

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 11-0244

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IN RE PETITION TO ADOPT  
UNIFORM BAR EXAMINATION

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**IMPLEMENTATION PLAN FOR EDUCATIONAL  
COMPONENT AS ORDERED JULY 3, 2012**

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**INTRODUCTION**

By its Order dated July 3, 2012, the Court approved adoption of the UBE and increasing the passing score to 270 (135 on the scale formerly used). The Court also directed adoption of a Montana law educational component consisting of a “required one- or two-day in-person seminar on Montana law” and stated confidence that the Board of Bar Examiners, the CLE Commission and the CLE Institute would be “capable of developing and administering a high-quality seminar.” (Order, p. 3.)

The Court directed the Board of Bar Examiners to submit a “proposal outlining a Montana law seminar component to be completed by every Montana bar applicant before admission to the bar.” *Id.*, p. 5. To develop that proposal, a working group was formed consisting of members of the Board of Bar Examiners, the CLE Commission and the CLE Institute. The Board of Bar Examiners and the

undersigned express appreciation to Mary Sheehy Moe and K. Paul Stahl of the CLE Commission, Susan Gobbs and Sara Sexe of the CLE Institute and Jacqueline Lenmark and Mike Anderson of the Board of Bar Examiners who participated in the working group chaired by the undersigned. That working group met, discussed and ultimately agreed on the proposal contained in this Implementation Plan.

The proposal is broken into three areas – logistics of preparation, content and substance, and cost considerations taking into account the existing fee structure.

Each of the three areas is discussed below.

### **LOGISTICS OF THE SEMINAR – TIMING, PRESENTATION**

The working group attempted to isolate the major issues and make decisions as to each. The following summary is presented on each of the points:

1. The seminar will be one day in length. Adding a second day is regarded as too expensive, too much to ask of applicants and too much to ask of faculty. Shortening the testing portion of the exam to two days by use of the UBE and then adding a day of seminar keeps the bar exam time commitment for applicants at its present length.
2. The seminar will be given on the Thursday following the July and February exams. The bar exam is always administered on the final Tuesday and Wednesday of each February and July. Because everyone who has to attend the seminar will have just completed the bar exam (with very limited exceptions), the seminar will be held on the Thursday following completion of the bar exam and in the same location (Missoula in July; Helena in February). The Board of Bar Examiners has already locked down that date for space in Missoula in July 2013 and it adds very little to the cost. Holding the seminar

immediately after completion of the bar exam does not add significant travel costs for applicants or for State Bar staff.

3. The seminar will be limited to applicants for admission to the bar. The only individuals who can attend will be applicants for admission to the bar who must complete the seminar in order to qualify for admission. This will not be a CLE opportunity for lawyers. This issue could be revisited at some point in the future but at least for the implementation phase, attendance is restricted.
4. Applicants are required to attend in person. There will be no video-streaming of the seminar. Individuals will be obligated to sign in and out of the seminar as there is no point holding a seminar people can check into and then slip out the side door.
5. Only two to four speakers will be used for presentation. While content outlines and content topics will be developed through the survey of content experts described below, the seminar will be presented by speakers chosen for their prominence as lawyers as well as their proven ability as speakers able to keep a room full of lawyers awake who just finished the bar exam. Using only one or two speakers who work from prepared content outlines will make the seminar easier to put together and less costly as the speakers will be paid for their work. The BBE will choose speakers in consultation with the CLE Commission and CLE Institute.
6. There will be no grace period to complete the seminar. An applicant must attend the seminar to gain admission to the bar. The working group discussed whether to allow an applicant to gain admission to the bar without having attended the seminar and to provide a six or twelve-month grace period to complete that requirement. It was agreed that because the seminar is important and because it is like the requirement to take the MPRE or pass the character and fitness portions of the exam or attend and take the bar exam, it is something that is a requirement before admission to the bar. If that creates some specific hardship, the affected individual may petition the Court for relief.

7. Completion of the seminar requirement for admission to the Montana State Bar will be recognized for one year after the completion date. Since they will have just completed the UBE, most attendees at the seminar will not yet know whether they have passed the UBE. In the event an applicant fails the exam, completion of the seminar will be recognized through two more opportunities to pass the UBE.

### **SEMINAR CONTENT**

The Court in its July 3 Order directed the seminar to focus on 1) the structure of the legal system in Montana; 2) the unique aspects of Montana law, including the Montana Constitution; and 3) the accepted mores and culture of practicing law in Montana.

Regarding the first content requirement, the working group agreed that a portion of the seminar would be devoted to providing a state and tribal court overview, which will of necessity include explanation of the structure and role of the federal courts, and an overview of the procedural rules.

With respect to the third content requirement, the accepted mores and culture of practicing law in Montana, the working group identified the following content areas to be covered in the seminar:

- Montana Rules of Professional Conduct
- Legal Assistance Program
- Role and resources of the Montana State Bar
- Dealing with clients, witnesses, law partners/office staff, opposing counsel, court staff, reporters, judges and juries

- Pro bono representation and expectations
- Continuing Legal Education

Regarding the second content requirement, unique aspects of Montana law, the working group has been engaged in a survey of Montana practitioners regarded as “content experts” to obtain their ideas regarding important and unique aspects of Montana law in the following areas:

- Montana Constitutional Law
- Family law – divorce, child custody, child support, etc.
- Indian law and in particular how issues involving tribal sovereignty and jurisdiction interact with substantive areas of law in Montana, such as family law, real property, torts, and others
- Tort and insurance law
- Contract law
- Trusts, probate, wills, guardianships, conservatorship and estates. This area should also include issues that arise regarding Indian law.
- Criminal law
- Business organizations and the UCC as adopted in Montana; commercial transactions
- Administrative and agency law
- Workers compensation
- Differences between federal and state civil procedure and evidence
- Labor and employment, particularly the Wrongful Discharge Act

Responsibility for surveying in these content areas has been distributed among members of the working group.<sup>1</sup> Some of the surveys are completed and some are not, as of the date of this writing. It is anticipated that each commission/committee (CLE Institute, CLE Commission, BBE) will be responsible for collating and organizing the responses to provide a compilation of major issues and to have identified possible content experts to prepare the content outlines. In responses thus far, it appears as if there will be sufficient numbers of people willing to work on preparation of the content outlines. In addition, the working group agrees that the content outlines are important but that they should be relatively limited both in length and in scope. It is generally thought that such outlines may be in the range of five to ten pages long at the most. Work on content outlines will be ongoing with a target completion date of mid-June, 2013.

### **COST OF THE MONTANA EDUCATIONAL SEMINAR – EFFECT ON FEE STRUCTURE**

At this point, the Board of Bar Examines does not anticipate the need to modify the existing fee structure or to charge additional fees. We may be naïve or underinformed, but at this point it appears the cost of the additional day for use of the facilities is negligible and the cost of putting on the seminar itself should be in

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<sup>1</sup> The survey template is attached. The working group chose to use a uniform template to request assistance of content experts and practitioners and this template was drafted and is in use.

the neighborhood of \$5,000 to \$10,000. The amount of money saved by eliminating the drafting, grading and administration of an exam containing four Montana essay questions should cover all or most of that cost. That particular issue will be given additional attention and, if it appears as if adjustments in fees need to be made, the Board and the State Bar will report that to the Court by the end of 2012.

### **CONCLUSION**


The Board of Bar Examiners respectfully requests Court approval of the one-day Montana seminar as proposed in this submission. If the Court has specific questions, the undersigned is available to answer them. Please note that work is ongoing and that the decision was made to seek overall approval of this approach prior to putting specific pieces of the program together. The Board is confident that it, with the assistance of CLE Commission and CLE Institute, will be able to complete the work and present a high-quality educational seminar directed to the topics identified in the Court's July 3 Order.

DATED this 30<sup>th</sup> day of October, 2012.

MONTANA BOARD OF BAR EXAMINERS

Randy J. Cox  
Jacqueline T. Lenmark  
Gary W. Bjelland  
Loren "Larry" J. O'Toole, II  
Michael B. Anderson  
Debra D. Parker  
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By



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## CERTIFICATE OF SERVICE

This is to certify that the foregoing *Implementation Plan for Educational Component as Ordered July 3, 2012* was served by U.S. Mail upon the following this 30<sup>th</sup> day of October, 2012:

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MONTANA BOARD OF BAR EXAMINERS

By

  
Randy J. Cox, Chair

Dear [Name]:

The Montana Supreme Court has approved a petition by the Montana Board of Bar Examiners (BBE) to change the structure of the Montana Bar Examination, eliminating four essay questions referred to as the “Montana Essay Examination.” In its place, the Court has directed development of a plan for a one- or two-day seminar to be given to all persons who apply for admission to the Montana Bar. The Court has directed the seminar to address three major areas:

1. The structure of the legal system in Montana;
2. The unique aspects of Montana law, including the Montana Constitution; and
3. The accepted mores and culture of practicing law in Montana.

The working group created by the Court, consisting of representatives of the BBE, the CLE Commission and the CLE Institute, is undertaking a review of leading Montana practitioners, judges and educators to identify “unique aspects of Montana law, including the Montana Constitution. “ That is where you come in. You have been identified as a person particularly knowledgeable in **[fill in the legal area]**. Our working group is asking you and several others to take a few minutes to think about and then to send via return email your thoughts on the **unique and most important aspects** of Montana law in this area. (Question #1, below.) The compiled responses we receive from you and the others will help us identify the core content of instruction for the seminar. Because of the introductory nature of the seminar and the number of topics to be covered, instruction will be an overview, rather than an in-depth exploration of each topic. We are looking for “everybody should know” kind of points regarding the law in this area.

Second, if there are particular resources that you have found invaluable in the practice of law in this area, please list them under Question #2. These might be texts, articles, government offices, associations, etc.

Third, we hope to provide attendees at the seminar with a short outline (3-5 pages) capturing the main points of Montana law that are identified through this survey. If you would be willing to prepare such an outline at a later date, please indicate that in response to Question #3 in the survey. Your service to the Court and the Bar in this fashion will be noted and greatly appreciated.

Finally, please consider whether this particular area of practice is affected by or influenced by laws relating to the Indian nations. (Question #4.) For example, if your area of law is family law or tort law, we would expect you to note the ways in which Indian tribal jurisdiction and substantive law may affect practice in this area, perhaps creating traps for the unwary practitioner.

The survey itself is attached for your convenience. We hope to receive all surveys by **August 31**. Please let me know as soon as possible if you will be unable to participate in the survey. Thank you in advance for your time and your assistance. Be assured that the Court appreciates your contribution.

**Attorney Name:** \_\_\_\_\_

**Area of Practice:** [Family Law]

**Instruction:** Please answer the questions below, taking as much space as you deem necessary. When you have completed your answers, please return via email to [Name] at [email address] no later than August 31.

1. What are the unique and/or most important aspects of the practice of [family law] in Montana? (What does every new lawyer need to know before practicing family law in Montana?)
2. What resources have you found invaluable in practicing family law in Montana?
3. Would you be willing, at a later date, to prepare a short outline (3-5 pages) capturing the main points of Montana law that are identified through this survey?
4. How, if at all, is this particular area of practice affected by or influenced by laws relating to the Indian nations?