

**APPLICATION FOR**

**DISTRICT COURT JUDGESHIP  
Eighth Judicial District**

**A. PERSONAL INFORMATION**

1. Full Name: Matthew Stuart Robertson
- a. What name do you commonly go by? Matt Robertson
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]  
[REDACTED]
4. Office Address: 121 4<sup>th</sup> Street North, Suite 2A, Great Falls, MT 59401  
Phone: 406-454-6915
5. Length of residence in Montana: 53 years
6. List your place of residence for the last five years:
- | <u>Dates</u>            | <u>City</u> | <u>State</u> |
|-------------------------|-------------|--------------|
| March 4, 2007 - Present | Cascade     | Montana      |

**B. EDUCATIONAL BACKGROUND**

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

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
CM Russell High School	Great Falls, Montana	May, 1985	Diploma
University of Montana	Missoula, Montana	June 9, 1990	B.A. and B.A.
U of M, School of Law	Missoula, Montana	May 15, 1993	Juris Doctor

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

I have been presented with numerous citations for my work on the Montana Youth Court Act and with juvenile offenders during the court of my career in presenting new statutory changes to the District Court Judges Conference when I was a Special Assistant Attorney General, through my presentations at the Montana Board of Crime Control. I was asked by the Office of the Public Defender to attend a training on Indigent Defense by former managing attorney, Betty Carlson, and was further asked to testify before the Colorado legislature on the issue of juvenile justice and adult incarceration. I have been honored by the Montana Supreme Court Administrator's Office on numerous occasions and have been selected to be a member of the Montana Drug Court Peer Review Process and completed the training this past February.

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

No.

### C. PROFESSIONAL BACKGROUND AND EXPERIENCE

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

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Montana Supreme Court, Montana	September 21, 1993
Montana Federal District Court, Montana	October 5, 1993
9 <sup>th</sup> Circuit Court of Appeals	March 12, 1998
United States Supreme Court	November 27, 2000

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

Cascade County Attorney's Office, Great Falls, Montana.

I have the privilege of working with Joshua Racki, Cascade County Attorney, Susan Weber, Chief Criminal Deputy Cascade County Attorney, Carey Ann Shannon, Chief Civil Deputy County Attorney,

Kory Larson, Jennifer Quick, Amanda Lofink, Ryan Ball, Valerie Winfield, Jake Wilkinson, Carolyn Mattingly, Mercedes Oxford-Kemp and Angela Payne; Deputy Cascade County Attorneys.

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

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Cascade County Attorney's Office 121 4 <sup>th</sup> St. N., Suite 2A Great Falls, MT 59401	Deputy County Attorney	2003 – Present
Montana Department of Corrections 5 S. Last Chance Gulch PO Box 201301 Helena, MT 59620- 1301	Special Assistant Attorney General	1998 – 2003
Western Intermodal Transport, Ltd. Dissolved in Bankruptcy Proceedings (1998-1999)	In-House Counsel	6-1997 to 12-1997
Anderson, Robertson, and Stevens, PLLP Dissolved in 1997.	Partner	10/1993 – 6/1997

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

I have been continuously employed as an attorney since my graduation from law school, either in private practice, as in-house counsel, as described above, and was an intern at ASUM Legal Services from 1991-1993, when I graduated.

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

I am currently employed by the Cascade County Attorney's Office as a prosecutor where I practice in the civil and criminal fields dealing with juvenile justice issues in both the Youth Court and the Criminal Court pursuant to the Montana Youth Court Act. I also prosecute felony offenders on a wide variety of offenses from felony DUI cases to Deliberate Homicide cases which are pending before the Eighth Judicial District Court.

I am also involved in civil practice in the areas of prosecuting Youth in Need of Care cases in the Eighth Judicial District Court. I deal with civil litigation on the defense aspect when Cascade County is

the defendant in lawsuits by inmate litigators and when it involves issues with the Cascade County Regional Juvenile Detention Center. I also deal with and counsel other attorneys who are involved in litigation concerning inmate sentence calculations, or habeas corpus petitions. I advise the various correctional facilities and assist them in investigating PREA allegations inside correctional facilities to ensure the safety of inmates in Cascade County's correctional offender population.

I provide legal advice to the Cascade County Commissioners as requested through other counsel when it deals with juvenile justice issues, primarily with detention and shelter care issues. I advise and defend the Cascade County Juvenile Detention Center and provide training to their staff on the treatment, care, and custody of inmates under their care. I have also taught at the judicial training course on the Montana Youth Court Act during the most recent course in Helena at the request of the Supreme Court Administrator's Office.

Criminal Practice constitutes approximately 50% of my current case load.

Civil Practice constitutes approximately 50% of my current case load.

I do not appear before any administrative bodies in my current employment.

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

During my private practice in Missoula and Lolo, Montana, I assisted clients with criminal defense in felony and misdemeanor cases in Missoula and Ravalli County. I represented clients in child custody and dissolution of marriage proceedings, including property disputes in Missoula, Ravalli and Superior Counties. I assisted clients in civil defense for tort litigation involving several businesses in the Lolo and Missoula areas. I assisted many clients with incorporating or forming partnerships for purposes of conducting business in Montana. I represented clients in the Water Court on the issue of water rights in the Bitterroot Valley. I assisted the courts in representing children as a CASA-CAN Attorney Guardian Ad Litem on a pro-bono basis, and as a court-appointed guardian ad litem in several cases. I was also appointed to assist in the closing of estates where the personal representative had failed to act or had died during the course of the estate process and worked with the heirs to close estates by appointment of the Missoula and Mineral County Judges.

When I worked as in-house counsel for an intermodal drayage company, I assisted in creating, Western Intermodal Transport, Ltd., which hauled commodities to and from railroad yards and ports in Billings and Missoula, Montana; Spokane, Washington; and Portland, Oregon. I provided legal counsel and acted as the Human Resources Director for the company and was in charge of disciplinary actions

involving employees and advised the president and board of directors on termination decisions. I also negotiated contracts, reviewed contracts with various vendors, and dealt with GST Corporation, Nippon Yusen Kabushiki Kaisha, or NYK, Ltd., Burlington Northern and Santa Fe Railroad (BNSF), Union Pacific and Southern Pacific Railroad (UPSP), and various port-drage and commodities companies on the transportation and delivery of commodities in the intermodal drage business of my employer. I also dealt with employee grievance issues concerning their conditions of employment.

During my employment with the Montana Department of Corrections as a Special Assistant Attorney General, I engaged in the defense of the State of Montana from inmate civil rights litigation under U.S.C. §1983 in the Federal District Courts. I defended the Department in Habeas Corpus proceedings before the Montana District Courts in any county where a correctional facility was located, the Federal District Courts in Helena and Missoula, the 9<sup>th</sup> Circuit Court of Appeals, the Montana Supreme Court, and the United States Supreme Court, on a wide variety of issues involving inmate sentences and the inmates civil rights. Many of the issues which arose during these habeas corpus proceedings involved the calculation of the inmate's sentence. I became an expert in the calculation of an inmate's sentence or sentences, including the calculation and impact of "good time" on an inmate's sentence while working with Janet Cox, the former chief of records at the Montana State Prison. I was one of the primary developers of the sentence calculation spreadsheet which is still utilized by the Montana Department of Corrections in the calculation of an inmate's sentence.

Prior to 1999, there were no real consequences for juveniles who assaulted staff or personnel within the Juvenile Correctional Facilities and several staff members were seriously injured during these incidents. I developed the strategy, in consultation with Director Rick Day, to amend statutes to address the issue of serious assaults inside the juvenile correctional facilities. I drafted legislation which made it a direct file offense under M.C.A. §41-5-206(1)(a), to charge juveniles who assault law enforcement or corrections and detention officers directly in the District Court with criminal penalties, to address juveniles who assaulted staff in correctional facilities. I then lobbied for the passage of the legislation which was implemented by the 1999 legislature. I was then sworn in as a Special Assistant Deputy County Attorney for Custer and Jefferson Counties and prosecuted juvenile offenders who committed offenses inside the Pine Hills and Riverside Youth Correctional Facilities following the enactment of the law. I also lobbied for amendments to the Extended Jurisdiction Juvenile Prosecution Act with the Honorable Judge John Larson, to correct the constitutional defects as found by the Montana Supreme Court. I drafted the Criminally Convicted Youth Act codified at M.C.A. §41-5-2501, et. seq., after

discussions with Pine Hills Youth Correctional Facility Superintendent Steve Gibson, to address the issues involving juveniles who were prosecuted as adult offenders pursuant to M.C.A. §41-5-206, and ultimately convicted of criminal offenses in the District Court. The Criminally Convicted Youth Act allows juveniles to petition for review of their sentence before the court of conviction for a quasi-sentence review by the courts.

I was an instructor at the Montana Law Enforcement Academy from 1999 through 2003, and taught Corrections and Detention Officer Basic and Use of Force courses in Law Enforcement Basic and Corrections and Detention Officer Basic. I became the Juvenile Justice Specialist for the Montana Department of Corrections and the State of Montana. I have also testified as an expert in proceedings involving the application of the Montana Youth Court Act and provided legal opinions to courts and prosecutors across the State. I am still consulted by attorneys in other jurisdictions and judges on the impact of the Montana Youth Court Act, the Interstate Compact on Juveniles, and other issues involving juvenile justice in Montana.

I worked with the Montana Department of Corrections and the Montana Correctional Enterprises branch to facilitate the transfer of state land to a private entity in order to facilitate the development of the Montana State Prison ranch facilities and the installation of a pivot sprinkler system to enhance the agricultural abilities at the prison. I worked with the Montana Department of Corrections Facilities Manager on solid waste disposal act issues concerning the disposal of solid waste at the Montana State Prison. I assisted the Facilities Manager in evaluating and siting correctional facilities in Montana by reviewing Request for Proposal documents from various private prison corporations in siting the new prison in Shelby, Montana, and other proposed locations and advised the Director on the contractual issues involved. I worked with the Facilities Manager on the creation of the WATCH program at the former Xanthopoulos Building on the Montana State Hospital site, which turned the former forensic unit of the hospital into a chemical dependency treatment program which is used to treat offenders for alcohol treatment by the Montana Department of Corrections.

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

I am recognized as a specialist in the field of juvenile justice in the State of Montana for my extensive experience with the Montana Youth Court Act, the Interstate Compact on Juveniles and my work to lobby for amendments, changes, and improvements to the Montana Youth Court Act during my tenure with the Montana Department of Corrections, and during the past 12 years as a practitioner who

specializes in the prosecution of juvenile offenders for Cascade County. I am also recognized as a specialist in treatment court programs and have been invited to participate in the Montana Supreme Court Administrator’s Peer Review Program which evaluates and suggests improvements in the implementation of adult treatment court programs throughout the State of Montana. I have been involved in and implemented many administrative and policy changes in Cascade County involving the care and custody of juvenile offenders. I was one of the primary people to implement detention reform in detention facilities through the Juvenile Detention Alternatives Initiative in collaboration with the Annie Casey Foundation and the Alliance for Youth. Additionally, I remain a part of a work group which is working on addressing many other issues facing juvenile offenders, including the Disproportionate Minority Contact issue with the Montana Board of Crime Control.

17. Do you regularly appear in court? Yes

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

Federal court	_____	%
State or local courts of record	<u>100</u>	%
Administrative bodies	_____	%
Other	_____	%

18. During the last five years, what percentage of your practice has been trial practice? 75%

19. How frequently have you appeared in court? 100+ times per month on average.

20. How frequently have you appeared at administrative hearings?  
Zero times per month on average.

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

Civil	_____	15%
Criminal	_____	50%
Other (Quasi-Criminal Youth Court and YINC)	_____	35%

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

No. I last argued a case before the Montana Supreme Court at oral arguments in *WORDEN, Plaintiffs and Appellants, v. MONTANA BOARD OF PARDONS AND PAROLE*, Defendants and Respondents, which was decided: July 7, 1998. I have not been counsel of record on an appeal, habeas corpus proceeding, or other matter which has been heard by the Montana Supreme Court since I took a

position with the Cascade County Attorney's Office in September, 2003, because the appeals are handled by the Montana Attorney General's Office Appellate Bureau. I have had numerous cases taken up on appeal, and to my knowledge I have only had one case returned to the District Court to correct a perceived error.

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

Over 20, including 3 in the past 12 months.

24. State the number of non-jury trials that you have tried in the last ten years. Over 300

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

Litigation Matters which involve confidential proceedings, or which were settled prior to trial

Matthew McKittrick  
Regional Deputy Public Defender,  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Youth in Need of Care cases  
Criminal Cases

Lawrence LaFountain  
Conflict Public Defender  
615 2nd Avenue North Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Youth in Need of Care cases (Confidential)  
Criminal Cases

Ken Olson  
Attorney at Law  
471 Central Avenue  
Johnson Building, 4<sup>th</sup> Floor  
Great Falls, MT 59401  
(406) 727-6263  
(406) 788-5656  
Criminal cases, Assault with a Weapon  
DUI, 4<sup>th</sup>, Arson, Agg. Assault.

Jeff Olson  
Attorney at Law  
410 Central Ave Suite 302  
Great Falls, MT 59401  
(406) 788-8748  
Treatment Court Defense Counsel  
Criminal cases, Youth in Need of Care Cases  
Youth Court Cases

Daylon Martin  
Office of the Public Defender  
615 2<sup>nd</sup> Ave. N. Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Youth in Need of Care cases (Confidential)

Carl Jensen  
Attorney at Law  
410 Central Avenue Suite 506B  
Great Falls, MT 59401  
(406) 899-6696  
Youth Court cases  
Criminal

Meghan Lulf-Sutton

Jeff Sutton (Deceased)

Attorney at Law  
410 Central Ave., Suite 306  
Great Falls, MT 59401  
(406) 771-7477  
Youth Court and YINC cases (Confidential)

Attorney at Law  
417 Central Ave Suite 2B  
Great Falls, MT 59401  
(406) 453-1673  
Youth Court, YINC and Criminal cases

Nathan Prohaska  
Office of the Public Defender  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Youth in Need of Care cases  
Criminal Cases

Anthony Platt (no longer employed)  
Office of the Public Defender  
615 2nd Avenue North Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Youth in Need of Care cases (Confidential)

Vince van der Hagen  
Conflict Public Defender  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Youth in Need of Care cases (Confidential)  
Criminal Cases

Michael Kuntz  
Office of the Public Defender  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Criminal Cases

Claire Lettow  
Office of the Public Defender  
615 2<sup>nd</sup> Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Criminal Cases

#### CRIMINAL TRIALS IN THE PAST TWO YEARS:

Counsel of Record:  
Daylon Martin and Nathan Prohaska  
Office of the Public Defender  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Sexual Intercourse Without Consent  
State v. Cook, CDC-20-199  
Trial Dates: July 6-8, 2020, Not Guilty

District Court Judge:  
Hon. John Kutzman  
Eighth Judicial District Court Judge  
(406) 454-6897

Counsel of Record:  
Todd Glazier  
Attorney at Law

District Court Judge:  
Hon. John Kutzman  
Eighth Judicial District Court Judge

PO Box 202  
Kalispell, MT 59903  
(406) 770-3200

(406) 454-6897

Riot  
State v. Bird, CDC-18-610  
Trial Dates: February 2-3, 2020, Guilty

Counsel of Record:  
Victor Bunitsky  
Attorney at Law  
PO Box 77  
Virginia City, MT 59755  
(406) 843-5432

District Court Judge:  
Hon. John Kutzman  
Eighth Judicial District Court Judge  
(406) 454-6897

Riot  
State v. Morsette, CDC-18-608  
Trial Dates: December 2-3, 2019 - Guilty

Counsel of Record:  
Carl Jensen  
Attorney at law  
410 Central Ave., Suite 506B  
Great Falls, MT 59401  
(406) 761-0613

District Court Judge:  
Hon. John W. Kutzman  
Eighth Judicial District Court Judge  
(406) 454-6897

Incest, Indecent Exposure to a Minor, Incest, Sexual Intercourse Without Consent,  
Sexual Intercourse Without Consent, and Incest.  
State v. Scott W. Ellison, CDC-18-306  
Trial Dates: July 15-17, 2019 – Guilty on all six counts

Counsel of Record:  
Victor Bunitsky  
Attorney at Law  
PO Box 77  
Virginia City, MT 59755  
(406) 843-5432

District Court Judge:  
Hon. John Kutzman  
Eighth Judicial District Court Judge  
(406) 454-6897

Riot  
State v. Morsette, CDC-18-608  
Trial Dates: July 8-9, 2019 – Mistrial – Jury Deadlocked 11-1 for Guilty

Counsel of Record:  
Carl Jensen  
Attorney at law  
410 Central Ave., Suite 506B  
Great Falls, MT 59401

District Court Judge:  
Hon. John W. Larson  
Eighth Judicial District Court Judge (Substituted)  
(406) 258-4773

(406) 761-0613

Incest.

State v. Davin Dahl, ADC-18-637

Trial Dates: May 6-7, 2019 – Mistrial after two days.

Counsel of Record:

Dean Koffler and Mark Frisbie

Office of the Public Defender

615 2nd Avenue North, Third Floor

Great Falls, MT 59401

(406) 770-3200

Criminal Endangerment, Obstructing a Peace Officer or Other Public Servant, Failure to Yield, Reckless Driving, Unsafe Turn, Stop Sign Violation, Fleeing from or Eluding a Peace Officer, Speeding, and Failure to Carry Proof of Liability Insurance

State v. Sivertsen, DDC-18-585

Trial Dates: January 14-15, 2019, Not Guilty and Guilty on various charges

District Court Judge:

Hon. John W. Parker

Eighth Judicial District Court Judge

(406) 771-6656

Counsel of Record:

Lawrence LaFountain

Office of the Public Defender

615 2nd Avenue North, Third Floor

Great Falls, MT 59401

(406) 770-3200

Sexual Intercourse Without Consent

State v. Richard Lee Tome, ADC-16-643

Trial Dates: December 3-4, 2018 - Guilty

District Court Judge:

Hon. Gregory G. Pinski

Eighth Judicial District Court Judge

(406) 454-6894

Counsel of Record:

Vince van der Hagen

Office of the Public Defender

615 2nd Avenue North, Third Floor

Great Falls, MT 59401

(406) 770-3200

Theft – Common Scheme

State v. Tiffany Ann Opitz, ADC-18-123

Trial Dates: September 17-18, 2018 – Guilty

District Court Judge:

Hon. John W. Kutzman

Eighth Judicial District Court Judge

(406) 454-6897

Counsel of Record:

Ken Olson

Attorney at Law

471 Central Avenue

District Court Judge:

Hon. John W. Kutzman

Eighth Judicial District Court Judge

(406) 454-6897

Johnson Building, 4<sup>th</sup> Floor  
Great Falls, MT 59403  
(406) 727-6263  
Arson  
State v. Daniel Doran, BDC-16-517(C)  
Trial Dates: April 16-18, 2018 – Not Guilty

Counsel of Record:  
Travis Cushman  
Attorney at Law  
P.O. Box 2848  
Great Falls, MT 59403  
(406) 454-2889  
Sexual Intercourse Without Consent  
State v. Jeremy Mark Lopez, BDJ-17-023  
Trial Dates: April 3-5, 2018 – Not Guilty

District Court Judge:  
Hon. Elizabeth Best  
Eighth Judicial District Court Judge  
(406) 771-3950

Counsel of Record:  
Matthew McKittrick  
Office of the Public Defender  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Incest, Incest, Incest, Incest, Incest, Incest, Incest  
State v. David Komeotis, ADC-17-055  
Trial Dates: March 19-22, 2018 – Guilty – all seven counts

District Court Judge:  
Hon. Gregory G. Pinski  
Eighth Judicial District Court Judge  
(406) 454-6894

Counsel of Record:  
Theresa Diekhans  
Office of the Public Defender  
615 2nd Avenue North, Third Floor  
Great Falls, MT 59401  
(406) 770-3200  
Tampering with Witnesses or Informants, Assault  
State v. Shawn Fleger, DDJ-17-060(B)  
Trial Dates: January 9-10, 2018 – Guilty

District Court Judge:  
Hon. Elizabeth Best  
Eighth Judicial District Court Judge  
(406) 771-3950

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

I have not appeared before any administrative boards or commissions in the past five years.

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

I have not published any articles. I have lectured on the Montana Youth Court Act before the Judicial Training on the topic of the Montana Youth Court Act, I do not recall the dates, but it was prior to Judge Pinski being sworn in as a Judge. I have lectured at the Montana Board of Crime Control several times on various topics including the Montana Youth Court Act and upon other topics as requested, I do not recall the dates.

## D. PROFESSIONAL AND PUBLIC SERVICE

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

Montana State Bar Association, October 1993 – Present

Cascade County Bar Association, February 2015 - Present

Missoula County Bar Association, November 1993 – December 1997

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

Great Falls Gaming Rendezvous, Inc., a non-profit public charity which raises funds for charitable purposes, currently to fund scholarships with local colleges and universities. I assisted the current president of the organization and the group of volunteers in organizing the charity, drafted their corporate documents and processed the documents for them to become an IRS 501(c)(3) public charity organization and continue to serve the board on issues concerning their fundraising events and filing any required paperwork with the State and Federal government agencies on a pro-bono basis. I have been involved since 2012 with the organization.

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

I have not run for or held public office since graduation from law school. I was campaign manager for Matthew Denny, during both of his campaigns for Representative in Missoula.

I have sought judicial appointment in the Eighth Judicial District in 2015 and the Seventh Judicial District in 2017.

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

I have volunteered my time with the Montana Eighth Judicial Drug Treatment Court by taking the juvenile offenders who participate in this program on various outings and events. I take the youth involved in the program on an annual float trip to show them alternative activities they can engage in while living in Montana instead of recreational drugs, as well as participating in other scheduled events as time permits. I conceived the idea shortly after the creation of the drug court and I organized and planned the events from the inception of the program in 2006, until additional funding became available through charitable organizations. I support public involvement by providing my time to charitable organizations which work to improve the community and advance educational opportunities. I assisted in the implementation of the Veteran's Treatment Court program and supervised the program on behalf of the Cascade County Attorney's Office and advised Judge Pinski on eligibility issues for possible participants and sought out the initial group of participants. I have worked with individuals on non-profit programs to improve the community through the Great Falls Gaming Rendezvous, Inc., by providing them guidance on charitable activities and causes to further their goals.

## **E. PROFESSIONAL CONDUCT AND ETHICS**

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

No.

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

No.

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

No.

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

No.

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

No.

## **F. BUSINESS AND FINANCIAL INFORMATION**

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

I was the Human Resources Director and in-house Counsel for Western Intermodal Transport, Ltd., in which I practiced law and assisted in the conduct of the affairs of the corporation. The details are addressed in my list of experience above. I worked for the company as their attorney and became the in-house counsel for six months from June 1997 through December 1997 and resigned on December 31, 1997.

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

I am currently a silent partner at Kelly's Komix, a local game store in which I assist with stocking games, comic books, and collectible memorabilia. The nature of my duties involves stocking shelves, running games which are sold by Kelly's Komix, interacting with customers, retail sales, and cleaning the store. I do not intend to resign my duties unless it is deemed necessary to the integrity of this office as it is mainly a hobby of mine, and I do not benefit from my duties in any pecuniary way.

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

None.

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

None.

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

Yes.

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

If not, please explain.

Not Applicable

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

If yes, please explain.

Not Applicable

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

Never.

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## G. WRITING SKILLS

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

I research and write my own briefs in virtually every case. In the rare exception, I receive assistance, advice and suggestions from other attorneys in the office when addressing issues which they have had more experience with during their careers. I do all of my research, but I have had assistance on some briefs with research and drafting in certain complex cases. If I encounter an issue which contains issues which are new and novel, and in which other counsel have more experience, I will consult with them, or review the various brief banks available to prosecutors and have on occasion sought out and received advice from other prosecutors within and without the State of Montana. When I worked for the Montana Department of Corrections, I wrote most of my own briefs with the rare exception being those which involved issues which were before the Montana Supreme Court, the 9<sup>th</sup> Circuit Court of Appeal, or the United States Supreme Court, where the briefs were drafted by numerous attorneys and which were reviewed by counsel inside and outside of the Montana Department of Corrections.

In issues which are not novel, or new and the response is generally a boiler-plate response on the current state of the law, I use the current briefs submitted in prior cases which have been amended to apply to the current case at bar and update the research on the most recent court opinion on the subject. I do not have associates, or a paralegal who conducts research for me on a regular basis, as there is not sufficient time for any person in this office to have a research associate. I am required to perform my own research on issues and write my own briefs.

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

I regularly draft, file and charge persons with crimes in youth court, District Court, and file civil petitions concerning parents involved in Youth in Need of Care proceedings before the District Court. I also draft and respond to discovery requests, file responses to discovery motions, responses to various motions on criminal and civil cases, including motions to suppress, and motions to dismiss. I draft proposed orders for the District Court Judges of the 8<sup>th</sup> Judicial District Court following contested case hearings, including the Findings of Fact, Conclusions of Law, and Orders in Youth Court and Youth in Need of Care proceedings every week for review and execution by the Court. I draft proposed orders for the court on a weekly basis for review by the Court following proceedings which occurred earlier

that day, or during a hearing held previously, but generally have the proposed order to the Judge within one to five business days. I have also been engaged to write powers of attorney for persons involved in the legal system to assist them in providing care for crime victims to make end-of-life decisions when the designated individual cannot be present, such as writing a medical power of attorney for the grandparents of a child who is dying due to child abuse by the parent, who remains incarcerated.

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

See Exhibit 1, Attached

48. What percentage of your practice for the last five years has involved research and legal writing?  
35 %

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

I am competent in the use of both Westlaw and Lexis having used both research engines in my practice with the Montana Department of Corrections and the Cascade County Attorney's Office since I began my legal practice in 1993.

## H. MISCELLANEOUS

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

I have a family and I am currently raising five children, two of which are now adults. We regularly travel to Glendive, Montana, where my wife is from, to visit relatives who own the Newton Ranch. We regularly travel there to participate and support the local community in Glendive.

Most of my free time is consumed by making sure that my children get to their school activities, or conducting home-schooling since the advent of the COVID-19 pandemic, that my children get their homework completed, that everyone makes it to their numerous appointments, and spending time playing with and reading to my children. When I have time, after the children are in bed, or on weekends, my primary hobby is reading and researching military history and has been since I was approximately 11 years old; I then use to re-create battles and scenarios from historical battles with miniature soldiers. I paint and paint military miniatures as a part of my hobby and have done so for more than thirty-five years with my father, who was a history teacher at CM Russell High School. In addition to researching military history and modeling, I like to ride my bike, spend time in the outdoors at the family cabin outside Cascade in the mountains. I am also involved in shooting sports and engage in target practice. I have completed several firearms courses and enjoy shooting with my family, especially my uncle, Ken Robertson, former editor of the Tri-City Herald, in the Tri-Cities area of Washington.

Most recently, I am now a part-time caregiver for my father who resides with me in my home where he is going through a terminal illness. The issues with SARS-COV2 or COVID-19 have drastically compromised my ability to interact with him as his immune system is virtually non-existent given his current treatment protocols and drugs. Learning to adapt and address the complications within the realm of a pandemic have shown me how much time and energy it takes to be protective of those around me and the people I interact with.

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

Following High School, I worked at the KOA as a grounds keeper for the summer of 1985 and then went to college at the University of Montana where I was hired for work-study programs at the Chemistry and Pharmacy labs to assist with the operation of the labs, copying tests and exams, worksheets, and other duties as assigned by my supervisor. Following school in 1986, I took a job delivering pizza for Stageline Pizza in Great Falls, as well as working for the Montana State Fair as a night show ticket salesclerk during the summer. I remained working at the Montana State Fair in the summers from 1986 through 1988 and working at work-study programs on campus at the University of Montana in the computer labs. In 1989, I was hired by Anderson Enterprises in Missoula, Montana, where I worked construction and renovated houses for rental units by college students until I finished law school, in 1993.

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

I have been precluded from the performance of most pro-bono work due to the nature of my job duties as a sworn Deputy Cascade County Attorney and the problems which could be created by providing pro-bono services to clients or organizations because any legal violation could cause a conflict of interest for my agency which would require that the matter be referred to the Attorney General or another county attorney to prosecute. I have performed pro-bono work on behalf of the Great Falls Gaming Rendezvous, Inc., by assisting them with drafting articles of incorporation and qualifying the organization as an IRS 501(c)(3) public charity organization founded to provide scholarship money to students and to benefit disadvantaged youth and continued to provide guidance and direction to them until the end of the year in 2019.

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

I have worked in a wide variety of positions throughout my career with the law and in that process, I have been influenced by a wide number of people and events which have influenced my view of the justice system. When I first started practice as a student-intern at ASUM legal services, I was inspired by my supervisor, Bruce Barrett, who instilled in me the desire to do the best that I could in advocating for my clients in family law cases and in prosecuting various proceedings allowed within the

scope of my duties. It often came down to spending quality face-time with the client to discuss their concerns, fears, hopes, and legal problem, to craft an appropriate plan to resolve their current legal problem, whether it was child support payments, property settlements, or simply to be heard by the court to voice their side of a case and make the opponent listen to what they had to say.

Following my work as an intern as a new attorney, I was inspired by the various Judges in Missoula County who presided over the cases I litigated, especially Judge McLean, Judge Harkin and Judge Larson as they appointed me on various pro-bono cases or requested that I assume duties where other counsel had resigned, or died prior to the case being closed. These Judges were willing to guide me, a young and inexperienced attorney, through the myriad problems which are encountered by every new attorney. The Judges taught me important lessons in ways which were at times painful, and in other instances inspiring, but the lessons were necessary to my becoming a better lawyer. The Judges showed me that the people who end up before the court look to Judges to be fair and impartial when ruling on their case, but that the clients looked to their counsel to guide them, while retaining their dignity and integrity as people.

After leaving Missoula, I started working for the Montana Department of Corrections and I had the fortune to work for David Ohler, and to work with Bill Gianoulis at Risk Management and Tort Defense, on a wide variety of cases facing the Corrections Department. Mr. Ohler inspired me to become a specialist in juvenile justice issues by first asking me to be the specialist for the Department and to read and review all of the case law and the statutory law which governed juveniles involved in the criminal justice system. Mr. Ohler and Mr. Gianoulis also showed me that sometimes cases are worth taking to trial, even though the outcome is nearly a foregone conclusion. They taught me that the justice system is not about winning and losing, but it is about representing a client's interests and making certain that your client's side of the story is heard. They taught me that our justice system is in place to voice publicly the issues and concerns, which are beyond the scope of the actual case or controversy, but which will have a lasting impact on the future.

In representing Cascade County and the State of Montana as a Deputy Cascade County Attorney, I have been influenced by Brant Light, who showed me that every crime victim needs a voice in the system and that as a prosecutor you need to be that voice to stand up on their behalf and to protect society from criminal offenders. Mr. Light also taught me that while doing so, you cannot lose sight of the fact that the defendant is also a person and that justice is not in the imposition of maximum sentences, but in holding the defendant accountable for their action and letting the court be the final say

on what punishment should be meted out in each case. Finally, our justice system has shown me that it is not about being black and white, or right versus wrong, but that it can evolve to include proceedings which are aimed at dealing with problems in new and novel ways, like the drug court programs, and the juvenile detention alternatives initiative. These experiences have demonstrated to me that it is not about the individual case, but about the processes, the proceedings, and being fair to all persons.

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

A good District Court Judge must have the ability to listen carefully to all sides of a case; to listen to both the legal arguments made and the equitable positions presented by the parties; before rendering a decision. A good judge will have patience and allow the parties appropriate amounts of time to present their cases so the parties feel they have been heard, while imposing appropriate time constraints to make certain that all cases can be heard within a reasonable period of time. I believe that I possess those qualities as I use them in my current position and in my dealings with the Courts and opposing counsel. In many instances the ability of the court to hear both sides and to address concerns of both parties when crafting a resolution of a case creates a lasting solution to the problem, whether it is a criminal proceeding or a civil proceeding. The ability to be heard, to have the court acknowledge that each party has value in society and that while the ruling may not be in their favor, they were heard by the judge is what the parties need more than the actual ruling on the merits. It is the impression that the Court has allowed both sides to tell their story and not merely to be allowed present in court.

A good judge must be honest in his dealings with all parties and must hold himself to a very high moral standard in his position within society. A good judge must be able to make decisions with finality and not waiver unless there is clear and convincing evidence that an injustice has been done. A good judge should have a wide variety of experiences prior to becoming a judge to reflect back on when considering the issues which will arise, and which could arise in any case. A judge must be intelligent and able to quickly and thoroughly distill the facts and legal issues which are brought before it. A good judge will have an excellent understanding of the current case law, the statutory provisions, and have the ability to apply that law to the present factual problem to render a fair decision. The ability to be candid with all people who appear before the court and to engender a sense of respect through courteous interactions is also a primary requirement of a good judge.

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

The essence of striking a balance between precedent and flexibility in the law is the ability of a judge to provide predictability to the public and the legal practitioners, while at the same time being fair and even-handed to the parties who are the subject of the judge's rulings. One accomplishes this by understanding the legal precedent which becomes apparent in each case based upon the briefs of the parties and the courts own legal research, and then being able to analogize the law to case at bar to arrive at a fair and just ruling. When a court finds facts which do not fit within any precedent, the court should analogize the law to the facts in a way that the legal principles are not contorted, or twisted, but draw conclusions which are based upon sound legal reasoning with reference to the precedent, and the societal and policy considerations of the underlying statute, and then apply them to the facts to reach a result which comports with the intents of the law and the precedent which has some analogous factual basis to the case.

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

I am applying to become a District Court judge to ensure the concepts of justice and fairness are protected, to ensure that individuals have their day in court, and to interpret the law in accordance with the rules, case law and statutes. I have practiced before more than thirty judges during the course of my career in both Federal and State courts. Each judge inspires me to be better at my profession, to delve deeper into the law, to better understand the facts, and to seek justice; even when that may be something which did not comport with my original beliefs on a case which I was prosecuting. I believe that I would be a judge who inspires others, who would work to better society and to provide clear, just and concise rulings to questions of fact and law in Cascade County. As a Judge, it is your first and foremost duty to render decisions as swiftly as possible, as justice delayed is often justice denied. As a judge, I believe I would be uniquely position to provide a long term perspective as I have lived and grown up in Cascade County and am familiar with so many aspects of the community, the people, who need justice and a judge they can rely upon to render fair and impartial justice to all.

I have had the opportunity to work with many new district court judges, including Judge Greg Pinski, Judge Elizabeth Best, Judge John Kutzman and Judge John Parker. During the course of working before these judges I have learned that being a district court judge is more than just sitting and listening to disputes, but it is delving deep into the facts, looking at the equity of any result, knowing

that in many instances the justice system can never undo the harm that has been caused, regardless of fault. I have been told by several members of the judiciary that I would be an excellent judge based upon my conduct at hearings before them over the years and my experience in dealing with complex issues involving families, children, and the criminal justice system. I have handled well over 1,800 cases in my career, from minor misdemeanors, to horrific cases of incest spanning decades, and issues of equity concerning the sentences and punishments handed down to offenders. I believe that my combined experience in private practice, as an appellate attorney, and a prosecutor will serve the interests of the Eighth Judicial District and that I can ensure that all cases which come before me receive a fair hearing.

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

I have worked to implement and improve the justice system by working with Judge McKittrick, Judge Neill and Judge Pinski in the creation, implementation and operation of the three drug courts which are currently operating in the Eighth Judicial District Court. During my time working on these problem solving courts, I have suggested changes, worked to maintain the number of participants in each court, and worked to improve the usage of these courts with individuals who have substance abuse issues and who are involved in the legal system. I have enjoyed working closely with Jeff Kushner on issues facing the drug court model and with many other issues which impact the justice system such as juvenile detention alternatives and the JDAI initiative of the Annie Casey Foundation. I am pleased to have reduced or eliminated juveniles from the detention center for many offenses which prior to my work in Cascade County, would have resulted in an extended stay in the juvenile detention center.

I have had the honor of arguing a case before the Montana Supreme Court, which resulted in my state agency receiving the ruling they hoped for at the outset of the case. The experience was extremely challenging and difficult, because while I did not prosecute the underlying case, I worked on the appellate brief becoming intimately familiar with the case, and ultimately argued the case to the Court. The case dealt with an area of the law which remains vitally important to the citizens of the State of Montana, the right to privacy versus the right to know in documents filed with a state agency. These two competing rights are always before the court system as citizens wish to know what is happening in governmental bodies, while the governmental bodies are trying to protect the individual's right to privacy. In the case I argued, our goal at the Department of Corrections was to try to protect the privacy rights of those who submitted documents to the Montana Board of Pardons and Parole from having

personal identifying information disclosed to inmates, specifically the victims of their offenses, and to prevent disclosure of any information which could jeopardize the safety and security of the institution of the Montana State Prison, and we accomplished that goal.

I also addressed the significant problem of inmate litigation over sentence calculations during my tenure at the Montana Department of Corrections, handling the bulk of the inmate's Habeas Corpus petitions filed with the Montana Supreme Court and the Federal District Court. In addressing the issue facing the Department, I had to deal with the calculation of inmate's accumulated good time credits under prior statutory schemes which had varying rates of reward based upon which classification or status the inmate held within the Montana prison system. I worked very hard with the records supervisor at the Montana State Prison to develop a spreadsheet which could be utilized on each inmate's sentences to calculate their discharge of each prison sentence imposed, regardless of the number or the manner in which it was imposed. During this process, I also lobbied for and ultimately worked to implement a state-wide inmate record database system, which made the inmate records available to staff of the Department who worked directly with the inmates and eliminated the risk of lost documentation through the use of secure data storage for the inmate records. I look back on the numbers of cases prosecuted before the Montana Supreme Court during my tenure and the spike in Habeas Corpus petitions rose and then dropped off precipitously after I finalized the sentence calculation spreadsheet and worked to get it implemented system wide.

I am also very honored to have specialized in a complex body of law which rarely garners the attention of the Montana Supreme Court, that of the Montana Youth Court Act, and I am now recognized as an expert on the act and the statutory framework which governs this civil body of law, but applies the criminal standards of proof and evidentiary rules. I also deal with Youth in Need of Care proceedings which are emotionally draining and difficult, but when they succeed in eliminating the abuse and neglect, are very rewarding as you see families reunited, or you see children placed into loving adoptive homes.

Most recently, I continue to work with victims of horrific sexual abuse and to provide them with closure, a sense of safety and security, as well as insuring that their voices were heard in the justice system. These individuals inspire me to continue to improve my abilities to ensure that justice is served in the cases which I am assigned.

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

I believe that my credentials and experience speak for themselves and I am honored to be considered for this position. If the Judicial Nomination Commission has further questions or seeks additional information, I would be happy to answer any questions or provide any additional information.

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

I have an extremely wide range of legal experiences from working as a partner in a law firm with a colleague right after being sworn in as an attorney handling routine and complex civil and criminal cases in Missoula and Ravalli Counties; dealing with complex contractual issues as in-house counsel negotiating contracts and dealing with contract issues involving international corporations and railroads; working as a Special Assistant Attorney General dealing with issues of legal and illegal sentences, creating the computerized spreadsheet sentence calculation system which would pass constitutional requirements; and working as a prosecutor at the County Attorney's Office handling everything from minor misdemeanors to the most serious incest, sexual intercourse without consent, and homicide cases. These experiences will allow me to deal with many different complex and serious cases from prison riot litigation, inmate civil rights issues, child custody, dissolution of marriage, personal injury, criminal defense, risk management, and any complex civil matters which may come before me as a judge. I have dealt with budgeting issues facing the Montana Department of Corrections, fiscal impact statements on legislation, and have dealt with the public on a daily basis in many of my positions.

I believe that my experience in all these different positions and my credentials at crafting solutions to complex legal problems over my twenty-seven years of practice will serve me well as a District Court Judge.

## CERTIFICATE OF APPLICANT

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



8-10-2020

(Date)

(Signature of Applicant)

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A signed original **and** an electronic copy of your application and writing sample must be submitted by  
**5:00 p.m. on Friday, August 21, 2020.**

**Mail the signed original to:**

**Office of Court Administrator  
c/o Lois Menzies  
P.O. Box 203005  
Helena, MT 59620-3005**

**Send the electronic copy to: [mtsupremecourt@mt.gov](mailto:mtsupremecourt@mt.gov)**

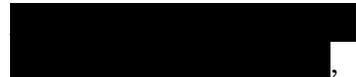
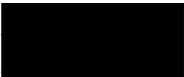
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Attorneys for the State

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**MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY**

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IN THE MATTER OF	)	<b>Companion Case Nos.:</b>
	)	
YOUTHS IN NEED OF CARE.	)	

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**STATE'S RESPONSE TO BIRTH MOTHER'S MOTION TO DISMISS  
STATE'S PETITION FOR EMERGENCY PROTECTIVE SERVICES,  
ADJUDICATION AS A YOUTH IN NEED OF CARE  
AND TEMPORARY LEGAL CUSTODY**

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[REDACTED FACTUAL INFORMATION]

**III. BIRTH MOTHER'S ARGUMENT**

Birth Mother has moved to dismiss these proceedings on procedural grounds, alleging that the State has violated her constitutional rights. She first claims that the State has violated her rights under § 41-3-101(b) and (c). Second, Birth Mother alleges that the removal of the minor children from her custody was not supported by any statement that the minor children were at risk of "imminent harm" as required by law. Third, Birth Mother alleges the State has failed to comply with §41-3-301(6), because she was not provided with a copy of the Affidavit within two working days after the removal. Finally, Birth Mother alleges that her right to a show cause hearing within twenty (20) days after the date of removal was violated

when the Office of the State Public Defender filed a Motion to Continue after Counsel for the Birth Mother had already filed a notice of appearance.

#### **IV. SUPPORTING BRIEF**

**A. Dismissal of a Youth In Need of Care proceeding is an improper remedy for failing to provide the parents with a copy of the affidavit within 2 days.**

Montana law states that “[a]ny child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility.” Mont. Code Ann. § 41-3-301(1) (2015). If the Department removes child from their home under such circumstances “a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal.” § 41-3-301(6).

Montana law further states that “proceedings under this chapter must be initiated by the filing of a petition.” § 41-3-422. Specifically, the County Attorney may “file a petition for immediate protection and emergency protective services.” § 41-3-427(1)(a). The above-referenced affidavit must accompany the petition, and the County Attorney has “the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child.” § 41-3-427(1)(c) and (2). The law mandates that an abuse and neglect petition be filed within 5 working days of the emergency removal. § 41-3-301(6).

Montana law authorizes the County Attorney to request a number of relief options when filing the initial petition, including the relief relevant to this case: temporary legal custody, as provided in § 41-3-422. As discussed *infra*, the Court must adjudicate the Youth as a Youth in Need of Care, by a preponderance of the

evidence, prior to a Disposition Hearing. It is at this time that temporary legal custody may be transferred to the Department. § 41-3-438(3)(f)(i).

The State concedes that a copy of the affidavit was not submitted to the parents within 2 days of removal, but notes that this is a courtesy, not a legal mandate. The law says “if possible.” § 41-3-301(6). The State recognizes that the affidavit should have been provided to the Birth Mother as soon as practicable in this case and the Child Protection Specialist could have provided the parents with a copy of her affidavit at the time it was submitted to the County Attorney’s Office.

Arguably, the purpose of the statute which suggests the affidavit be provided to the parents within 2 days of the emergency removal, if possible, is one of notice. Even without the formality of an affidavit, it can be inferred from the events described above that both parents were well aware of the reasons for Department involvement. Here, both Birth Mother and Birth Father were provided notice regarding the removal from the Birth Mother, as Birth Mother was advised in person by [REDACTED]. Birth Father was notified of the removal as he was contacted by the Department, through [REDACTED], who requested he be the placement for his minor children. This, coupled with numerous discussions regarding the concerns and ongoing involvement of the Department, including the voluntary services plan instituted in [REDACTED], provided Birth Mother with sufficient notice of the Department’s ongoing concerns. As detailed above, the birth parents were certainly on notice of the facts and circumstances surrounding the removal and the grounds for the State’s Petition, although a copy of the Affidavit was not provided in the timeframe recommended by § 41-3-301(6).

The State argues that dismissal of the proceedings is not the proper remedy for a violation of the time requirements set forth in § 41-3-301. The statute is silent as to the proper remedy in the event of such a violation, but it can be inferred through other portions of the statute that dismissal is not a proper remedy. For

example, § 41-3-422 sets out the statutory guidelines for Temporary Legal Custody. In subsection (7) the statute states: “If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.”

The best interests of the children are paramount in all Youth in Need of Care proceedings. Here the allegations are that the infant child sustained non-accidental trauma consisting of linear bruising, followed by further injury consisting of a laceration to his head, while the other minor child had significant, recent bruising extending from the middle of her back down her entire backside, across her right hip, as well as bruising under the left armpit. This was coupled with an inconsistent explanation of the bruising by Birth Mother.

The Court has already found probable cause to believe the Youth is dependent or in need of care, and an Order granting Emergency Protective Services was signed by this Court on [REDACTED]. To dismiss the case is to return these children to a potentially unsafe or dangerous environment, without first addressing the Department’s concerns regarding Birth Mother and her admitted failure to engage in the programming agreed upon with the Department prior to the emergency removal. Birth Mother admits in her Affidavit filed with the Court that she did not begin to engage with [REDACTED], more than two weeks after the Department’s initial intervention in [REDACTED]. The State contends that dismissal would be absolutely contrary to the best interests of the children at this stage in the proceedings.

Therefore, the State respectfully requests that the Court deny Birth Mother’s motion to dismiss the State’s petition on these grounds.

**B. The proper forum to challenge the State’s Petition for Adjudication as Youths in Need of Care and Temporary Legal Custody is at the Show Cause and Adjudicatory Hearing already set by this Court.**

An Order granting Emergency Protective Services was signed by this Court on [REDACTED]. A Show Cause and Adjudicatory Hearing was set for [REDACTED]. The State concedes that the time for the Show Cause Hearing was not set within the statutory requirements by the Court, due to the fact that twenty days after [REDACTED], would be either [REDACTED].<sup>1</sup> [REDACTED], and [REDACTED], were legal holidays, which further frustrated the Court's efforts to schedule this matter within the statutory timeframe, in addition to limitations imposed by the Court's already crowded docket; this constitutes institutional delay.

[REDACTED] asserts that Birth Mother's rights were further violated when the Office of the Public Defender filed a motion to continue the Show Cause and Adjudicatory Hearing set for [REDACTED], without consulting him and filing the motion on behalf of his client. The State agrees that the Office of the Public Defender should have notified [REDACTED] and contacted him based upon his filing of a notice of appearance. However, the State did not object to the continuance as both parents are entitled to the benefits of counsel pursuant to M.C.A. § 41-3-425. The OPD's representations that the Birth Father had not been appointed counsel and they were seeking conflict counsel, are reasonable and appropriate grounds for a continuance of the proceedings. The State contends that Birth Father is entitled to the same zealous advocacy and representation that Birth Mother currently avails herself of.

As the Court is well aware, § 41-102(7)(a) defines child abuse or neglect as "(i) actual physical or psychological harm to a child; (ii) substantial risk of physical or psychological harm to a child; or (iii) abandonment."

Physical or psychological harm to a child is:

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<sup>1</sup> Counsel for the Birth Mother erroneously asserts that the original hearing date of [REDACTED], was set within the 20 day requirement. *Brief of Birth Mother, Page 8, Lines 24-26.*  
STATE'S COMBINED RESPONSE TO ATTORNEY FOR THE MOTHER'S MOTION TO DISMISS THE STATE'S PETITION FOR EMERGENCY PROTECTIVE SERVICE,  
ADJUDICATION AS A YOUTH IN NEED OF CARE AND TEMPORARY LEGAL CUSTODY

harm that occurs whenever the parent or other person responsible for the child's welfare: (i) inflicts or allows to be inflicted upon the child **physical abuse, physical neglect**, or psychological abuse or neglect; (ii) commits or allows sexual abuse or exploitation of the child; (iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare; (iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so; (v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or (vi) abandons the child." § 41-3-102(21). (emphasis added)

Pursuant to §41-3-102(19), physical abuse is defined as

an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

§ 41-3-102(20) defines physical neglect as:

either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

Significantly, the statute recognizes not only actual physical or psychological harm to a child, but the substantial risk of physical or psychological harm to a child.

The allegations in this case are those of physical neglect and physical abuse.

██████████ indicated that ██████ examination showed evidence of physical abuse based upon the linear bruising on the infant child which was inconsistent with any explanation provided by Birth Mother. This, coupled with the infant child suffering further non-accidental head trauma in the form of a laceration to the scalp, and the other child suffering significant bruising virtually from head to toe, as documented

by [REDACTED], is indicative of ongoing abuse or neglect, or lack of protective capacities, to the extent the further investigation and involvement by the Department is warranted. [REDACTED] also stated that Birth Mother's story was inconsistent with the injuries to the Youths, and she did not want to send the children home with Birth Mother after [REDACTED] observed the children during a medical appointment.

[REDACTED] bases his motion to dismiss on the assertion that there are no specific allegations of "imminent harm" to the children by Birth Mother. The State asserts that [REDACTED] reliance upon the Declaration of Policy is an argument of form over substance. The Department's affidavit documents actual physical abuse in the form of linear bruising on an infant and significant bruising on a [REDACTED] child. The statutes do not mandate the use of the term "imminent," only that the allegations meet the definitions of abuse or neglect as set forth in Montana law. It is the Youths who are adjudicated as Youths in Need of Care by this Court, not the individual parent. Whether these Youths are Youths in Need of Care is for the Court to determine after hearing all of the evidence and reviewing the documentation on file.

It is the State's position that the proper forum to challenge the sufficiency of evidence as to whether these children are indeed Youths in Need of Care is the Adjudicatory Hearing that has been scheduled by this Court; not through a Motion to Dismiss. At the time of the hearing the State will present substantial testimony that supports, and will argue vehemently, that the facts outlined are sufficient to support a finding, by a preponderance of the evidence, that these Youths are indeed Youths in Need of Care.

- C. Birth Mother's Motion to Dismiss does not delineate a specific reason for the dismissal in compliance with Rule 12, and if it is construed at a Summary Judgment motion under Rule 56, it should be denied as not being in the best interests of the Youth, or within the framework of the Youth in Need of Care statutes.**

Birth Mother has moved to dismiss alleging that the State has “violated [REDACTED] rights” by failing to hold the hearing within the statutory requirements, by continuing the hearing without notice to her counsel, and for failing to serve her with a copy of the Affidavit within two business days of removal.<sup>2</sup>

Youth in Need of Care proceedings are governed by Title 41, Chapter 3; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence. § 41-3-422(4). [REDACTED] has not set forth the basis for his motion to dismiss under any of the statutory theories set forth in Rule 12 of the Montana Rules of Civil Procedure. The Motion does not allege lack of subject matter jurisdiction, lack of service of process,<sup>3</sup> or any of the other subsections under Rule 12.

Respectfully, the State requests that the Motion to Dismiss be denied for failing to comply with the Montana Rules of Civil Procedure as it fails to identify any statutory defense under Rule 12. Further, the interests of justice are best served an evidentiary hearing that allows the Court to hear all of the evidence and determine if the State has met its burden as the plaintiff in these actions.

The Court could also construe Birth Mother’s motion, together with the supporting Affidavits, as a Motion for Summary Judgment pursuant to Rule 56, as [REDACTED] presents numerous affidavits of witnesses which may be called to testify at any adjudicatory hearing as factual statements in support of his position. The State asserts that a Motion for Summary Judgment pursuant to Rule 56 is inappropriate, as the responsive filings and the timing of these motions would further delay the Court holding an evidentiary hearing in a timely fashion and would not serve the best interests of the Youths. Rule 56 provides that the State would have twenty-one days within which to file a response and any supporting

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<sup>2</sup> Birth Mother did not delineate whether this is a Motion to Dismiss pursuant to Rule 12 or a Motion for Summary Judgment pursuant to Rule 56.

<sup>3</sup> [REDACTED] does skirt the issue of lack of service of process by discussing the failure of the State to serve a copy of the Affidavit within 2 days of removal, if possible, pursuant to § 41-3-301(6), but does not specifically state that this alleged failure by the State falls within the parameters of Rule 12(b)(2), (4), or (5).

Affidavits. M.R.Civ.P. Rule 56(c)(1)(B). Further, Rule 56 provides that the moving party would then be allowed fourteen days to file a reply before this Court would be in a position to make a ruling. M.R.Civ.P. Rule 56(c)(1)(C). This is at best a dilatory tactic and not in the best interests of the minor children.

Regardless of how the Court construes Birth Mother's Motion to Dismiss, the State's time to file a response to either a Motion to Dismiss or a Motion for Summary Judgement would necessarily move any actual adjudicatory hearing well outside of the 20 day requirement under § 41-3-432(1). The Court should deny the Motion to Dismiss as not in conformance with the Montana Rules of Civil Procedure, not in the best interests of the minor children, and allow this matter to go forward with an evidentiary hearing as scheduled on [REDACTED].

## V. CONCLUSION

The policy of the Youth in Need of Care statutes was not violated when the State intervened and took emergency protective custody over children who are believed to be abused or neglected within the definitions of the law. The failure to hold the hearing within the statutory time frame, and the motion to continue filed by the Office of the Public Defender, while somewhat problematic, do not warrant dismissal of the proceeding, as dismissal is not an appropriate remedy under the statutes. Dismissal fails to provide for the best interests of the Youths, to ensure they are protected from the alleged abuse by Birth Mother. Finally, the Motion to Dismiss does not comply with the requirements of the Montana Rules of Civil Procedure and fails as either a Motion to Dismiss pursuant to Rule 12, or as a Motion for Summary Judgment pursuant to Rule 56, and should be denied in favor of holding an evidentiary hearing on the record to guarantee that the constitutional rights of the Youths, to be free from abuse and neglect, are protected.

The State respectfully requests the Court to deny the motion in its entirety and proceed with the Show Cause and Adjudicatory Hearing presently set on