EXHIBIT NO. 7
DATE 3-4-05
BILL NO. SB 504

State Bar of Montana Talking Points
S.B. 504 Increasing the Annual Attorney License Tax to $69

- The Legislature's intrusion into the attorney regulatory structure is an unconstitutional infringement upon the Montana Supreme Court's authority to regulate the practice of law. Montana Constitution Article III, section 1, Article VII, section 2.
- Active, practicing lawyers pay $285/year in fees, dues and assessments. (There are additional voluntary section dues as well as expenses relating to mandatory continuing legal education that are not included in this discussion.] The $25 license fee that accrues to the general fund is included in the $285. When challenged as unconstitutional, the Supreme Court upheld the infringement on its constitutional responsibility as a matter of comity (a term meaning "an atmosphere of social harmony"]. An increase in the fee would undoubtedly be challenged as unconstitutional, and likely prevail. *In the Matter of the Application of Kradolfer v. Smith*, 246 Mont. 210, 805 P.2d 1266 (1990).
- The assumption has been made that the assessment will be directed to the Supreme Court Commissions, however the bill does not include that directive. The current license fee goes into the general fund, without specific designation.
- There are twenty Supreme Court Commissions. However, only nine are principally funded through the Supreme Court. Eight of the remaining eleven receive administrative support and limited funding from the State Bar. The final three Commissions are funded entirely by specific attorney assessments and are administratively funded by the SBM, receiving no state funds. [See the back of this page for a listing of Supreme Court Commissions.]
- An assumption has been made boosting the current $25 license fee to $69 will uniformly fund the existing Commissions. In fact, eleven of the Commissions rely on the SBM and their separate assessments to thrive, exist or limp. Of the $285 assessed for licensure, $150 are the dues assessed to each active, practicing attorney. The $150 is used in part by the SBM to assist the eleven Commissions that receive no State general funds.
- The public is the direct beneficiary of the work of the Commissions, not lawyers or judges. The Sentence Review Division serves as a prime example. Other examples include the Equal Justice Task Force and the Commission on Self-Represented Litigants. Neither receives public funding, but both assist the public in obtaining access to the courts. Pro se forms have been developed and disseminated and pro bono programs created and supported—all without the benefit of public funding. Lawyers accrue no financial benefit by providing free access to self-help documents and free legal services. These are programs that should be supported by public funds. However, the funds do not exist to support the programs, therefore lawyers, in the interest of helping the judicial branch function, have attempted to fill the gap.
- Other professions' fees and dues, regulated within the Department of Labor & Industry and publicly funded, provide all the administrative, legal and clerical services need by the boards within the department—including discipline, licensing, registration, meetings, hearings and admissions (section 37-1-101, MCA). The State Bar of Montana is the administrative entity carrying the load of these responsibilities within an existing regulatory structure controlled by the Supreme Court, funded by the dues assessment. S.B. 504 inequitably suggests that the lawyers carry the burden for Commissions whose sole purpose is to benefit the public.

Supreme Court Commissions

Financially Supported Within the Supreme Court's Budget:

- District Court Council
- Sentence Review Division
- Commission on the Code of Judicial Conduct
- Commission on Courts of Limited Jurisdiction
- Commission on Practice
- Commission on Technology
- Judicial Nomination Commission
- Judicial Standards Commission
- Uniform District Court Rules Commission

Administrative Support and Limited Funding Contributed by the State Bar of Montana:

- Advisory Commission on Rules of Civil and Appellate Procedure
- Civil Jury Instructions Guidelines Commission
- Commission on Rules of Evidence
- Commission on Unauthorized Practice
- Criminal Jury Instructions Commission
- Commission on Self-Represented Litigants
- Equal Justice Task Force
- Gender Fairness Commission

Funding Provided by Specific Attorney Assessments and Administratively Supported by the State Bar of Montana:

- Board of Bar Examiners
- Commission of Continuing Legal Education
- Commission on Character and Fitness