8988.

Also, thank you to everyone who has helped start me off in the right direction to plan the seminars.



**Lynette Anderson,
ACP**

SECOND VICE PRESIDENT'S REPORT

By Lynette Anderson, ACP

Unfortunately, there are no new members to report since October 2012. Congratulations to Jen Defoe and Char Jacober for obtaining their ACP accreditation. We currently have 41 members and an updated roster is attached.

Please note new contact information for Amanda Kessel:

708 8th Street East
Dickinson, ND 58601
Phone: 701-290-7759
Email: akessel@ndsupernet.com

Please contact me at lynettejanderson@hotmail.com if you have any changes or questions.



Afton Basden, CP

“The NALA 38th Annual Meeting and Convention will be July 10-12, 2013 in Portland, Oregon.”

NALA LIAISON’s REPORT

By Afton Basden, CP

Well, here we are at the beginning of another year. Time for assessments, goal setting, resolutions and fresh starts - the perfect time to think about brushing up on your paralegal skills! The NALA Campus LIVE! Spring Program begins January 26 and runs through May 10, 2013. With over 50 courses to choose from, there is something for everyone. Check out the schedule at www.nala.org/spring2013schedule.aspx, and if you are a NALA member, don’t forget to use your gift certificate.

For those of you working in family law and wanting to obtain your ACP credential (or an additional ACP credential), a new APC was released in November 2012 for “Family Law – Child Custody, Child Support and Visitation.”

The results of the biennial Paralegal Utilization and Compensation Survey are available in the January/February 2013 issue of Facts and Findings. You can also review the results at: <http://www.nala.org/Upload/file/PDF-Files/FactsFindings/dover.pdf>. The January/February issue of *Facts and Findings* is always a great issue to peruse, because

topics are devoted entirely to paralegal careers.

The NALA 38th Annual Meeting and Convention will be July 10-12, 2013 in Portland, Oregon. This is a new schedule, with the convention ending on a Friday rather than a Saturday. The schedule has been modified to reduce expenses for attendees and to allow attendees more time to explore the city. The convention will be at the Hilton Portland & Executive Tower in downtown Portland. The NALA Continuing Education Committee is tentatively planning to offer institutes on the subjects of Insurance Defense, Employment and HR, Technology in the Law Office, Estate Administration, Criminal Law and Procedure, and eDiscovery. The final educational line up should be confirmed soon.

Information for the testing and registration dates for the CLA/CP exam is listed below. Filing deadline dates are strictly enforced.

Please feel free to contact me if you have any questions concerning NALA or the benefits and services it offers.

Examination Date 2013	Application Filing Deadline** 2013	Late Application Filing Deadline (With \$25 late filing fee)
May 1-31	April 1, 2013	April 10, 2013
September 1-30	August 1, 2013	August 10, 2013



Shari L. Erdman

“This was such a great experience and we will definitely do it again next year.”

REGION I REPORT

By Shari L. Erdman

I can't believe Christmas was here and gone already. I hope everyone had a blessed Christmas season!

December was a memorable month for me. During the first week of December, we donated our office's fundraising monies to two wonderful organizations: Gifts for Veterans and Christmas for Kids. We were able to give them each almost \$600.00! Additionally, we were fortunate enough to provide six people from Crowley Fleck PLLP to help with the shopping for the Christmas for Kids program (including myself, my husband, and our daughter) on a Sunday morning. Wal-Mart opened early so all of the volunteers had the whole store to themselves. Wal-Mart also discounted all items of clothing (coats, boots, mittens, etc.) 50% for this cause. It was sad to see how many children didn't have those winter necessities. This was such a great experience and we will definitely do it again next year.

On December 19, my good friend Deyan (a former legal administrative assistant) and I performed Christmas music at Bethel Lutheran Home, a local nursing home. Beforehand, one of the elderly gentleman was telling me about an award-winning pie he had made and his friends were going to forward his receipt to Betty Crocker! Good for him! We had such a good time playing for the residents that we plan on making this regular event. Following is a picture of Deyan and I with just a few of the residents we played for.

On December 20, my office decided that I should be totally embarrassed for my birthday - they hired Elvis Presley to sing to me. My attorney was the main instigator and I believe this was payback for things I have done to him and others on their birthdays. I would have included a picture, however, I am "fifty shades" of red in all of them!

Oh, it's good to have memories!



Deyan (2nd from left) and I with residents of Bethel Lutheran



Crowley Fleck PLLP staff donation to Christmas for Kids program



Crowley Fleck PLLP staff donation to Christmas for Kids program



**Mary Sue Knutson,
CLA**

REGION II REPORT

By Mary Sue Knutson, CLA

Region II took a break over the holidays and did not meet as everyone had such hectic schedules. We did just recently get together at one of the newer bistros in town “Sweet and Flour.” We discussed the upcoming spring seminar and brainstormed about topics and speakers.



**Melissa M.
Klimpel, ACP**

REGION III REPORT

By Melissa M. Klimpel, ACP

Region III members continue to meet for monthly meetings at noon on the 2nd Tuesday of the month at A&B Pizza South.

Region III’s community service project for the holidays was to help 10 less fortunate Drug Court participants and their families. Numerous Region III members donated money to help buy Christmas gifts and bake Christmas goodies for the project. In addition, Carol Solberg, CLA, knitted winter hats and little stockings for the Drug Court participants and their families. We delivered the gifts to the families on December 20th and attended Drug Court on December 21st to deliver the baked goods. This project is a great reminder of the impact a small group such as ours can have in making a difference for others. All the participants were very grateful for the gifts and goodies and it was nice to feel that we brought some joy to their holiday season.

Thank you to the following Region III members for helping make our 2012 community service project a huge success:

Carol Solberg, CLA	Cheryl Tryhus, CP
Laurie Guenther, ACP	Tonia Fitterer
Dianne Taix, ACP	Bonnie Harris
Linda Hagen, CLA	Melissa Hamilton, ACP
Candace Schafer, CLA	Vicki Kunz, ACP
Traci Hilsabeck, ACP	

Also, a huge thank you to the WDALA members for their thoughts and prayers, those who volunteered to make and deliver meals, and sent cards and gift cards to Tonia and her family while she was receiving chemo treatments. Tonia and her family greatly appreciated all the support from our WDALA members.

REGION III REPORT continued

By *Melissa M. Klimpel, ACP*



Region III's Christmas Party: Bonnie Harris; Candy Schafer, CLA; Melissa Klimpel, ACP; Laurie Guenther, ACP; not pictured – Lindsay Harris.



Region III's Christmas Party: Bonnie Harris; Morgan Klimpel; Candy Schafer, CLA; and Laurie Guenther, ACP; not pictured – Lindsay Harris.



Region III delivering Christmas gifts: Candy Schafer, CLA; Whitney Klimpel; Morgan Klimpel; Melissa Klimpel, ACP; MacKenzie Hamilton; and Katelynne Hamilton.



Region III delivering Christmas gifts: Candy Schafer, CLA; Whitney Klimpel; Morgan Klimpel; Melissa Hamilton, ACP; MacKenzie Hamilton; and Katelynne Hamilton.

WDALA,
Thank you from the Bis/Man
Drug/DUI Court Program for
all of your support for the
Program Participants during the
Holidays. D.C. Team

Merry
Christmas
= Happy New Year
Thank you so much
for all you do.
Thank you for
the gifts.
Carol M. Vena
= Kids!

*Happy Birthday to the following
WDALA members:*

Lorelee Clay	February 5
Jim Lang	February 12
Laurie Guenther, ACP	February 16
Debra Grenz, CLA	March 21
Tonia Fitterer	March 23
Afton Basden, CP	April 11
Melissa Klimpel, ACP	April 27



Jen Defoe, ACP

“I can begin by saying there isn’t any other area of the law in which I would rather be specialized. Each personal injury case becomes personal to me.”

PERSONAL INJURY – MOTOR VEHICLE ACCIDENTS – BASIC FACTS WE ALL SHOULD KNOW

By Jen Defoe, ACP

CRASH!!!! You’ve just been in a car accident. Your body is thrown forward, backward, and sideways. Your head whiplashes and “bounces” off the headrest. You have no idea what just happened, and you feel dizzy. You shut your eyes and squeeze them tight. You are in severe pain.

You wake up in the hospital. It was bad. You learn throughout the day details of the accident. You were on your way to work around 7:30 a.m. You were waiting at a controlled intersection, behind three other vehicles waiting at the same red light. A young woman, who was talking on her cell phone and speeding at the time, was distracted momentarily and when she looked up at the road again, she had little time to apply her brakes before slamming into you, traveling at approximately 45 miles per hour. If you weren’t such a stickler for wearing seatbelts, you may not have made it. Your injuries are serious.

Terrible scenario, isn’t it? There are numerous facts we each could add to that scenario (the kids were in the car, I wasn’t wearing a seatbelt, my new car!), etc., that apply to our own lives that make the scenario even more personal.

Serious automobile accidents are terrifying for those involved. In fact, any automobile accident is an unpleasant situation we all strive to avoid. Sometimes, it simply isn’t your fault and there is simply nothing you could

have done to avoid the collision.

There are steps that need to be taken for anyone involved in a serious motor vehicle accident. We won’t go over those steps here - but for example, contacting the police and reporting the accident to your insurance company. In an effort to keep your interest in this article . . . by presuming these steps have already been handled, we are going to go behind the scenes - to the life of a paralegal specializing in personal injuries, who recently became advanced in automobile accidents, and who has been working in this specialty for about 20 years. I can begin by saying there isn’t any other area of the law in which I would rather be specialized. Each personal injury case becomes personal to me.

Your client now becomes the individual involved in the accident above. She has taken the steps mentioned and has decided to speak with an attorney to see what options, if any, she has. She is getting confused by the enormous amount of paperwork she is receiving from the automobile insurance companies, her personal health insurance carrier, and the medical bills. She has also had her statement taken by one of the insurance companies, is waiting to receive compensation for her vehicle, (which was totaled in the accident), and, has been offered a sum of money from the other driver’s insurance company to settle her claim. Your client works as

a secretary at a school, has a clear driving record, has had very minimal medical problems in her past, and has never been involved in a motor vehicle accident before.

I put myself immediately into our client's shoes and know how scared I would be if I was going through that situation. My initial contact with our client is definitely a getting to know them meeting, and most importantly, is to get their story. I want to know what occurred from the moment of impact up to the present day. I don't necessarily have a checklist that I use for every meeting, but they certainly can be helpful, especially when you are starting out. You will find that your clients most often have to be probed a bit for you to get the whole story. You know what you need to build the case, and you have to ask the right questions of the client to enable you to request the proper information from the proper facilities and agencies. There are facts that are imperative to your case that your client may not have even thought to tell you had you not asked.

Additionally, when insurance companies are involved, your client may have some limit to the information they have been made aware of because the records, bills, and correspondences have been going through the various insurance companies and facilities and not the client.

It is most effective to keep them on track - start immediately

prior to the accident, or, sometimes, even the entire day preceding the accident, depending on the circumstances. You will usually get an accurate description of the accident, unless your client has no memory or limited memory of the event itself. You then gently walk them through everything that transpired thereafter. Some of the general information I am always looking for includes:

- Who responded to the scene (city police, highway patrol, county sheriff, ambulance, or fire department) - you will need to request the complete reports from each responding unit. I have found that not all have an actual "report" but have always had some kind of documentation if they actually responded to the scene. If your client can, ask them to describe everything about the accident in as much detail as they can recall.
- Were they taken to the emergency room? If so, be sure you ask which hospital. I find there is really no need to attempt to have our clients recall names of specific physicians. If they offer names, I do make note of it, but the records you request from each facility will include all records from that clinic, which will often include reports from several different physicians.
- Our clients often have information as to what tests were performed at the emergency

room and what they were told. Make note of this information and certainly compare it to the records when received. Your client's initial evaluation does become an important record if they proceed with a claim. Observations may be noted on the record that can aid or potentially harm your case. You must also take into consideration the shock people go through when they are involved in a serious car accident. They may have certain injuries that are very serious and concerning, and other, minor injuries aren't even thought of or discussed. The client then later develops soft tissue pain and begins treatment therefor. It can be argued that since it was not complained of during the initial evaluation, it can't be related to the accident.

- Going through a general overview of their medical treatment from then forward, as well as briefly discussing their past medical history, is my next step. I do not expect anyone to recall every date of every medical visit they had. I need to know each facility where they received treatment after the date of the accident. I need to know what kind of injuries they sustained and a summary of the treatment they received. Did they require a hospital stay; did they undergo any

surgeries; did they go through therapy; did they receive prescriptions; etc.

- Of utmost importance here is to listen for descriptions of the pain and suffering your client experienced in the accident, during their recovery process (presuming they have recovered), and bring them to present day. As time passes, we forget. A perfect client has kept a journal that they have used to record how they are feeling, the appointments they have attended, the work they have missed, and the things that just aren't the same after the accident as they were before. An even more perfect client will have photographs of their vehicle (perhaps the other vehicle as well), and photographs depicting their injuries, if applicable, which are very valuable to your case. We love the "but for" phrase. Ask your client to think, "Had it not been for this accident" [but for] "I would not have had to hire someone to do this; I would not have had to miss work; I would not have had to take all that medication; etc." So many things can change as a result of a serious injury to you or someone in your family, it can become your new way of life and if you are not reminded that, had it not been for the accident, this would not have been the way we did this or that. They can

always start a journal once you have met with them, if they haven't started one already. I always find them to be helpful.

- You must also discuss what contact your client has had with any insurance companies, and be sure they get any information they have from the insurance companies to you for review. If they have any correspondences from any companies, you will then have the companies' addresses, the claim representatives' names, and the claim numbers. Notifying the insurance companies of our firm's representation is one of the first steps we take, once we have been hired. I always request that any other driver's insurance company cease any further communication with our client and direct all future communications to our office. Things are a bit different with one's own insurance company.

A fact that so many people do not know is that if you are in your own vehicle at the time of an accident, YOUR insurance company will be paying your medical bills associated with the accident. We are a no-fault state, therefore, your no-fault benefits kick in through your insurance company and you are entitled to benefits for related medical expenses and wage loss that

resulted from the accident. This part of your insurance is referred to as "personal injury protection" or PIP benefits. The amount of PIP benefits available per statute is \$30,000.00 (medical bills and wage loss combined). See N.D.C.C. §26.1-41-01(2). Unfortunately, in this day and age, a night in the hospital can eat up that \$30,000.00 rather quickly. If you have personal health coverage, your automobile insurance company will most likely discuss coordination of benefits with your personal health insurance carrier. Typically, the PIP benefits will pay the first \$10,000.00 incurred (wage loss included), and thereafter, bills will first be processed by your personal health insurance carrier, and any balance should be picked up by your PIP carrier. Often times, your personal health insurance carrier will have what is called a subrogation interest. Any benefits it pays that are related to the accident must be repaid if you obtain a third party settlement or money judgment. I explain all of this to our client at our initial consultation. Additionally, if Medicare, Medicaid or Workforce Safety and Insurance have paid any bills associated with your accident, they are entitled to a subrogation as well.

- I have our client sign a

HIPPA compliant medical authorization, our fee agreement, and complete a client questionnaire.

- I conclude our meeting with requests to our client to keep me updated as much as possible as to any change in treatment, injuries, work status, etc., and provide my business card for contact. I advise our clients (as do the attorneys I work with) that I will know more regarding the status of the case than the attorney, in most cases, during the investigation stage. I collect the information, review it, and only summarize for attorney review once we have collected all information. We use my summary to prepare our demand package.

From that point forward, the paper rolls in. I prepare letters requesting the medical information required to evaluate our client's claim. This can include past medical information, but I usually am able to begin to build our case with review of the records only related to the accident. If the client advises me of a medical history that concerns me, or, the medical records after the accident discuss something that concerns me with regard to the patient's history, I will request those records as well. In addition, I request each facility's itemized billing statements.

The greatest tool I was ever given with regard to monitoring

the status of my requests is a personal injury chart that was discussed at a seminar I attended early in my career. It is a simple graph chart where I record pretty much everything I am monitoring as the case progresses. I record the name, address, and telephone number of the facility I wrote to (this can be my requests for records or my notifications to the insurance companies, or, even just correspondence or phone calls to the client). I record the date of my request and include any pertinent notes. I keep all of my charts in pending on my desk, and check them regularly. It is amazing how often these charts have assisted in my follow up requests. I would have hundreds of reminders if I used my calendaring system or a tickling system for this. My charts take up little room but allow me to constantly monitor where I am at in a case, without having to pull the file or check my computer. I have tailored them over the years to include contact information for our client, the date of the accident, claim numbers, etc., so they are very much a part of my case.

Obtaining a PIP ledger from the no-fault carrier is a must. I use this ledger to compare to the billings I have received from the facilities. Sometimes, bills have been presented to the insurance company that I was not aware of. If your client has personal health insurance, I request a ledger from that company as well, which I also use to compare. I have actu-

ally found bills paid by personal insurance companies that I have found to not be related to the motor vehicle accident. This is good for your client because as I mentioned above, they usually have to reimburse their personal health insurance company for any bills it paid that are associated with the accident.

Once all materials have been received and reviewed by me, I prepare my summary memorandum. I read and highlight medical records as they come in, and file them in the file only after I have reviewed and highlighted. I am then able to review my highlighted information to put together the good, the bad, and the ugly, for attorney review. This memorandum is an internal document that provides the attorney with every bit of information I believe will be crucial in their evaluation of the case. The attorney would have to spend hours and hours reviewing these records. Paralegals are invaluable in this specialty area, and all of the attorneys I work with would agree!

I have usually kept in very close contact with our clients throughout this process, but when I am preparing the summary memorandum, I confer with the client to discuss their current status and advise them that I am putting together the summary memorandum.

The attorney and I prepare a settlement demand letter from

the summary memorandum. We have, of course, confirmed with our client the amount of our demand at this point. If we have any photographs that depict the injuries our client suffered, damage to the vehicle(s), etc., we often will incorporate one or two of them into the body of our demand letter. We Bates stamp the crash report and any other responder information we have; the related medical reports and billings; wage loss information if applicable; photographs; and any other pertinent information we want the insurance company to have. This is all sent with our settlement demand letter as our settlement demand package, once the client has approved the letter. We usually include a deadline for response to our letter. I tickle that date and monitor for the attorney.

Moving on from this point involves negotiations with the insurance company, more paper of course, and hopefully, an end result that is satisfying to both your client and your firm. If a settlement is not able to be reached through negotiations, filing suit is certainly your next consideration.

The point I most wanted to get across in this article is to first, give you a bit of information that may assist you if you are ever involved in a car accident yourself and decide to pursue an action against another driver, or, if you have the opportunity to work

with personal injury cases, perhaps you may find something I included in this article helpful. Certainly, there are pages and pages of information I could have included; we all know that things are never simple when it comes to the law. I find personal injury cases to be quite rewarding. Usually, your client has been and may still be in pain from injuries they suffered. They want someone to listen to their story and they want to feel that they have someone on their side. I offer genuine compassion and concern to our clients, and as I said before, these cases become personal to me. I, or someone I know or love, could be injured in a car accident at any moment. No amount of money can take the pain away our clients have suffered, but simply knowing they have someone fighting for them is a huge relief, and being able to hand over their “box” of papers and information takes a load off their minds. I encourage them to focus on getting better and let us handle the paperwork.

Refer to N.D.C.C. §26.1-41 “Auto Accident Reparations” for definitions of the terms associated with and used in the statute, and for any questions you may have regarding personal injuries involving motor vehicle accidents.

If any of you ever have any questions for me, please feel free to call or email, and drive safe!!

Jen Defoe, ACP, just passed her one year anniversary with Larson Latham Huettl, LLP (www.bismarcklaw.com). Her work history includes 3 years of working for Senator Kent Conrad in Minot, that began through a work study program while she attended Minot State University, and turned into a part-time job. This is where Jen met her mentor, Mavis Williamson, who taught her, through example, the importance of caring about what you do, having compassion (and never losing it), and giving it your all, every single day. Jen then moved to Fargo where she worked for Legal Assistance of North Dakota for a year, but missed her family so started an employment search in the Bismarck area. She was hired by Ralph Vinje, and spent her next 18 years working for him and enjoying every single minute of those years. With Ralph thinking about retirement, Jen left with tears, but began a new venture with the Attorney General’s Office, Civil Litigation Division, and from there, to the U.S. District Court Clerk’s Office. She feels she is now settled in and hopes to work for LLH until retirement! Jen is a member of WDALA and NALA. Jen and her husband live in Mandan and have two busy girls, Carli (17), a junior at Mandan High, and Darbi (12), a 7th grader at Mandan Middle School.



**David R. Phillips,
Esq.**



**Diane M. Wehrman,
Esq.**

Reprinted with permission of NALA, The Association of Legal Assistants/Paralegals, and David R. Phillips and Diane M. Wehrman, the article originally appeared in the November/December 2012 Facts & Findings, NALA's bi-monthly magazine for paralegals. The article is reprinted here in its entirety. For further information, contact NALA at www.nala.org or phone (918) 587-6828.

AN OVERVIEW OF FEDERAL AGENCY INVOLVEMENT PUBLIC RESOURCES, DOMESTIC ENERGY

By David R. Phillips, Esq. and Diane M. Wehrman, Esq.

Where energy comes from and how it is generated is an increasingly important issue for many Americans and American companies. Recent advances in technology have given access to fossil fuels that were previously not economically recoverable. Of particular importance are recent advancements in horizontal drilling techniques that allow recovery of oil and natural gas from shale rock formations miles below the surface of the Earth. This technology has created a boom in investment and development in states like North Dakota. According to the United States Geological Survey, the Bakken Shale formation (located in North Dakota, Montana and Saskatchewan, Canada) is thought to contain recoverable reserves of 3.65 billion barrels of oil, 1.85 trillion cubic feet of associated/dissolved natural gas, and 148 million barrels of natural gas liquids. However, a re-assessment of the formation is underway with results which are expected to be greater than previous estimates. With the increase in domestic oil and gas production, there is a corresponding increase in legal needs for oil and gas developers, and the numerous other businesses and industries that support energy production.

The United States government, through various federal agencies, is the owner of the minerals underlying approximately 700 million acres of land, spread throughout mostly the western states, including Alaska. To

put that number into perspective, 700 million acres is larger than the area of Alaska, Texas, and California combined. (<http://www.wisegeek.com/how-big-are-the-states-in-america.htm>). According to statistics released by the Office of Natural Resources Revenue, payments received as a result of the development of energy on public lands "exceeds \$10 billion annually and that money is distributed to the U.S Treasury, five federal agencies, 38 states, 41 Indian tribes, and about 30,000 individual Indian mineral owners."

Development of oil and gas on lands with private mineral ownership is relatively simple in comparison to development on lands with federally owned or controlled minerals. When mineral interests are privately owned, a developer typically contacts the mineral owner to negotiate oil and gas lease terms, establishing the rights and responsibilities of both the developer and the mineral owner. Thereafter, the developer must comply with state and federal regulations dealing with oil and gas development, but there is little, if any, further involvement by the mineral owner, other than receiving royalty payments. In contrast, when public lands are involved, several federal agencies are responsible for leasing, access, development, and managing payments relating to energy development.

Bureau of Land Management (BLM), Department of the Interior

The BLM is charged with managing public lands to preserve and protect various natural, cultural, and historic resources while recognizing the need for “domestic sources of minerals, food, timber, and fiber from the public lands...” 43 U.S.C. § 1701(a)(12) (2011). Some of the BLM’s responsibilities relating to energy development include:

- Administering the mineral leasing of lands managed by the U.S. Forest Service, the U.S. Fish and Wildlife Service, the National Park Service and the U.S. Army Corps of Engineers
- Reviewing and approving drilling permits
- Granting access to federal lands, such as easements, and rights of way. (Access to some lands may require approval of other agencies or private owners.)
- Overseeing mineral operations on public lands as well as 56 million acres of Indian lands

Bureau of Indian Affairs (BIA) Department of the Interior

Indian tribes and Alaska Native entities, and their members, have a unique relationship with the United States as established through the U.S. Constitution, treaties, court decisions and Federal statutes. The BIA is responsible for implementing the pro-

grams and complying with these laws in order to fulfill the responsibilities the United States has towards Indian tribes, Alaska Native entities, and their members. In relation to energy development, the BIA is responsible for:

- Approving oil and gas leases, rights-of-way, easements, and other transactions involving lands which are owned in trust by the United States of America for the benefit of Indian Tribes or for the benefit of individual Indians when the agreements are determined to be in the best interest of the Indian owner
- Coordinating with the BLM in the development of energy resources within Indian country
- Providing support to tribal governments in the development of laws and resolutions relating to energy development within reservations
- Distributing all payments to the appropriate tribe or individual Indian mineral owner through the Office of Trust Funds Management in coordination with the Office of Natural Resources Revenue

Office of Natural Resources Revenue (ONRR), Department of the Interior

The ONRR manages revenue received from oil and gas production occurring on public lands as

well as revenue associated with some offshore renewable energy development. The revenue managed by the ONRR is one of the Federal government’s largest sources of non-tax revenue. According to its website, the ONRR mission is “[t]o ensure the full and fair return to the American people of federal and Indian royalties and other monies owed for the utilization of public resources in the production of conventional and renewable energy and mineral resources.” The ONRR’s various responsibilities include:

- Asset Valuation – providing guidance and support for entities developing federal mineral interests to properly evaluate and therefore pay in accordance with regulations and lease terms
- Audit and Compliance Management – Ensuring that revenues are accurately reported and paid in compliance with laws, regulations and lease terms. (According to the ONRR website, as a result of compliance audits, the ONRR has collected \$3.7 billion in additional royalties since 1982.)
- Financial and Program Management – Receiving payments, performing quality reviews, and ensuring that revenue and reports are directed to the proper recipients
- Education and Training Opportunities providing help to those private enti-

ties responsible for payment of revenue and reporting of development of energy from federal lands

Among the numerous other issues which must be considered by the agencies charged with overseeing energy development on public lands, are compliance with relevant laws including the National Environmental Policy Act, the National Historic Preservation Act and the Endangered Species Act. While compliance with these laws are Federal responsibilities, energy developers on public lands may be required to assist the BLM and other managing agencies by providing documentation of the character of the lands where access roads, well locations and other surface operations are proposed. Onshore Oil and Gas Order No. 1, Approval of Operations, 72 Fed. Reg. 10,308, 10,335 (March 7, 2007). The Preamble to Onshore Oil and Gas Order No. 1, which provides a basic guide to the process of approval and guidelines for oil and gas operations on public lands, notes that developers are encouraged to use best management practices that are “innovative, dynamic and economically feasible mitigation measures applied on a site-specific basis that reduce, prevent, and avoid adverse environmental or social impacts of oil and gas activities.”

This article is meant to provide a very brief overview of a highly complex topic. Development of oil and gas on federally owned or controlled lands is governed by

numerous federal statutes, regulations, and rules, which trigger the jurisdiction of various federal bodies, only some of which are discussed in this article. Navigating the complex maze of federal laws and agencies can be time consuming and expensive in terms of legal fees. However, the cost of failing to comply with federal statutes, regulations, and rules can be enormous. For example, a recent press release issued by the ONRR indicates that an oil and gas developer was fined \$1.2 million for “knowing or willful maintenance” of inaccurate oil and gas royalty and/or production reports in the ONRR reporting system.

Luckily, the federal agencies do provide guidance to legal practitioners. The websites of the various federal agencies provide a great deal of information. These websites are well organized and are a good resource to find basic information about the federal agencies and the steps that must be taken at various stages of oil and gas development. The websites provide everything from basic explanations of the agency missions, to federal statutes, regulations, and rules themselves. The following are the websites consulted in preparation of this article:

**Bureau of Land Management:
Oil and Gas Home Page,**
www.blm.gov

See also 43 C.F.R. Parts 3160 and 3180 (2011).

Bureau of Indian Affairs:
www.bia.gov

Office of Indian Energy and Economic Development

See also 25 C.F.R. Parts 211, 212 and 225 (2011).

**Office of Natural Resources
Revenue:** www.onrr.gov

See also 30 C.F.R. Parts 1201-1219 (2011).

The significant recent oil and gas development on federally owned and controlled lands has created a high demand for skilled legal representation. While this area is complex, good resources are available to legal practitioners when help is needed.

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**Sandra K. Kuntz,
Attorney/Mediator**

“The mediation process is goal oriented and focuses on available factual information and assumptions regarding the future, perspectives, and options available to all participants.”

MEDIATION – PROBLEM SOLVING FOR ALL TYPES OF CONFLICT

By Sandra K. Kuntz, Attorney/Mediator

Conflict is a reality of our culture. No one can predict or avoid the inevitable challenges that accompany changes in our economy, business, communities, or neighborhoods. No one plans to get divorced when that wink or a smile is brewing into a relationship or the wedding bells are ringing. However as life throws us these challenges, we have choices in how we manage them.

Recognizing that conflict is inevitable, one can choose to focus on the conflict as a wedge to push people apart, or a goal to pull people together. Mediation is a process for resolving conflict with a focus on mutually acceptable solutions. In contrast, the adversarial approach of litigation focuses on victory and defeat. Mediation allows the parties to maintain the control. Parties maintain the control in decision making, cooperative problem solving, and work within a neutral setting allowing better communication.

A mediator can provide a perspective that an attorney cannot. For strategic reasons, evidentiary reasons, or ethical reasons, the attorney must argue for their client. The mediator is neutral and therefore can help both parties view issues from a neutral standpoint with a focus on resolving the dispute, rather than validating one party's position and seeking to "win". A mediator can minimize side arguments while concentrating everyone's efforts

towards a mutually satisfactory conclusion. A mediator can resolve the parties' issues by communicating rather than fighting, working as a team, rather than engaging in battle.

The mediation process is goal oriented and focuses on available factual information and assumptions regarding the future, perspectives, and options available to all participants. It clarifies relationships, promotes understanding of established objectives, and assigns specific responsibilities, tasks, and time schedules to define and review progress. The mediator helps establish the ground rules for the mediation sessions, maintains the participants focus, and encourages participation to be creative. The mediator leads the mediation process, provides suggestions to move forward, finds and defines points of consensus, restates comments and ideas through active listening, and maintains the climate of the meeting.

Mediation takes time and commitment from all involved. Since the parties control the results of mediation there is generally much greater satisfaction with the results obtained than is the case for litigation through court or administrative processes. Mediation can be used for all types of conflict including divorce and family disputes, surface damages related to oil and gas development, pipeline easements, reclamation and aesthetic concerns,

credit and loan financing issues, employment and human resource problems, and other points of disagreement. In mediation, everyone wins for the following reasons:

It's less costly. In mediation the parties typically split the cost of the mediator, with the mutual focus on resolution. In the alternative, lengthy divorce battles require both parties to pay extensive legal fees to two attorneys. The process of fighting has led to the financial ruin of many families. Divorcing families already have enough financial strain. Encourage the parties to pay for their child's college education instead.

Litigation is emotionally expensive as well. Custody trials usually require the children to be interviewed and observed by several experts. The children may even be required to appear at court. The animosity between parents can increase significantly while embroiled in an adversarial process, which can expose children to increased conflict, verbal attacks and tension, leading to stress, confusion and long-lasting damage. A mediator can help educate parties in a neutral manner and keep the focus on the children's needs, while engaging parents in a more sensitive and less inflammatory process.

If no children are involved, there can still be significant ex-

penses associated with the identification and valuation of property. Appraisers, evaluators, accountants, economists, and adjusters may be required by one or both sides, with the parties paying the costs for these services. Mediation can often offer solutions to avoid these costs.

Mediation services are available privately and through various State sponsored mediation programs. The ND Family Mediation Program provides six-hours of mediation for families with cases involving custody or parenting time filed with the Courts. The Department of Agriculture Mediation Service provides mediation involving agricultural producers, as well as issues surrounding oil and gas development, surface damages, pipeline and road easements, reclamation, dust control, loss of production, deer depredation concerns, and a growing number of other issues.

There is faster resolution. With resources in Western North Dakota stretched beyond their capacity, the wait for legal services and access to the Courts are backlogged for months. Parties set their own timeframe for resolving issues, without having to wait months for the next court date or for a time when two lawyers and the Court can coordinate their calendars. It is possible to resolve issues in a matter of hours instead of years. One of the worst parts of any litigation is

the anxiety brought about by living with unresolved, lingering issues for a prolonged period and by having to remain attached to a problem rather than working towards a solution.

There is greater confidentiality. Communications, documents and work notes made or used in mediation are privileged and confidential. Meetings are private and at the mediator's office (or even held via Skype or conference call). Litigation in a Court requires the parties to argue their case in a public courtroom in front of a judge, officers and court employees as well as other litigants and attorneys. It is often very uncomfortable to have financial circumstances and family problems discussed in a room full of strangers, or in front of neighbors and other people in the parties' community.

The parties control the discussion and the outcome. The parties choose the topics that they want to discuss and settle. The parties, not a judge or jury, have final say over the terms of their agreement. Important decisions about the parties' property, business operations, and children are not left in the hands of strangers. Because the parties design the outcome, they can fine tune the agreement specific to their circumstances and needs. The parties make their own "informed" decisions.

There is greater creativity, flexibility, and more personal attention. The mediation process allows the parties to speak and be heard. The parties work directly with the mediator, who will elicit, explore and generate options, help the parties negotiate, refine ideas, encourage decision-making and strive to find final agreement. The Courts are backlogged and understaffed with too many cases. Judges often do not have the time or opportunity to get to know each party or family and by necessity, must speak to the lawyers more than the people actually going through the litigation. Mediators are more able to work around the parties busy schedule, as opposed to a court, with its rigid operating hours and overflowing dockets. Mediation can even work when parties desire to mediate their disputes but cannot do so while in the same room, or the same state. Mediation can be achieved online via Skype or another online service, or via conference call or speaker phone.

It builds common ground, communication skills, and provides for greater longevity and stability to agreements. In contrast to the adversarial nature of the traditional litigation system, mediation seeks to improve parties' understanding of each other and their ability to communi-

cate. In the context of divorcing or separating parents who will need to co-parent for years to come, emerging from a divorce with the ability to communicate effectively and with respect is especially important. In the context of energy development disputes, the issues and damages are complex and impacted by numerous variables. Unique resolution options can be crafted through mediation and include a working business relationship to address the challenges that are to come not just those that have accrued in the present litigation. Everyone who runs a farm, ranch, or other business operation knows today's points of conflict are just another stepping stone in the road and the challenges that tomorrow will bring. Burning bridges is a poor business plan. A mediator can help moderate, settle disputes and clarify or modify the parties agreement as time goes by. The mediator already knows the parties agreement, is attuned to the parties' business or families' issues and dynamics.

Mediation may not be the final solution for every case. However, even without an agreement reached through mediation, the parties often find the process helpful and rewarding. Given the low cost and ease of access to mediation, it is a worthwhile option to explore in even

the most deadlocked cases.

Sandra K. Kuntz opened Legal Edge Solutions, PLLC. in April 2012, as the first dedicated conflict resolution center in southwest North Dakota.

Ms. Kuntz graduated summa cum laude from UND with a B.S. degree in public administration and received her J.D. degree, with distinction, from UND. She is licensed to practice law in the States of North Dakota, South Dakota, and Montana. She has focused her career in the areas of family law, juvenile defense, real estate, oil and gas, and also currently serves the cities of Medora and Belfield as their municipal attorney. Ms. Kuntz is a qualified neutral for family law, oil and gas, and civil mediation, as well as a certified guardian ad litem, parenting investigator, and parent coordinator. She is a member of the State Bar Association of North Dakota, the Montana State Bar Association, the State Bar of South Dakota, and the American Bar Association.

When work doesn't interfere with her fun, Sandra enjoys spending time with her family, training horses, gardening, fishing, hunting, and working with kids as a 4H leader.



Char Jacober, ACP

“Have a place for everything and put everything in its place when finished with it.”

Char Jacober, ACP

Where do you see yourself in ten years?

Retired and living in Orchid Bay, Belize.

Which celebrity would you enjoy going to dinner with?

Jose Antonio Dominquez Banderas

How many US states have you visited and which one is your favorite?

15. Florida

What is one goal you have set for the year and how do you plan to achieve it?

Get back in shape by working out more.

If you could choose to have any job in the world, what would you do?

Travel writer.

What is the one thing in your kitchen you could not live without?

Coffee maker.

What was your first car?

AMC Javelin

Share a tip on how you organize your life (work, home or otherwise).

Have a place for everything and put everything in its place when finished with it.

Where are you likely to be at 8:00 on a Saturday evening?

In my Lazy Boy watching TV.

When and where were you happiest?

In the Badlands on the back of my horse.

Which talent would you most like to have?

Creativity.

If you could choose what to come back as, what would it be?

A wealthy person.



Shari L. Erdman

“I don’t think I would trade the present time for any other.”

Shari L. Erdman

Where do you see yourself in ten years?

Hopefully contemplating retirement!

Which celebrity would you enjoy going to dinner with?

Josh Groban. He is my favorite singer!

How many US states have you visited and which one is your favorite?

I have visited about a dozen. My visit to Mississippi was only for about 5 minutes as I took a wrong turn leaving Memphis. I stopped to buy a “Mississippi” magnet and then turned around and left the state. My favorite would have to be California. San Diego has the perfect weather!

What is one goal you have set for the year and how do you plan to achieve it?

Obtain my CP. Study, study, study.

If you could choose to have any job in the world, what would you do?

I think it would be awesome to work for a travel network and get to see the world. A close second would be working with animals.

What is the one thing in your kitchen you could not live without?

The dishwasher. Seriously, who likes to wash dishes?

What was your first car?

A 1969 Mustang. It was really cool until I wrecked it.

Share a tip on how you organize your life (work, home or otherwise).

Do as much as you can the night before for the next day. Pre-planning meals for the week helps, too.

Where are you likely to be at 8:00 on a Saturday evening?

At home with my family watching movies.

When and where were you happiest?

I don’t think I would trade the present time for any other.

Which talent would you most like to have?

To be a great singer!

If you could choose what to come back as, what would it be?

One of my cats – they are SPOILED!



**Carol Solberg,
CLA**

*“A mouse in the
corner of the jury
room.”*

Carol Solberg, CLA

Where do you see yourself in ten years?

I am now semi-retired and I hope to be fully retired in 10 yrs.

Which celebrity would you enjoy going to dinner with?

Hillary Clinton.

How many US states have you visited and which one is your favorite?

Around 12 – Hawaii in January is at top of my list.

What is one goal you have set for the year and how do you plan to achieve it?

Haven't set any goals, but I would like to have a better golf game. I guess playing more might help achieve that objective.

If you could choose to have any job in the world, what would you do?

Work in a yarn store.

What is the one thing in your kitchen you could not live without?

Microwave.

What was your first car?

1964 Chevy Impala – I bought in 1972 after I started working as a legal secretary.

Share a tip on how you organize your life (work, home or otherwise).

No tips to share, being mostly retired allows me freedom to be less organized with my time.

Where are you likely to be at 8:00 on a Saturday evening?

In my chair watching TV and knitting in the winter; on the patio with husband and glass of wine in the summer.

When and where were you happiest?

Birth of my sons.

Which talent would you most like to have?

Singing.

If you could choose what to come back as, what would it be?

A mouse in the corner of the jury room.



**Laurie Guenther,
ACP**

*“I’m always happy
when I’m on our
boat at the lake.”*

Laurie Guenther, ACP

Where do you see yourself in ten years?

10 years closer to retirement and within reach! Maybe even some grandchildren in the picture.

Which celebrity would you enjoy going to dinner with?

Keith Urban – he can sing and talk to me all night long.

How many US states have you visited and which one is your favorite?

18 - Hawaii

What is one goal you have set for the year and how do you plan to achieve it?

I haven’t really formulated a goal for the year.

If you could choose to have any job in the world, what would you do?

My current position. I love my job.

What is the one thing in your kitchen you could not live without?

Microwave

What was your first car?

1963 4-door Chevy

Share a tip on how you organize your life (work, home or otherwise).

I use Google calendar for appointments and events. I like being able to access it anywhere. I use Gtasks on my phone and ipad to set reminders of things I need to do daily, weekly, or monthly.

Where are you likely to be at 8:00 on a Saturday evening?

Mostly likely at home – how boring, huh?

When and where were you happiest?

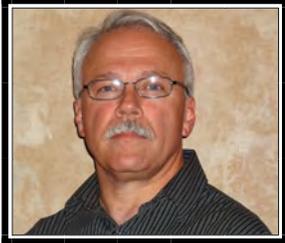
I’m always happy when I’m on our boat at the lake.

Which talent would you most like to have?

To have a semblance of musical capabilities.

If you could choose what to come back as, what would it be?

Sorry – I have no idea.



Jim Hagen, CLA

“When I was going to school in Minnesota in the late ‘80’s. Separated from extended family. Just me, my wife, and three kids, doing everything together . . . with no money.”

Jim Hagen, CLA

Where do you see yourself in ten years?

Retired and, in all likelihood, living in Bismarck.

Which celebrity would you enjoy going to dinner with?

Patti Smith.

How many US states have you visited and which one is your favorite?

I am not very well traveled. Sixteen, I think. I may have imagined Iowa. And I guess, even if I didn’t imagine it, I didn’t visit it so much as I crossed the border into it. So . . . fifteen. My favorite state will always be North Dakota. But, of the states I have only visited, Montana.

What is one goal you have set for the year and how do you plan to achieve it?

Goal?

If you could choose to have any job in the world, what would you do?

I would be a professional artist. It’s not really a job, it’s a profession (if people pay for your work that is).

What is the one thing in your kitchen you could not live without?

The ice dispenser in the fridge.

What was your first car?

A 1966 Plymouth Fury III. Huge, unwieldy, yellow with a black vinyl top. I was the envy of no one I ever met.

Share a tip on how you organize your life (work, home or otherwise).

Organize?

Where are you likely to be at 8:00 on a Saturday evening?

Typically, in my living room.

When and where were you happiest?

When I was going to school in Minnesota in the late ‘80’s. Separated from extended family. Just me, my wife, and three kids, doing everything together . . . with no money.

Which talent would you most like to have?

I already have it (I am a practicing artist), but I wish that talent was more developed.

If you could choose what to come back as, what would it be?

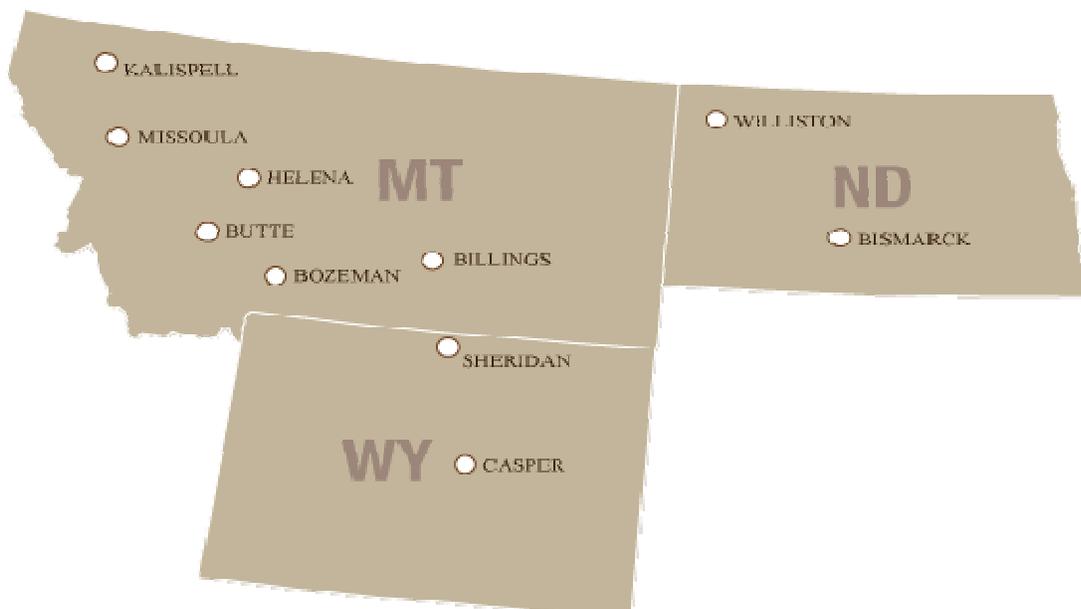
I would probably take another shot at being me.

CROWLEY | FLECK PLLP
ATTORNEYS

Serving Montana, North Dakota, and Wyoming, Crowley Fleck PLLP provides a strong, consistent presence throughout the region. While the legal profession has changed markedly since the firm's founding, our goal remains the same today as it was in 1895: to provide the highest quality legal services in a timely and cost-effective manner.

To achieve this goal, the firm hires and trains the best available lawyers, paralegals and administrative assistants. The firm's major practice groups reflect the legal expertise required to serve our clients in today's market. Each of these groups focus on specific areas of law and provide the depth and skill necessary to customize our services and to concentrate appropriate resources on any project, no matter how complex. Reflecting the values of our region, we enjoy the practice of law and the opportunity to provide personalized services to each and every one of our clients.

The firm has six Montana offices located in Billings, Bozeman, Butte, Helena, Missoula and Kalispell, two offices in North Dakota located in Bismarck and Williston, and two in Wyoming, Casper and Sheridan.





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